



Federal Communications Commission
Washington, D.C. 20554

October 1, 2014

Asian Pacific Islander American Public Affairs Association
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Re: KTVU(TV), Oakland, CA, *et al.*, Application for
Assignment of License, File No. BALCDT-
20140701ABV

Dear Parties:

This is in regard to the above-captioned application for assignment of the licenses of television stations KTVU(TV), Oakland, California, *et al.*¹ filed by KTVU LLC and Fox Television Stations, Inc. ("FTS"). The Asian Pacific Islander American Public Affairs Association ("APAPA") filed a petition to deny ("Petition").² The Applicants filed an opposition ("Opposition")³ and APAPA filed a reply ("Reply"). For the reasons stated below, we deny the Petition.

¹ KTVU, LLC has filed an Application for Consent to Assignment of the licenses of television stations KTVU(TV), Oakland, California, ID No. 35703; KICU-TV, San Jose, California, ID No. 34564; K29AB, Monterey-Salinas, California, ID No. 34565, to FTS. File No. BALCDT 20140701ABV ("the Application").

² APAPA states that it is a national, non-profit, non-partisan, grassroots organization that promotes the advancement of Asian and Pacific Islander Americans through active participation and leadership in civic and public affairs. APAPA has included a declaration by Joel Wong, a resident-viewer of KTVU's service area, who states that he will be harmed if the Application is granted.

³ APAPA argues that the Opposition should be dismissed as untimely. Oppositions to petitions to deny are due 10 days after the petition is filed if the petition is served by hand or electronically, plus three extra days if it is served by mail. 47 C.F.R. § 1.4(h), 1.45(b), 1.47, 73.3584(b). As such, the Opposition was due no later than August 19, 2014. The Opposition was filed on August 20, 2014, fourteen days after the Petition was filed and, therefore, we dismiss it as untimely. See 47 C.F.R. § 1.4(h), Example 12.

APAPA states that FTS, the proposed assignee, is owned by Fox Entertainment Group (“FEG”), which also owns and operates Fox News Channel (“FNC”), a cable and satellite news channel owned by FEG.⁴ APAPA objects to the FNC program “The Five,” specifically to statements made by co-host Robert “Bob” Gilliland Beckel that it claims are racist or otherwise insensitive.⁵ None of the programming at issue appeared on a Fox-owned television broadcast station.⁶ APAPA argues that this speech was condoned by FNC despite public objection and that, if the Application is approved, the stations at issue would be subject to the same standards to the detriment of the local communities.⁷

APAPA also states that KTVU has a history of making racist comments.⁸ APAPA cites four incorrect and mocking names used by KTVU for the pilots of the 2013 Asiana Airlines that crashed at the San Francisco airport in 2013.⁹ APAPA states that three producers were fired from the station following that incident.¹⁰

The Commission analyzes any public interest allegation raised in a petition to deny according to a two-step process. The petition must first contain specific allegations of fact sufficient to show that such a grant would be *prima facie* inconsistent with the public interest.¹¹ If so, the Commission will designate the application for hearing when the allegations, together with any opposing evidence before the Commission, raise a substantial and material question of fact as to whether grant would serve the public interest, or if the Commission is otherwise unable to conclude that granting the application would serve the public interest.¹² We find that the Objection fails to establish a *prima facie* case that grant of the above-captioned application would disserve the public interest.

With respect to APAPA’s objection to KTVU(TV)’s allegedly racist comments, we note that in the one example cited here, the station took immediate corrective action including staff dismissals in response to the incident. APAPA has not cited any statute or rule violation in this instance and we do not find any further reason for investigation based on the allegations in the record.

In regard to APAPA’s objections to specific programming aired on FNC, this assignment proceeding is not the proper forum to address such concerns. None of the programming was aired on any of the stations being assigned or on any broadcast station. APAPA’s assertions that same type of programming aired on FNC that it finds objectionable will also be aired on the stations if we approve the Application is speculative. As to the general choice of programming on the stations at issue here, we also reiterate the well-settled maxim that because journalistic discretion in the presentation of news and public information is the core concept of the First Amendment’s Free Press guarantee, licensees are entitled to the broadest discretion in the scheduling, selection, and presentation of news programming.¹³ Thus, the

⁴ Petition at 1.

⁵ *Id.* at 2-3, 4.

⁶ *Id.* at 2-3.

⁷ *Id.* at 5.

⁸ *Id.* at 4.

⁹ *Id.*

¹⁰ *Id.*

¹¹ 47 U.S.C. §309(d)(1); *Astroline Communications Co. Ltd. Partnership v. FCC*, 857 F.2d 1556 (D.C. Cir. 1988).

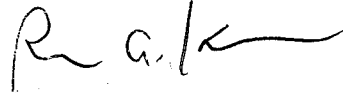
¹² *Astroline*, 857 F.2d at 1561; 47 U.S.C. §309(e).

¹³ See, e.g., *National Broadcasting Company v. FCC*, 515 F.2d 1101, 1112-1113, 1119-1120, 1172 (1974), *vacated as moot*, *id.* at 1180, *cert. denied*, 424 U.S. 910 (1976); *Columbia Broadcasting System, Inc. v. Democratic National*

Commission has repeatedly held that “[t]he choice of what is or is not to be covered in the presentation of broadcast news is a matter committed to the licensee’s good faith discretion,” and that “the Commission will not review the licensee’s news judgments.”¹⁴

Accordingly, the Petition to Deny filed by The Asian Pacific Islander American Public Affairs Association against the application for assignment of the licenses of television stations KTVU(TV), Oakland, California, *et al.*, File No. BALCDT-20140701ABV, filed by KTVU LLC and Fox Television Stations, Inc., **IS DENIED**.

Sincerely,



Barbara A. Kreisman
Chief, Video Division
Media Bureau

Committee, 412 U.S. 94, 124 (1973); *Hunger in America*, Memorandum Opinion and Order, 20 FCC 2d 143, 150-51 (1969).

¹⁴ *American Broadcasting Companies, Inc.*, 83 F.C.C.2d 302, 305 (1980). See also *Dr. Paul Klite*, Letter, 12 Com. Reg. (P&F) 79, 81-82 (MMB 1998), *recon. denied sub nom, McGraw-Hill Broadcasting Co.*, Memorandum Opinion and Order, 16 FCC Rcd 22739 (2001) (denying petition that cited excess of news stories dedicated to “mayhem” and under-coverage of issues involving the environment, arts, science, education, poverty AIDS, children and local elections).