

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

In the Matter of
OTA Broadcasting (SFO), LLC
(Assignor)
and
TV-49, Inc.
(Assignee)
Application for Consent to Assignment of License
of Class A Television Station KAXT-CD, San
Francisco-San Jose, CA
Application for Consent to Assignment of License
of Station KTLN-TV, Novato, CA
File No. BAL-20171026ABS
Facility ID No. 37689
File No. BALCDT-20171101ACJ
Facility ID No. 49153

MEMORANDUM OPINION AND ORDER

Adopted: January 21, 2020

Released: January 22, 2020

By the Commission:

I. INTRODUCTION

1. The Commission has before it for consideration an Application for Review filed by Nalini Kapur, Rishi Kapur, and Ravi Kapur (the Kapurs) in the above-referenced proceeding (AFR). The Kapurs seek review of a decision by the Video Division (the Division) of the Media Bureau granting the applications for consent to assign the licenses of stations KAXT-CD, San Francisco-San Jose, California (KAXT) (KAXT Application), and KTLN-TV, Novato, California (KTLN) (KTLN Application), from OTA Broadcasting (SFO), LLC, (OTA) to TV-49, Inc. (TV-49), and denying the Kapurs' informal objections to those applications. As discussed below, we dismiss the AFR for lack of standing.

1 Application for Review of Nalini Kapur, Rishi Kapur, and Ravi Kapur, File Nos. BAL-20171026ABS & BAL (filed Oct. 18, 2018) (AFR). OTA filed an Opposition to the AFR on November 2, 2018 (AFR Opposition), and the Kapurs filed a Reply on November 15, 2018 (AFR Reply).

2 Applications of OTA Broadcasting (SFO), LLC (Assignor), and TV-49, Inc. (Assignee), for Consent to Assign the Licenses of Station KAXT-CD, San Francisco-San Jose, CA, KTLN-TV, Novato, CA, Memorandum Opinion and Order, 33 FCC Rcd 8765 (MB 2018) (2018 MO&O). Unlike the "petition to deny" filed against the KAXT assignment application, the Kapurs filed an informal objection to the KTLN Application. Although the AFR nominally asks for the rescission of the assignment grants for both KAXT and KTLN, the Kapurs have failed to advance an argument at any point in this proceeding that they have standing with respect to the assignment of KTLN. See AFR at 9; see also Chapin Enterprises LLC, Memorandum Opinion and Order, 29 FCC Rcd 4250, 4252, para. 7 (2014) (Chapin) (recognizing that, while an informal objector is not required to demonstrate standing when challenging an application, it is required to do so when filing an application for review). Therefore, we dismiss the AFR with respect to KTLN for lack of standing.

II. BACKGROUND

2. The history of this dispute is well-documented, and we decline to restate it here. In relevant part, these issues stem from the Kapurs' unsuccessful challenge to the grant of the original assignment of KAXT's license from KAXT, LLC—in which the Kapurs were minority interest holders—to OTA in 2014.³ The Division also renewed KAXT's license over the Kapurs' objection.⁴ In several subsequent decisions, the Division and the full Commission have repeatedly rejected the Kapurs' challenges.⁵

3. In October 2017, OTA sought Commission approval for the assignment of KAXT to TV-49. The Kapurs asked the Commission to deny the assignment, relying primarily on its previous arguments that OTA lacked the character to be a Commission licensee.⁶ In opposition, OTA urged the Commission to reject the Kapurs' challenge because the arguments had already been rejected in another proceeding.⁷ The Kapurs, in reply, objected to OTA's characterization of the Kapurs' arguments and asserted that OTA's character was still an open matter.⁸ On September 18, 2018, the Division rejected the Kapurs' objections and approved the assignment of KAXT from OTA to TV-49. Notably, while the Kapurs styled their challenge to the KAXT Application as a petition to deny, the *2018 MO&O* treated it as an informal objection because the Kapurs' pleading was not supported by an affidavit demonstrating standing.⁹

