

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In Re Application of)	
)	
MARGARET JACKSON)	
(Transferor))	
and)	File No. BTCCT-20011024AAU
)	Facility ID No. 63865
RAY WEBB, et al.)	
(Transferees))	
)	
For Consent to the Transfer of Control of)	
Sunbelt Television, Inc., Licensee of)	
KHIZ(TV), Barstow, California)	

MEMORANDUM OPINION AND ORDER

Adopted: December 3, 2003

Released: December 17, 2003

By the Commission:

1. The Commission herein considers an Application for Review filed by Costa de Oro Television, Inc. (Costa), seeking reversal of the December 27, 2001, grant of the above-captioned application to transfer control of Sunbelt Television, Inc. (Sunbelt), licensee of KHIZ(TV), Barstow, California.

2. **Background.** The subject application to transfer control of Sunbelt from Margaret Jackson to Ray Webb, *et al.* was filed on October 24, 2001. Pursuant to Section 309 (b) of the Communications Act of 1934, as amended (Act), a Public Notice was issued establishing, among other things, a 30-day public comment period, during which petitions to deny the subject application might be filed. *See Public Notice*, Report No. 25117, released November 23, 2001. In this case, the deadline for filing such petitions was December 26, 2001.¹ It appearing that no such petitions were filed against the application by that day, the application was granted by routine staff action on December 27, 2001.

3. Costa, the licensee of KJLA-TV, Ventura, California, filed a petition to deny the application with the Commission's Secretary's office on December 26, 2001. Although filed on that date, the petition was not received by the staff until after the application was granted and the Commission's grant form (FCC Form 732) was mailed to the parties. Nevertheless, because Costa did timely file its pleading, the staff considered it as a petition for reconsideration of the grant of the application. In its pleading, Costa advised the Commission that the subject transaction was the subject of pending litigation in California state courts concerning the transferability of these shares under state law between it and Sunbelt's shareholders, and it

¹ Although the 30-day period was to expire on December 24, 2001, the Commission was closed that day and the Christmas holiday on December 25th.

requested that the Commission defer action until the resolution of that or possible future litigation.

4. In a letter directed to Costa on February 25, 2002 (Staff Letter), the staff found that Costa did not set forth specific allegations that raise a substantial and material question of fact under Section 309 (d)(1) of the Act sufficient to show that grant of the subject application would be *prima facie* inconsistent with the public interest, convenience or necessity. It was explained that the Commission is not the proper forum for resolving private disputes under state law, and that it is not appropriate to defer action on an application pending the resolution of present or future litigation properly in the California courts.² Costa's remaining allegations concerning the execution and preparation of the application were found to be speculative. Accordingly, the staff concluded that Costa's pleading failed to indicate that the grant of that application must be revisited or reversed.³

5. In its Application for Review, Costa re-alleges that the grant of the subject application prior to consideration of the allegations raised in its petition to deny is "*per se* unlawful." It maintains that the staff's attempt "to ameliorate the situation by the reclassification of a valid and timely Petition to Deny as a Petition for Reconsideration" evidences that its action "is irretrievably tainted." Aside from this "patent illegality," Costa asserts that this application was given "unusually prompt processing by the Commission" that "whether by error or blatant favoritism . . . presents the appearance of a violation of the impartial treatment [sic] opponents are entitled." Costa therefore asks the Commission to rescind the grant of the subject, conduct *de novo* review of its allegations, and hold the application in abeyance or specifically condition any grant on the outcome of any pending present or future state litigation.

6. **Discussion.** Initially, we find under the circumstances of this case that Costa was not prejudiced by the staff's treatment of its petition to deny as a petition for reconsideration of the grant of the instant application, because Costa's arguments concerning its litigation with Sunbelt and/or its shareholders in the California state courts were thoroughly considered and properly resolved by the staff. Costa had and exercised its right to seek Commission review of the staff action and we have fully considered its application for review.⁴ We uphold the grant of the subject application for the reasons stated in the Staff Letter. It is well established under Commission precedent that the Commission is not the proper forum for resolving private contractual disputes, and that the Commission will not defer action on pending transfer applications pending state court litigation of contractual disputes. *See, e.g., Decatur Telecasting, Inc.* 7 FCC Rcd 8622, 8624 (1992). Accordingly, there is no reason to disturb the grant of this

² The Staff Letter further advised that the grant of the application is permissive rather than compulsory. If the parties close on the transaction, they do so at their own risk, and remain subject to the determination of the state courts as to their contractual rights and obligations. Grant of the application indicates only that the parties are *qualified* under our rules and policies to change their ownership interests in Sunbelt and does not alter in any way the parties' rights or obligations under state law.

³ On February 5, 2002, Costa filed a "Motion to Rescind Grant" claiming that the grant of the transfer application without considering the petition to deny was "*per se* unlawful." Because Costa's allegations were addressed fully in the staff letter, and because it was not prejudiced by such action, its motion was dismissed.

⁴ Moreover, nothing in the staff's treatment of Costa's pleading as a petition for reconsideration deprives Costa of any other right ordinarily afforded a petitioner to deny, including the right to seek judicial review of the Commission's decision.

application.⁵ In addition, we find Costa's concern regarding the appearance of impropriety by the prompt grant of the subject application to be without any factual basis, wholly speculative and insufficient to warrant any further action.

7. Accordingly, for the reasons set forth above, IT IS ORDERED, That the Application for Review filed by Costa de Oro Television, Inc. IS DENIED.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary

⁵ See, e.g., *WAMC, Inc.*, 10 FCC Rcd 12219 (1995).