4. The Kapurs now seek Commission review of the *2018 MO&O*. They argue that the Division misapplied the relevant statutory standing requirements of section 309(d)(1) of the Communications Act of 1934, as amended (the Act), and thus improperly classified the Kapurs' petition to deny as an informal objection.¹⁰ The Kapurs also raise various substantive objections to the *2018*

³ *Application of KAXT, LLC (Assignor), and OTA Broadcasting (SFO), LLC (Assignee), for Consent to Assign the License of Station KAXT-CD, San Francisco-San Jose, California*, Memorandum Opinion and Order, 29 FCC Rcd 8266 (MB 2014) (*2014 MO&O*). Those seeking additional background can consult recent decisions in this proceeding. See generally *Application of KAXT, LLC (Assignor), and OTA Broadcasting (SFO), LLC (Assignee), for Consent to Assign the License of Station KAXT-CD, San Francisco-San Jose, California*, Memorandum Opinion and Order, 33 FCC Rcd 8760 (MB 2018); *Application of KAXT, LLC (Assignor), and OTA Broadcasting (SFO), LLC, (Assignee) for Consent to Assign the License of Station KAXT-CD, San Francisco-San Jose, California*, Memorandum Opinion and Order, 32 FCC Rcd 9638 (2017).

⁴ See *Application of KAXT, LLC (Assignor), and OTA Broadcasting (SFO), LLC (Assignee), for Consent to Assign the License of Station KAXT-CD, San Francisco-San Jose, California*, Memorandum Opinion and Order, 30 FCC Rcd 2691, 2691, para. 1 (MB 2015).

⁵ In a separate decision issued today, we have rejected the Kapurs' most recent attempt to overturn the grant of assignment of KAXT to OTA. *Application of KAXT, LLC (Assignor), and OTA Broadcasting (SFO), LLC (Assignee), for Consent to Assign the License of Station KAXT-CD, San Francisco-San Jose, California*, Memorandum Opinion and Order, FCC 20-2 (rel. Jan. 22, 2020).

⁶ *Petition to Deny of Nalini Kapur, Rishi Kapur, and Ravi Kapur*, File No. BAL-20171026ABS (filed Nov. 30, 2017) (*2017 Objection*). The Kapurs filed an Erratum on December 5, 2017, and supplemented their petition on February 9, 2018, to raise additional character allegations. OTA filed an Opposition on December 13, 2017 (*2017 Opposition*)—with an Erratum on November 5, 2018—and the Kapurs filed a Reply on December 26, 2017 (*2017 Reply*).

⁷ *2017 Opposition* at 5.

⁸ *2017 Reply* at 2-7.

⁹ *2018 MO&O*, 33 FCC Rcd at 8765, para. 1 n.1.

¹⁰ AFR at 3-4.

MO&O,¹¹ which, for the reasons discussed below, we decline to address herein. OTA argues in its AFR Opposition that the AFR is the Kapurs' latest attempt to use the Commission's processes to exact revenge on their former business partners for selling KAXT to OTA and asks the Commission to sanction the Kapurs for abuse of process.¹² As it relates to standing, OTA asserts that the Kapurs "cannot deny that they failed to comply with the plain letter of the statute."¹³ In their AFR Reply, the Kapurs contend that, rather than use its Opposition to oppose the substance of the AFR, OTA inappropriately uses the bulk of the Opposition to launch a personal attack against the Kapurs and their counsel.¹⁴

III. DISCUSSION

5. We dismiss the AFR for a lack of standing.¹⁵ Section 5(c)(4) of the Act provides that "[a]ny person aggrieved by any . . . order, decision, report or action [made or taken pursuant to delegated authority] may file an application for review by the Commission."¹⁶ In interpreting the term "aggrieved," the Commission has required the applicant to allege facts sufficient to: (1) show an injury; (2) demonstrate a direct causal link between the challenged action and its alleged injury; and (3) show that the injury would be prevented or redressed by the requested relief.¹⁷

6. Review of the record plainly shows that the Kapurs have failed to demonstrate that they have standing in this proceeding.¹⁸ First, the Kapurs fail to demonstrate that they have been injured by

¹¹ *Id.* at 5-9 (presenting arguments regarding alleged public file violations by OTA and asserting that the 2018 *MO&O* erred in affirming previous Commission rulings in the parallel proceeding involving the sale of KAXT to OTA and KAXT's license renewal).

¹² AFR Opposition at 2-3, 7-12.

¹³ *Id.* at 1 n.3.

¹⁴ AFR Reply at 2-10.

¹⁵ We need not address whether the Bureau's decision can be read to hold that facts purporting to establish standing to file a Petition to Deny must be set forth in an "affidavit asserting standing" that is separate from the text of the petition. AFR at 3-4 (citing 2018 *MO&O*, 33 FCC Rcd at 8765, para. 1 n.1). Rather, as discussed herein, we conclude that because the Kapurs failed to demonstrate how they are "aggrieved" by the grant of the KAXT Application, they do not have standing to file an application for review. For the same reasons, we conclude that the Bureau properly treated the Kapurs' self-styled "Petition to Deny" as an informal objection. See *Cellco Partnership*, Memorandum Opinion and Order and Declaratory Ruling, 27 FCC Rcd 10698, 10713, para. 36 (2012) (explaining that standing to file a Petition to Deny under Section 309(d)(1) requires a showing regarding the same factors as under Section 5(c)(4) to establish standing to file an application for review: (1) injury; (2) a causal link between the challenged action and the claimed injury; and (3) showing that the injury can be traced to the challenged action and that the injury would be prevented or redressed by the relief requested).

¹⁶ 47 U.S.C. § 155(c)(4); accord 47 CFR § 1.115(a) ("Any person aggrieved by any action taken pursuant to delegated authority may file an application requesting review of that action by the Commission. . . . Any application for review which fails to make an adequate showing in this respect will be dismissed.").

¹⁷ *K Licensee, Inc.*, Memorandum Opinion and Order, 31 FCC Rcd 841, 842, para. 3 (2016); accord *New Jersey Public Broadcasting Authority Request to Cancel License for Translator DW276BX, Pompton Lakes, New Jersey*, Memorandum Opinion and Order, 29 FCC Rcd 5558, 5558-59, paras. 2-3 (2014). The Commission based this interpretation on the U.S. Supreme Court's test for constitutional standing. *E.g.*, *K Licensee, Inc.*, 31 FCC Rcd at 842, para. 3 n.8 (citing *Duke Power Co. v. Carolina Envtl. Study Grp., Inc.*, 438 U.S. 59 (1978)).

¹⁸ AFR at 4 n.8 (citing *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560 (1992) (*Lujan*)). The Kapurs do not contest that they did not claim standing under the traditional broadcast standards. In the broadcast regulatory context, standing is generally obtained in one of three ways: (1) as a competitor in the market suffering signal interference; (2) as a competitor in the market suffering economic harm; or (3) as a resident of the station's service area or regular listener of the station. See *Chapin*, 29 FCC Rcd at 4252, para. 7; *Sunburst Louisiana, LLC*, Memorandum Opinion and Order, 29 FCC Rcd 9777, 9778-79, para. 5 (2014).

the Bureau's decision to grant the assignment of the KAXT-CD license to TV-49.¹⁹ Specifically, we find that the Kapurs mischaracterize their interest and their injury. While they inexplicably profess unqualified ownership of KAXT, LLC in their standing argument, the record clearly demonstrates that their ownership interest is non-controlling.²⁰ The Commission and reviewing federal courts have repeatedly rejected standing assertions advanced by minority interest holders.²¹ Further, we reject the Kapurs' repeated and conclusory claims that the purported injury here and their purported injury in the prior assignment and renewal proceedings are somehow "inextricably" linked or intertwined.²² On the contrary, the instant assignment is distinct and separable from the prior assignment and renewal of the license.²³ In denying requests to defer action on a proposed assignment or transfer of control where a prior renewal or other proceeding is pending, the Commission has repeatedly held that Commission actions on applications for assignment or transfer of control amount only to consent, and, absent a stay or injunction by a court, the applicants consummate the transaction at their own risk.²⁴ The Commission has explained that "consummation of the transaction neither prejudices a petitioner's right to judicial review nor our ability to take remedial action, if the court so orders," and that the assignee/transferee "assumes the risk that transaction may be subject to further proceedings."²⁵ Regardless of any claim of standing to challenge the prior assignment/renewal,²⁶ the requirement to show a direct injury *in this proceeding* does

¹⁹ The Kapurs claim that as the "owners" of KAXT, LLC seeking reassignment of the KAXT-CD license to KAXT, LLC they have suffered an injury in the prior assignment and renewal proceedings and in the present "inextricably linked" proceeding through "the loss of KAXT-CD to OTA," an injury that is "only deepened" in this proceeding by the assignment of the same station license to TV-49. AFR at 4 & n. 8 (citations omitted).

²⁰ See, e.g., *2014 MO&O*, 29 FCC Rcd at 8269 (citing an arbitrator's declaration that the contract to sell KAXT to OTA was validly signed and enforceable, and a state court's confirmation of that determination). Despite numerous filings reporting protracted litigation and arbitration, the Kapurs have not filed with the Commission any record evidence of any court recognizing their ownership or control over KAXT, LLC. Further, in their informal objection at issue here, the Kapurs claim only to hold an ownership interest in KAXT LLC—not unqualified ownership. See 2017 Objection at 2.

²¹ See, e.g., *Iacopi v. FCC*, 451 F.2d 1142 (9th Cir. 1971) ("We are unable to agree that the Commission's order is responsible for the fact that Iacopi does not enjoy his minority shareholder status. That Iacopi's 19% interest is 'locked-in' with whoever holds the 81% interest does not seem to us to be an injury flowing from the Commission's order. . . . Thus we doubt that Iacopi, as a minority shareholder of TVS, has presented a 'case or controversy' within Article III of the Constitution."); *Lester and Alice Garrison*, Memorandum Opinion and Order and Notice of Apparent Liability, 6 FCC 2d 270, 272, para. 6 ("Petitioner's allegations as a stockholder of the licensee are patently speculative and conclusionary and do not show that a grant would cause direct and immediate economic injury to petitioner.") (citations omitted).

²² AFR at 1 n.1, 4, 4 n.8; see also *id.* at 4 ("It is difficult to perceive of parties with a greater or more direct 'interest' in a license assignment application than those who have been working for years to restore the subject station license to the entity in which they hold ownership interests."). It is worth noting that the controlling members of the entity in which the Kapurs are minority interest holders voluntarily sold the station to OTA and show no interest in being reinstated as the licensee.

²³ See, e.g., *Application of National Broadcast Co., Inc.*, Memorandum Opinion and Order, 11 FCC Rcd 10779, 10780, para. 5 (1996) ("The pendency of an objection against a licensee does not confer standing on that objector to challenge another of the licensee's applications.").

²⁴ See, e.g., *Application of Pinelands, Inc. (Transferor) and BHC Communications, Inc. (Transferee)*, Memorandum Opinion and Order, 7 FCC Rcd 6058, 6062, para. 14 (1992).

²⁵ *Id.* at 6063, para. 14. Prior staff decisions have found unpersuasive the argument that it will be difficult for the parties to undo an additional assignment if a grant is eventually reversed, and we make the same finding today. See, e.g., *Casewell Capital Partners*, Letter Order, 24 FCC Rcd 14335, 14338 (AD 2009) ("Thus, a grant is permissive, not mandatory. When parties consummate after a grant is effective, but before it is 'final,' they proceed at their own peril, as the Commission or the courts may require the sale to be undone.").

²⁶ We need not address whether the Kapurs have standing to challenge the prior assignment/renewal.

not allow the Kapurs to simply bootstrap such a claim to the subsequent, downstream transaction before us.²⁷

7. Second, the Kapurs have failed to demonstrate a direct causal link between the Bureau's decision to grant the assignment of the KAXT-CD license to TV-49 and their alleged injury.²⁸ In all cases, the facts must demonstrate that grant of the application would result in, or be reasonably likely to result in, some injury of a direct, tangible, or substantial nature traceable to the proposed action.²⁹ The gravamen of this dispute, despite the numerous pleadings in the several proceedings arising therefrom, is a private disagreement over whether the majority owners of KAXT, LLC had the legal right to sell KAXT to OTA, an issue that has been resolved in the affirmative in both arbitration and state courts. The Kapurs have failed to present any facts or provide any analysis demonstrating a direct causal link between their alleged injury in the loss of the KAXT-CD license to OTA and the Bureau's subsequent decision to grant the assignment of the KAXT-CD license from OTA to TV-49.³⁰

8. Third, the Kapurs do not show that their alleged injury would be prevented or redressed by the requested relief.³¹ The Kapurs here fail to demonstrate how denying the sale to TV-49 would prevent injury to the Kapurs or even address their complaints in the underlying contract dispute. Indeed, even if the Commission denied the assignment of KAXT-CD to TV-49, that would not redress the Kapurs' alleged injury because denial of the assignment would not restore KAXT-CD to the original licensee—KAXT, LLC.³² This appears to be little more than an attempt to open yet another front in this contractual dispute, an attempt that we cannot countenance.³³

9. Ultimately, we find that the Kapurs failed to demonstrate standing to seek review of the 2018 MO&O; therefore, we dismiss the AFR. Because we dismiss the AFR as procedurally defective, we decline to consider other arguments raised by the Kapurs therein.

²⁷ See *supra* note 22; see also *Entercom Sacramento License, LLC*, Second Order on Reconsideration, 34 FCC Rcd 5435 (2019) (rejecting a standing claim premised on participation in a related proceeding).

²⁸ AFR at 4 & n. 8.

²⁹ See, e.g., *Rainbow/Push*, 330 F.3d at 543; *Pinelands*, 7 FCC Rcd at 6063, para. 18 & n.20 (1992).

³⁰ The Commission is not obligated to mine pleadings in search of arguments that a petitioner *might* have made. See, e.g., *Entercom License, LLC*, Memorandum Opinion and Order, 32 FCC Rcd 7149, 7151-52, para. 10 (2017); *Tindal v. McHugh*, 945 F. Supp.2d 111, 130 (D.D.C. 2013) (holding that an agency is not required to anticipate and address any possible argument a party might have made); *Tama Radio Licenses of Tampa Florida, Inc.*, Memorandum Opinion and Order, 25 FCC Rcd 7588, 7589, para. 2 (2010) (“The Commission is not required to sift through an applicant’s prior pleadings to supply the reasoning that our rules require to be provided in the application for review.”).

³¹ AFR at 4 & n. 8.

³² See *Entercom Sacramento License, LLC*, Memorandum Opinion and Order, 33 FCC Rcd 6615, 6618, n.27 (2018) (no standing to challenge renewal application because claim rested on “an indirect and speculative connection between the claimed injury and the requested relief”; even if the license at issue were revoked or not renewed, objector offered no legal theory or precedent for why license would be returned to him), *recon. dismissed*, Order on Reconsideration, 33 FCC Rcd 10704 (2018), *further recon. dismissed*, Second Order on Reconsideration, 34 FCC Rcd 5435 (2019).

³³ We have addressed OTA’s request for sanctions in the separate item released today. See *supra* note 5.

IV. ORDERING CLAUSE

10. **ACCORDINGLY, IT IS ORDERED** that, pursuant to section 155(c)(4) of the Act, 47 U.S.C. § 155(c)(4), and section 1.115(a) of the Commission's rules, 47 CFR § 1.115(a), the Application for Review **IS DISMISSED**.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary