

**BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554**

In re)
)
GLR Southern California, LLC)
)
Application for Permit to Deliver Programs to) File No. 325-NEW-20180614-00001
Foreign Broadcast Stations)
)

To: Office of the Secretary
Attn.: Chief, International Bureau

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RESPONSE TO UNAUTHORIZED FILINGS

GLR SOUTHERN CALIFORNIA, LLC

Paige Fronabarger
David Oxenford
Its Attorneys

Wilkinson Barker Knauer, LLP
1800 M Street, N.W., Suite 800N
Washington, D.C. 20036
(202) 783-4141

Dated: September 24, 2018

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EXECUTIVE SUMMARY

GLR Southern California, LLC (“GLR”) and its parent company H&H Group USA LLC (“H&H”) hereby respond to the unauthorized supplemental pleadings filed by Chinese Sound of Oriental and West Heritage (“Chinese Sound”). As originally explained in GLR’s Opposition to Petition to Deny (“Opposition”), Chinese Sound bases its arguments on wholly unsupported allegations of improper influence in a self-serving effort to protect itself from competition to the Southern California Chinese-speaking American audience. There is a history, and always a danger, that in times of insecurity citizens and the government will make harmful generalizations about race, language, and ethnic heritage. GLR does not dispute that the Chinese government may have an interest in influencing the views of American citizens or that the U.S. government, including the Federal Communications Commission (“FCC” or “Commission”), increasingly is identifying and taking action to minimize legitimate threats to national security. However, GLR has affirmatively shown that the Application poses no such threat, and Chinese Sound has not demonstrated anything to the contrary.

As set forth in this Response to Unauthorized Filings (“Response”), Chinese Sound’s Supplement to Petition to Deny (“Supplement”) was not timely filed and should be dismissed without consideration. While allegedly containing “new” material not available at the time that Chinese Sound filed its initial Petition to Deny (“Petition”), even a cursory review of the pleading shows that the bulk of the arguments raised could easily have been submitted in the Petition, and any new allegations are irrelevant to the Commission’s consideration of the Application. Similarly, Chinese Sound’s Reply to Opposition to Petition to Deny (“Reply”) is grounded in matters raised in the Supplement, or other entirely new matters not properly raised in a reply pleading. That filing also should be dismissed without consideration.

Even if the Commission decides to consider the matters addressed in the Supplement and Reply, these pleadings raise no substantive claims that would warrant denial. Chinese Sound relies on generalized concerns about Chinese government propaganda to argue that an American citizen’s export of programming to a Mexican station (the “Station”) that serves a U.S. audience will undermine national security. The facts are that the Station is carrying programming produced by a publicly traded company that provides Chinese-language programming around the world, including throughout the United States to major TV distributors. The Station’s programming is principally music and lifestyle talk programming, and it is already running on the station pursuant to an STA. No claims have been made that either the TV or the radio programming contains anything that presents an actual threat to national security.

Chinese Sound, in its kitchen sink approach to its attacks on the Application, also suggests that the FCC delay processing while various national security registrations are made or reviews are conducted by other government agencies. Neither the facts nor the cited laws support such review under the circumstances presented here. Petitioner also raises issues about technical interference to two AM construction permit applications that were filed over 15 years ago, even though no technical changes to the facilities of the Station are proposed, and these facilities have been approved in Section 325 applications many times during the past 15 years. For all the above reasons, the Commission should expeditiously grant the Application.

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RESPONSE TO UNAUTHORIZED FILINGS

GLR Southern California, LLC (“GLR”) and its parent company, H&H Group USA LLC (“H&H”), by their attorneys, hereby respond to the Supplement to Petition to Deny (“Supplement”)¹ and to new issues raised for the first time in the Reply to Opposition to Petition to Deny (“Reply”)² filed by Chinese Sound of Oriental and West Heritage (“Chinese Sound”) on September 4, 2018 and September 11, 2018, respectively.³ As GLR originally explained in its Opposition to Petition to Deny (“Opposition”),⁴ Chinese Sound bases its arguments on wholly unsupported allegations of improper influence in a self-serving effort to protect itself from

¹ Chinese Sound of Oriental and West Heritage Supplement to Petition to Deny, FCC File No. 325-NEW-20180614-00001 (filed Sept. 4, 2018) (“Supplement”).

² Chinese Sound of Oriental and West Heritage Reply to Opposition to Petition to Deny, FCC File No. 325-NEW-20180614-00001 (filed Sept. 11, 2018) (“Reply”).

³ The pleadings oppose GLR’s *Application for Permit to Deliver Programs to Foreign Broadcast Stations* (File No. 325-NEW-20180614-00001) (the “Application”). The Application seeks approval under Section 325 of the Communications Act, 47 U.S.C. § 325, for authorization to deliver, via internet protocol, Mandarin Chinese programming from a studio in the Los Angeles area to Mexican radio station XEWW(AM), Rosarito, Baja California Norte, Mexico (the “Station”), whose signal can be received in portions of Southern California.

⁴ GLR Southern California, LLC Opposition to Petition to Deny, FCC File No. 325-NEW-20180614-00001 (filed Aug. 29, 2018) (“Opposition”).

competition to the Southern California Chinese-speaking American audience. This unsupported and anti-competitive effort continues in the Supplement and Reply.⁵

As an initial matter, the new information and claims presented in these pleadings were not timely and should be summarily dismissed. Chinese Sound advances in its Petition two speculative bases on which to deny the Application: (1) the prospect of economic harm to its own non-commercial low power FM station, KQEV-LP; and (2) the prospect of the Chinese government using XEWW-AM (the “Station”) to provide propaganda programming.⁶ With no new relevant facts, in the Supplement and Reply Chinese Sound merely repeats its own fearmongering, extrapolating legitimate national security concerns about the government of China in a hyperbolic attempt to convince the Commission to suppress the First Amendment rights of a U.S. citizen to access the airwaves, in direct contravention of one of the core purposes of this Commission’s efforts to diversify media ownership.⁷

There is a history, and always a danger, that in times of insecurity citizens and the government will make harmful generalizations about race, language, and ethnic heritage. Such generalizations harm those about whom they are made, as well as our nation’s ideals more generally. It cannot be the case under the First Amendment that no programming from China, or from American citizens born in China or of Chinese descent, can run on U.S. stations. Chinese Sound claims this is not its argument, but it would be the result.

⁵ During this same period, U.S. Senator Ted Cruz also submitted a letter to FCC Chairman Ajit Pai regarding this proceeding. Letter from Sen. Ted Cruz to FCC Chairman Ajit Pai, FCC File No. 325-NEW-20180614-00001 (filed Sept. 11, 2018). GLR responds herein to Senator Cruz’s letter, which addresses concerns similar to those raised in the Chinese Sound filings. *See supra* n.24.

⁶ Chinese Sound of Oriental and West Heritage Petition to Deny at 1-2, FCC File No. 325-NEW-20180614-00001 (filed Aug. 8, 2018) (“Petition”).

⁷ These accusations filed outside the normal pleading cycle cannot sit unanswered. Accordingly, in the interest of due process, to the extent necessary, GLR requests leave to file this Response to Unauthorized Filings (“Response”) in the event the Commission does not simply strike the unauthorized and unsubstantiated claims made in the Supplement and Reply.

GLR does not dispute that the Chinese government may have an interest in influencing the views of American citizens or that the U.S. government increasingly is identifying and taking action to minimize legitimate threats to national security. Indeed, the FCC has taken action in the name of national security on issues dealing with core infrastructure matters such as telecommunications network equipment. However, Chinese Sound has not demonstrated that this Application raises concerns of this type; in contrast, GLR affirmatively has shown that the Application, the Applicant, and the underlying programming arrangement pose no such threat. The Commission can best serve its own policies including promoting diversity in media ownership, the principles of the First Amendment, and the interests of the listening audience in Southern California, by granting the instant Application, and it can do so without concern of implicating national security interests.

I. APPLICANT HAS SHOWN SUFFICIENT EVIDENCE TO SUPPORT GRANT, AND PETITIONER HAS NOT DEMONSTRATED ANY GROUNDS FOR DENIAL

Sections 325 and 309 of the Communications Act of 1934, as amended (the “Act”), together provide that a permit to transmit or deliver programs to a foreign broadcast station which will, in turn, transmit to the United States, shall be granted upon a finding by the Commission that such grant would serve the public interest, convenience, and necessity.⁸ The Applicant has provided all information requested in the application for a Section 325 permit and has provided further information responsive to Petitioner’s pleadings.⁹ All of the information

⁸ 47 U.S.C. §§ 325(c)-(d) (grant or refusal of an application for a permit to deliver broadcasts to foreign countries for rebroadcast to the United States “shall be subject to the requirements of Section 309”); 47 U.S.C. § 309 (the Commission “shall determine ... whether the public interest, convenience, and necessity will be served by the granting of such application).

⁹ The Commission should reject Chinese Sound’s claim that “more disclosure” is necessary. Chinese Sound acknowledges that a Section 325(c) application is to be weighed by the standards similar to those used to evaluate other applications for broadcast facilities. However, Chinese Sound would also have the Commission impose additional new obligations on this Applicant that are not imposed on other 325(c) applications, and not required by the application form itself, including its request regarding financing disclosures. Supplement at 24-25. GLR has

provided shows that Petitioner intends to comply with the Communications Act, any other relevant statutes, and the Commission's rules. Petitioner, despite its multiple filings attempting to thwart competition to its own station, has failed to present any substantial or material question of fact or any legal or factual basis on which grant would be inconsistent with the public interest, convenience, and necessity. Accordingly the Commission should deny the Petition and grant the Application.¹⁰

II. THE SUPPLEMENT AND REPLY OFFER NEW INFORMATION AND NEW CLAIMS THAT ARE UNTIMELY, AND THE COMMISSION SHOULD DISMISS BOTH PLEADINGS

The Commission's rules are clear that if an applicant requests Commission action, an opponent may petition to deny the application and then subsequently may reply to the applicant's opposition to petition to deny.¹¹ An opponent does not receive unlimited opportunities to continue to raise concerns in order to delay processing of the application. After already having filed a Petition to Deny on August 8, 2018,¹² (to which GLR responded), Chinese Sound took the opportunity to develop a new laundry list of issues between the U.S. government and the People's Republic of China, issues which have nothing to do with the Applicant or the

been more than forthcoming in its initial Application and responsive pleadings, and there is no basis for a new or different standard regarding disclosures.

In addition, Chinese Sound would have the Commission consider this Application within "traditional rules and procedures applicable to Section 325(c) permits," *and* within "the context of the new White House National Security Strategy, the jurisdiction of the Committee on Foreign Investment in the United States ('CFIUS'), the Foreign Agents Registration Act and other federal statutory provisions and policies involving China-linked entities." Supplement at 1. This second category of proposed review suggests an entirely new standard for FCC assessment of an application for a Section 325(c) permit. National security concerns, if any substantiated claims were in fact raised, can be addressed within the Commission's existing general public interest authority. In any event, as evaluated by any standard, the Application should be approved.

¹⁰ In the interim, the Commission should not rescind the STA under which the station currently operates. Such action would prejudice the decision and harm the Station, and it is not warranted based on any programming or other issues. *See* FCC File No. 325-STA-20180710-00002, granted July 24, 2018.

¹¹ *See* 47 C.F.R. §§ 1.41-1.51.

¹² Chinese Sound of Oriental and West Heritage Petition to Deny, FCC File No. 325-NEW-20180614-00001 (filed Aug. 8, 2018) ("Petition").

Application. Petitioner has made multiple lengthy filings improperly submitting new information and making new claims. The Commission should decline to consider the claims in the Supplement and dismiss the new claims in the Reply because these claims do not contain any even arguably relevant information that was unavailable prior to the deadline for the Petition, and they are thus untimely.¹³

Presumably recognizing that the additional information it wanted to submit was unlikely to meet the standard for a reply to an opposition to petition to deny, which under 47 C.F.R. §1.45 is “limited to matters raised in the opposition,” Chinese Sound styled its second bite at the apple as a “Supplement” to its Petition, filed on September 4, 2018, and attempted to justify the Supplement by claiming that “much of the information presented was not available prior to the date for filing the Petition.”¹⁴ This claim rings hollow and wastes the Commission’s time with the need to evaluate additional filings. Nothing in the Supplement could not have been raised in the initial Petition. As just a few examples, the Supplement includes extensive discussion of the following:

- Efforts of the People’s Republic of China to control information going back to World War II, British relinquishment of Hong Kong in 1997, and the media environment in Hong Kong in 2015, all of which certainly occurred well before the deadline for filing the Petition;¹⁵
- A 2001 engineering report from KCEE(AM), the station which allegedly would receive interference from XEWW-AM, which is 17 years old and clearly was available before the deadline for filing the Petition;¹⁶

¹³ See, e.g., New Life Broadcasting, Letter, 25 FCC Rcd 7293, 7294 n.3 (MB 2010) (declining to consider unauthorized pleadings pursuant to Section 1.45 of the Commission’s rules). Ironically, while much of the information in the Supplement and Reply purportedly is “new,” it also builds on the same misplaced foundation as Chinese Sound’s earlier submissions. It is clear that Chinese Sound thinks the Commission will be swayed by multiplying the number of times that it makes a mere mention of national security and China, even though none of the facts surrounding the Applicant or Application support these fears.

¹⁴ *Id.*

¹⁵ Supplement at 3-9.

¹⁶ Supplement, Exhibit 2.

- A 1964 Supreme Court opinion regarding obscenity, with which Chinese Sound attempts to equate Chinese propaganda;¹⁷
- The North American Free Trade Agreement (“NAFTA”), which was in effect long before the deadline for filing the Petition;¹⁸ and
- “New information” about H&H and Phoenix (some of it untrue), all of which was available before the deadline for filing the Petition.

The Supplement also discusses new research regarding Chinese influence;¹⁹ while these developments did occur after the Petition was filed, this information has nothing to do with the Application before the Commission.

Just a week later, on September 11, 2018, Chinese Sound filed a lengthy Reply that also impermissibly raised new information (most notably, multiple references to the Supplement, as well as an uncorroborated declaration from a former Phoenix employee about an incident that allegedly occurred 15 years ago).²⁰ Nothing about this allegation addresses the facts of this case, or is newly-discovered information appropriate for Commission consideration.

¹⁷ Supplement at 20-21. Chinese Sound, with no respect for First Amendment protections for other broadcasters, argues that the Station’s proposed programming is objectionable and should be grounds for Commission denial of the Application. It claims the Commission has the “authority and obligation” to examine the programming and ensure that it provides no risk of substantive harm. This kind of investigation into broadcast programming is precisely the type of censorship the government must avoid at all costs. As a practical matter, however, the Station has been operating for two months via STA, and if the Commission wishes to examine the type of programming it will carry going forward, it need only look at that programming. A typical daily schedule consists primarily of unhosted Chinese music, along with news updates, local traffic and weather, cultural stories featuring food and cooking, technology updates, and entertainment matters designed to be of interest to the local community. The Commission can and should take action to prevent legitimate threats to national security, but nothing about the Station’s programming could be remotely considered such a threat. In any event, Chinese Sound could itself have raised specific objections about the programming since it has been operating, which, to the best of GLR’s knowledge, it has failed to do.

¹⁸ Supplement at 23.

¹⁹ Supplement at 4.

²⁰ See *infra* n.31.

III. NEITHER GLR NOR ITS PRINCIPAL IS OR WILL BE AN AGENT OF THE CHINESE GOVERNMENT

Chinese Sound takes six pages in its untimely Supplement to provide its views regarding the Chinese Government's suppression of a free press and efforts to control information.²¹ The vast majority of the events discussed predate Chinese Sound's Petition; these are inappropriate to include in a supplement or reply and, more importantly, are not relevant to the instant case. Chinese Sound is attempting to rely on knee-jerk, fear-based reactions to the combination of Chinese language content and investment by an individual of Chinese heritage in the hopes that the Commission will connect dots that do not exist. Its claims include a demonstrably false claim that "H&H employs ex-Phoenix TV on-air hosts to assist in Beijing's efforts to provide propaganda programming to Chinese Americans," that H&H and Phoenix are both "foreign lobbyists" required to register with the U.S. Department of Justice ("DOJ"), and that H&H is "required to secure approval from CFIUS for this transaction but has not done so."²² All of these are legally and/or factually incorrect. The Commission may of course take action against an application based on legitimate and substantial issues of national security, but Petitioner's allegations of improper influence—which lack detail and are unfounded—do not provide any such basis here.²³ GLR is not and will not be an agent of the Chinese government, and there is

²¹ Supplement at 3-9. While Chinese Sound is correct that "recent U.S. Government policy statements and directives ... indicate the U.S. Government is very concerned about the impact of People's Republic of China propaganda being broadcast in the U.S.," this is not a new concern, and no new policy or facts warrant different treatment of the Application than would have been appropriate on the date the Petition was filed.

²² Supplement at 2.

²³ It is puzzling that Chinese Sound views as a "concession" GLR's statement that the Commission may take action against an application on national security grounds. Reply at 12-13. GLR has never called into question the Commission's authority to act if national security is threatened. It is Chinese Sound's call for denial or hearing designation that is unfounded.

no evidence to suggest that GLR will use XEWW to deliver propaganda to Chinese-speaking listeners in southern California.²⁴

A. *THE CONTROLLING PRINCIPAL OF GLR AND H&H IS AN AMERICAN CITIZEN PURSUING A LEGITIMATE BUSINESS OPPORTUNITY THAT WILL BENEFIT THE PUBLIC INTEREST, NOT A FRONT FOR PHOENIX OR THE CHINESE GOVERNMENT*

Rather than present evidence of wrongdoing or an intent to disseminate propaganda, Chinese Sound calls H&H a “stalking horse” and a “front” for Phoenix, which it alleges is, in turn a “stalking horse” and “front” for the People’s Republic of China.²⁵ Chinese Sound’s so-called “evidence” pointing toward Phoenix as a front for the PRC includes claims such as, it is “listed on the Hong Kong Stock Exchange,”²⁶ “it has a global presence,” and the CEO is “one of the richest men in China.”²⁷ GLR has demonstrated with great specificity that Phoenix is a publicly traded company and that its mission is focused on profit, not propaganda.²⁸

²⁴ In a letter to Chairman Pai, *see infra* n.5, Texas Senator Ted Cruz noted his concern that approving the Application would “enhance the ability of the Chinese Communist Party to broadcast objectionable political propaganda into America and to interfere in domestic American politics.” GLR appreciates the Senator’s concern and assures him this is not the case. While it is reasonable to be concerned about allegations that the “Chinese Communist Party is waging an information warfare campaign to undermine American democracy,” it is unfair and simply wrong to assume that individuals of Chinese origin necessarily are operatives of the Chinese Communist Party for that purpose. Well-founded concerns regarding Chinese propaganda should not be confused with the proposals for this particular AM broadcast service. Ms. Huo is a U.S. citizen and businesswoman. The fact that she has conducted in-depth research and analysis of issues facing Chinese state-owned enterprises has nothing to do with her political allegiances and should not undermine her business interest in running a broadcast station.

²⁵ Supplement at 11.

²⁶ If anything, the stock exchange listing disproves Chinese Sound’s argument. As provided in the listing rules of the Hong Kong Stock Exchange, Phoenix’s governance is not capable of being unduly influenced by any possible shareholder linkage to the Chinese Government or the Chinese Communist Party.

²⁷ To the extent Mr. Liu’s wealth and power have landed him a spot in the Chinese People’s Political Consultative Conference (“CPPCC”), GLR notes that CPPCC is a political advisory body, not the government itself. It serves as a vehicle for input from prominent Chinese people who are *not* members of the Communist party—for example, business leaders, representatives of religious and civil society groups, and academics. The CPPCC is in fact often a venue for non-government actors to advocate for reform or a shift in policy direction. Charlie Campbell, *Ordinary Citizens Are Hoping to Make a Difference at China’s Biggest Political Meet-Up*, TIME MAGAZINE, Mar. 2, 2017, <http://time.com/4688103/china-two-sessions-cppcc-npc-policy/>. Providing input to the Chinese Government through this process does not equate to being directed by the Chinese Government.

²⁸ The majority of Phoenix HK’s shares are owned by shareholders that have no known linkage to the Government of the People’s Republic of China or to the Chinese Communist Party. Two shareholders, with a combined percentage ownership of under 28 percent, are linked *indirectly* to the Chinese Government through ownership

With respect to its content, Phoenix has won viewers and advertisers throughout the United States by providing quality programming, which has long be carried by leading U.S. multichannel video programming services including DISH, DIRECTV, and all of the major cable companies. In the Los Angeles area, Spectrum (formerly Charter) has placed Phoenix programming on its basic tier, making it available to all Spectrum subscribers at no additional charge.²⁹ In its arrangement with GLR, 80 percent of the content is un-hosted Chinese music, punctuated by commercials and station identifications. Phoenix creates music playlists and produces the remaining content at its studio near Los Angeles, California.³⁰ No content is delivered from either the Chinese Mainland or Hong Kong.

Additionally, as set forth in the attached Affidavit of Xiaoyong Wu, Chief Executive Officer of Phoenix Satellite Television (U.S.) Inc. H&H is not a front for Phoenix.³¹ As GLR repeatedly has demonstrated and Mr. Wu's affidavit supports, U.S. citizen Vivian Huo independently negotiated and completed the transaction for H&H to acquire the equity of GLR, and in turn, GLR's interests in the Mexican radio license concession holder and the entity that owns studio and transmission facilities in Mexico. Ms. Huo was introduced to Phoenix by an

interests that the Chinese Government holds in the very large China Mobile and the Bank of China. *See* paragraphs 1 and 2 of Affidavit of Xiaoyong Wu, Chief Executive Officer of Phoenix Satellite Television (U.S.) Inc. (Sept. 18, 2018) ("Wu Affidavit") attached as Exhibit A.

²⁹ Wu Affidavit, para. 4.

³⁰ Wu Affidavit, para. 11.

³¹ *See* Wu Affidavit generally. In contrast, Chinese Sound offers a declaration by Chung Pong, who was employed at Phoenix until 2002—more than 15 years ago. The incident alleged by Mr. Pong, even if true, involves a single incident where Chinese government concerns allegedly influenced a Phoenix-related company's programming *in China*, not the programming developed in the U.S. and targeted to a U.S. audience at issue here). After leaving Phoenix, Mr. Pong went to work for the New Tang Dynasty TV network in the U.S., which was established by the leader of Falun Gong, a group that has long had an adversarial relationship with the Chinese Government. *See, e.g.,* Daniel Trotta, *TV Channel Trying to Change China from New York*, REUTERS (Mar. 17, 2011), <https://www.reuters.com/article/us-usa-china-television/tv-channel-trying-to-change-china-from-new-york-idUSTRE72G6SF20110317>. The extent to which Chinese Sound is a "front" for, and being funded by, Falun Gong is unclear. However, it is hard to believe that a non-profit low-power FM radio station, acting alone, would invest the significant resources that Chinese Sound has to oppose the Application.

American media broker, and the parties entered into an agreement by which Phoenix provides programming for broadcast on XEWW.

Chinese Sound dismisses these facts and claims that H&H “has delegated all of its key functions to Phoenix.”³² Yet as part of H&H and GLR’s arrangement with Phoenix, GLR is responsible for delivering the programming from the Phoenix studio in California to XEWW’s studio in Rosarito, and Phoenix has no employees at the Station’s broadcast studio and transmission facilities located in Mexico, where programming is transmitted for reception in Mexico and the U.S. H&H and GLR are solely responsible for all costs and activities required to maintain and operate the Station’s facilities which are located in Mexico, including the salaries and benefits of the Mexican employees (who are the same employees who worked at the Station under the prior owner). Moreover, all programming supplied for broadcast on the Station must comply with GLR’s programming standards and may be rejected by H&H and GLR if such programming fails to meet applicable U.S. and Mexican legal requirements or to serve the public interest.³³ Thus, Phoenix does not have control over the Station by any of the indicia the Commission applies to evaluate control for any broadcast licensee.³⁴

³² Reply at 7.

³³ Contrary to Chinese Sound’s assertion, GLR is under no obligation to demonstrate “how it plans to implement any such preemptions.” Reply, n. 3. GLR has the right, as explained elsewhere, to preempt programming where it does not serve the public interest, where it violates law, or where GLR believes other programming would better serve the public interest – standards that are used and have been approved by the Commission in innumerable broadcast programming agreements. Although the Commission should not consider the Station’s content in evaluating the Application, GLR notes that the Phoenix team responsible for assembling content for broadcast on XEWW includes two people from Taiwan, one U.S. citizen from Taiwan, and two Chinese citizens. This is hardly the composition of a team promoting Chinese Government propaganda. See Fang-Yu Chen, Wei-ting Yen, Austin Horng-en Wang, and Brian Hioe, *The Taiwanese See Themselves as Taiwanese, not Chinese*, WASH. POST (Jan. 2, 2017), https://www.washingtonpost.com/news/monkey-cage/wp/2017/01/02/yes-taiwan-wants-one-china-but-which-china-does-it-want/?utm_term=.7e996e765a48. This content is then transmitted to GLR’s studio in Mexico and put on air by personnel who work for and are paid by H&H and GLR.

³⁴ The Commission has long held that a licensee may delegate day-to-day operations without surrendering de facto control, so long as the licensee continues to set the policies governing station programming, personnel, and finances. See, e.g., *WGPR, Inc.*, 10 FCC Rcd 8140, 8142 (1995); *Choctaw Broadcasting Corp.*, 12 FCC Rcd 8534, 8539 (1997); *Southwest Texas Broadcasting Council*, 85 FCC 2d 713, 715 (1981).

Chinese Sound also points to Ms. Jackie Pang as a “direct link” between H&H and Phoenix, claiming she is the smoking gun, a “Phoenix TV employee embedded in the H&H offices ... to guide and monitor H&H.”³⁵ Yet the Phoenix Assistant CEO has declared under penalty of perjury that Phoenix has not “directed, instructed, or permitted Ms. Pang to work with H&H,” that she “has not been involved with the XEWW project,” and that she has not disclosed to Phoenix any employment with an employer other than Phoenix, as her employee handbook would require.³⁶ Ms. Huo’s declaration declares, also under penalty of perjury, that Ms. Pang is simply an acquaintance from her graduate school days at Columbia whom she asked to serve as an informal advisor at H&H’s predecessor company, and has had no ownership, employment, or financial involvement in H&H or this radio project.³⁷ Thus, contrary to Chinese Sound’s claim, there is no “significant and material question ... presented as to whether Phoenix TV controls H&H.”³⁸

Moreover, GLR urges the Commission to recognize that the contention that H&H’s controlling principal, Vivian Huo, will act as a direct or indirect agent of the Chinese government simply because she was born in China is insulting. As GLR has demonstrated, Ms. Huo is a U.S. citizen and an Ivy League-educated successful businesswoman.³⁹ The arrangement underlying the Application is not a fantastical international plot to spread propaganda, but an

³⁵ Supplement at 14.

³⁶ See Wu Affidavit, para. 13.

³⁷ See Declaration of Vivian Huo at 1-2 (Sept. 24, 2018) (“Huo Declaration”) attached as Exhibit B.

³⁸ Supplement at 13.

³⁹ Chinese Sound also alleges that Ms. Huo must be a Chinese agent because she wrote for a newspaper controlled by the Chinese government. As set forth in the Huo Declaration, she was never an employee of the newspaper, but instead acted as a “stringer” to make some money while in graduate school, writing occasional articles reviewing New York restaurants and covering other social and cultural events in New York City – hardly the subversive covert activities that Chinese Sound suggests.

opportunity for a business owner who wants to provide programming of interest to the growing U.S. population of Chinese-speaking individuals.

B. THE COMMISSION DOES NOT EVALUATE CONTENT, BUT IF IT DID, IT WOULD FIND THE PROGRAMMING LEAVES NO ROOM FOR PROPAGANDA

The Commission does not consider proposed program formats when assessing applications for U.S. broadcast stations,⁴⁰ but in any event, the programming is not propaganda, and there is absolutely no evidence to suggest that it is or would be. Dictionary definitions cited by Chinese Sound are irrelevant;⁴¹ there is no practical definition by which anyone would consider the Station's programming to be "propaganda."

Nearly eighty percent of the program content broadcast on XEWW is and will continue to be "un-hosted" Chinese music, punctuated by commercials and station identifications. The remaining programming will include news and information content, such as local traffic and weather and lifestyle entertainment. Perhaps news and information programming could be considered propaganda in some cases,⁴² but not when it is coming from a variety of reputable news sources, including Asian-language broadcasters and publishers in Hong Kong and Taiwan, and U.S. and United Kingdom providers such as the Associated Press, the LA Times, National Public Radio, and the British Broadcasting Service. The programming does not have substantial political commentary, and there is no intention that it will do so in the future. GLR has ensured that any programming provided on the Station will service the public interest, be responsive to

⁴⁰ As GLR previously has discussed, the First Amendment very narrowly restricts the Commission from silencing a certain point of view, even if viewed as offensive. Opposition at 8; *Applications of Charles C. Babbs and Nellie L. Babbs d/b/a/ Cattle Country Broadcasting for Renewal of License of Station K TTL (FM) Dodge City, Kansas and Community Service Broadcasting, Incorporated Dodge City, Kansas; for Construction Permit for a New FM Station*, MM Docket No. 85-127; FCC 85-226 (1985) ("[T]he Commission cannot use its regulatory power to rule material off the air merely because the material may be offensive").

⁴¹ Reply at 9-10.

⁴² Reply at 10.

the needs of the local community and comply with applicable law in the U.S. and Mexico. In the Station's time thus far operating under an STA, there have been no complaints related to its programming.⁴³

C. THERE ARE NO GROUNDS FOR DEMANDING REGISTRATION UNDER FARA OR ASKING THE FCC TO DELAY UNTIL CFIUS REVIEW

Chinese Sound urges the Commission to postpone action on the Application “until it is determined whether H&H and Phoenix TV must register under the Foreign Agents Registration Act,” or “FARA.”⁴⁴ FARA provides that natural or legal persons who, within the United States, engage in “political activities” on behalf of a foreign government or foreign political party, first register under FARA, then comply with FARA’s disclosure requirements.⁴⁵ FARA defines the term “political activities” as “any activity that the person engaging in believes will, or that the person intends to, in any way influence any agency or official of the Government of the United States or any section of the public within the United States with reference to formulating, adopting, or changing the domestic or foreign policies of the United States or with reference to the political or public interests, policies, or relations of a government of a foreign country or a foreign political party.” In other words, lobbying the federal government or disseminating information in the U.S. that is intended to influence public opinion in the US on behalf of a foreign government or foreign political party requires registration under FARA. In contrast, freely expressing one’s own views about such subjects requires no FARA registration if one is not directed or controlled by foreign government or foreign political party.

⁴³ In addition, as noted above, the Commission could review the programming for the period since grant of the STA and will find there is no propaganda.

⁴⁴ Supplement at 2, 17.

⁴⁵ 22 USC § 611.

In the attached legal memorandum, counsel to Phoenix concludes that because Phoenix is not directed or controlled by the Chinese Government or the Chinese Communist Party (“CCP”), it is not required to register under FARA or file a report with the FCC as a United States-based foreign media outlet.⁴⁶ As set forth in the FARA Memorandum, the threshold question is whether, in its programming for distribution to a U.S. audience, Phoenix is acting under the direction or control of the Chinese Government or the CCP. There is nothing in the ownership structure or corporate governing characteristics to suggest that the Chinese Government or the CCP has the ability to control Phoenix’s programming. Thus, Phoenix is not an “agent of a foreign principal” under FARA and does not need to register.⁴⁷ While the analysis in the Legal Memorandum is focused on Phoenix (and was prepared by counsel to Phoenix), as the only real alleged connection to China shown by Petitioner is its programming relationship with Phoenix, if Phoenix does not need to register, there is absolutely no argument that H&H and GLR, both controlled by a US citizen, need to register.

The Commission’s public interest review may include a review of legitimate national security concerns, and the Commission understandably will need to address the possibility of Chinese influence in some of its proceedings where such concerns pose real concerns to U.S. security. However, suggesting that a rapidly evolving security landscape with respect to China is directly applicable to the AM radio station at issue here is misplaced and offensive. Petitioner is fear-mongering and attempting to take advantage of well-publicized concerns about foreign

⁴⁶ Memo to File from Daniel E. Waltz, Squire Patton Boggs, Counsel to Phoenix (Sept. 21, 2018) (“FARA Memorandum”), attached as Exhibit C.

⁴⁷ The attached FARA Memorandum also concludes that because Phoenix is not required to register under FARA, it likewise is not required to file a report with the FCC as a “United States-based foreign media outlet” under Section 1085 of the John S. McCain National Defense Authorization Act for Fiscal Year 2019, Pub. L. No. 115-232 (“NDAA”). For purposes of the reporting requirement, the NDAA provides that the term “United States-based foreign media outlet” means, *inter alia*, an entity that is required to register under FARA because it acts under the direction or control of a foreign government or a foreign political party. The deadline for submission of the first such report is October 12, 2018.

influence on U.S. elections to taint the current application, when no such concerns have been demonstrated here.⁴⁸

Moreover, the question of FARA registration is irrelevant here, as the Commission lacks jurisdiction to determine if such registration is necessary and generally will not determine on its own whether a law has been violated, absent a decision from the relevant authorities.⁴⁹ Indeed, the DOJ press release cited by Chinese Sound actually underscores that the Commission should not postpone action on or deny the Application even if it has concerns that one or both companies should register under FARA.⁵⁰ Specifically, the DOJ release says, “FARA does not inhibit freedom of expression, does not restrict the content of information disseminated, does not restrict an agent’s lobbying or publication of information or advocacy and applies neutrally to all foreign countries.... FARA does not limit publishing of materials or viewpoints; *it requires only registration, labeling of informational materials and broadcasts, and recordkeeping.*”⁵¹

On September 18, 2018, press reports indicated that DOJ had ordered two Chinese state-run media organizations to register as foreign agents.⁵² These entities are readily distinguishable from the facts in this case. Xinhua News Agency or New China News Agency is the official

⁴⁸ See, e.g., Supplement at 27 (“During the 2016 Presidential election, the country failed to interpret timely events reflecting that foreign countries were enabling efforts to influence American elections for their benefit ... We have learned also that there are negative economic impacts on our economy from foreign manipulation of the hearts and minds of voters. ... The Commission must not ignore the efforts of China to broadcast objectionable propaganda that could impact tens of thousands of Chinese Americans throughout Southern California via the surreptitious use of a border blaster radio station and the manipulation of treaties entered into decades ago with our southern neighbor”)

⁴⁹ See, e.g., *Policy Regarding Character Qualifications in Broadcasting Licensing*, Report, Order and Policy Statement, 102 F.C.C. 2d 1179, 1204-05 (1986).

⁵⁰ See U.S. Department of Justice, *Production Company Registers Under the Foreign Agent Registration Act as Agent for the Russian Government Entity Responsible for Broadcasting RT*, Press Release (Nov. 13, 2017), <https://www.justice.gov/opa/pr/production-company-registers-under-foreign-agent-registration-act-agent-russian-government>. Supplement at 17-18.

⁵¹ *Id.* (emphasis added).

⁵² See John Bowden, *DOJ Orders Two Chinese State-Run Media Organizations to Register as Foreign Agents*, MSNBC.com (Sept. 18, 2018) <http://a.msn.com/01/en-us/BBNwuaf?ocid=se>.

state-run press agency of the People's Republic of China, and China Global Television Network (CGTN) is the re-launched state-owned CCTV International. In contrast, Phoenix is neither state-owned nor controlled by a state-owned entity, and the DOJ has not asked it to register under FARA. In any event, Chinese Sound could have made this assertion in its initial Petition and does not explain why it failed to do so.

In addition to its FARA claims, Chinese Sound argues that recent changes to the CFIUS process implicate the Application and require the Commission to postpone action or deny grant of the Application.⁵³ This transaction has nothing to do with CFIUS, either in its current form or in the modified version,⁵⁴ most of which does not immediately go into effect. The arrangement underlying the Application does not constitute “foreign investment” by non-U.S. citizens or by a foreign state or state-owned enterprise in U.S. assets. H&H is a U.S. company owned by a U.S. citizen, and by its purchase of the equity in GLR (which is merely a holding company), H&H has acquired control of the studio and transmission facilities of the Station which are located in Mexico, an equity stake in the Mexican radio licensee and airtime rights on with respect to the Station, all in accordance with U.S. and Mexican law.

In any event, the Commission typically does not coordinate directly with CFIUS on transaction reviews and need not wait for a CFIUS determination even if CFIUS is undertaking review.⁵⁵ While the new law adds certain mandatory CFIUS filing requirements, including

⁵³ Supplement at 19 (“Absent a determination by CFIUS, the Commission is unable to conclude that grant of the permit would be in the public interest.”).

⁵⁴ NDAA, Sec. 1701, *et seq.*

⁵⁵ In contrast, the Commission does consult with and consider the views of Team Telecom when reviewing applicable license applications involving foreign ownership. *See* Statement for the Record, FCC Chairman Michael O’Rielly, Before the House Subcommittee on Digital Commerce and Consumer Protection, Apr. 26, 2018, <https://www.fcc.gov/sites/default/files/orielly-statement-for-the-record-04262018.pdf>. The Team Telecom coordination process also is irrelevant here, however, because there is no license application involving foreign ownership. Ms. Huo is a U.S. citizen with control of the Station’s programming, finances, and personnel, and the underlying station acquisition already has been completed.

declarations of substantial interest on the part of a foreign government, CFIUS transaction review remains a largely voluntary process that offers applicants a safe harbor with CFIUS approval. Importantly for purposes of this proceeding, no new element of CFIUS creates a hook or obligation for the FCC to defer or deny an application of this type. CFIUS retains authority to initiate review of a transaction on its own, even after the transaction has been consummated. With respect to recent changes to CFIUS, the vast majority have not yet gone into effect. Some provisions will not go into effect until certified by the Secretary of the Treasury or 18 months from the date of enactment, and others require CFIUS to write regulations.

Finally, even if CFIUS were to review the station acquisition or any aspect thereof, it would be deemed a national security risk worthy of suspension or prohibition *only if* there were credible evidence to believe that a foreign interest exercising control might take action that threatens to impair national security *and* that existing provisions of law are not adequate or appropriate to protect national security, and the instant scenario does not meet that threshold. The fact that GLR is providing Chinese-language programming and is owned by a Chinese-born U.S. citizen does not mean CFIUS is implicated, and it certainly does not mean the FCC should await a CFIUS determination before proceeding.

IV. CHINESE SOUND'S INTERFERENCE CLAIMS RELATED TO OTHER STATIONS ARE LATE, LACK STANDING, AND CARRY NO WEIGHT

In another desperate attempt to derail the operations of XEWW, going beyond the claims in its Petition, Chinese Sound argues that grant of the Application would result in harmful interference to two unrelated stations: KCEE(AM) and a 690 kHz construction permit in Flagstaff, Arizona.⁵⁶ Chinese Sound raises these issues despite the fact that neither KCEE nor the applicant with the 15 year-old Flagstaff construction permit application has objected to this

⁵⁶ Supplement at 22.

Application. Chinese Sound has no standing to argue on behalf of either of these stations, its claims are untimely, and they substantively fail. The KCEE engineering report attached to the Supplement was filed in 2001. There has been no change in the facilities of XEWW, which have been in place for some time and have been approved in previous Section 325 applications. Indeed, the Commission approved a renewal of GLR's authorization as recently as June 14, 2017, and there were no FCC or public objections that technical facilities were causing interference at that time.⁵⁷ Given that this Application proposes no changes, and XEWW will be operating whether or not this Application to provide programming from the United States is granted, these old applications provide no support whatsoever to the Chinese Sound plea for relief.


⁵⁷ See <https://fcc.report/IBFS/325-RWL-20170321-00004>.

V. CONCLUSION

The Applicant has demonstrated that grant of the Application is in the public interest and that denial would deprive Chinese-speaking residents of Southern California of a new radio service and an Asian-American woman the opportunity to operate a station serving significant populations in Southern California. National security concerns are extremely important, but it wastes the Commission's time and resources to throw such arguments at an Application merely in an attempt to prevent competition in the Chinese-language broadcast marketplace. The Commission should move quickly to grant the Application to permit the export of programming to XEWW.

Respectfully submitted,

GLR SOUTHERN CALIFORNIA, LLC

By: 
Paige Fronabarger
David Oxenford
Its Attorneys

Wilkinson Barker Knauer, LLP
1800 M Street, N.W., Suite 800N
Washington, D.C. 20036
(202) 783-4141

Dated: September 24, 2018

EXHIBIT A

Affidavit of Xiaoyong Wu

My name is Xiaoyong Wu. I have worked for Phoenix Satellite Television Holdings Limited ("Phoenix Limited") since its founding in 1996 and currently serve as the Chief Executive Officer of Phoenix Limited's wholly owned subsidiary, Phoenix Satellite Television (U.S.) Inc. ("Phoenix US").

I received a bachelor's degree from Beijing Foreign Languages Institute (1977), where I majored in English Literature and Translation, and a Master of Art degree in Broadcast Journalism from the University of Missouri's School of Journalism (1982). I also received the Nieman Fellowship in Journalism, which enabled me to spend a year studying at Harvard University's Kennedy School of Government (1994).

I am aware that, in a proceeding initiated by China Sound of Oriental and West Heritage ("CSO") before the Federal Communications Commission ("Commission"), CSO alleged that Phoenix US must register with the Department of Justice under the Foreign Agents Registration Act ("FARA") because it is a "front" for the People's Republic of China ("PRC") that allegedly will spread Chinese "propaganda" in the US. I provide this affidavit to refute that contention and to provide additional information regarding the relationship between Phoenix US and H&H Group USA, LLC ("H&H"). I make this affidavit on the basis of my personal knowledge.

1. Phoenix Limited was founded in 1996. Its shares are publicly traded on the Hong Kong Stock Exchange. The majority of Phoenix Limited's shares are owned by shareholders that have no known linkage to the Government of the People's Republic of China ("Chinese Government") or the Chinese Communist Party ("CCP"). The company's Directors are elected by the Company's shareholders. As provided in the listing rules of the Hong Kong Stock Exchange, the Company's governance is not capable of being unduly influenced by any possible shareholder linkage to the Chinese Government or the CCP.

2. Of the significant shareholders of Phoenix Limited, Extra Step Investments Limited ("Extra Step") and China Wise International Limited ("China Wise") are the only two that have any linkage to the Chinese Government. This linkage results from the ownership interest that the Chinese Government holds in China Mobile and the Bank of China, which, in turn, have ownership interests in entities that, in turn, have indirect ownership interests in Extra Step and China Wise, respectively. The combined percentage ownership of Phoenix Limited of these two shareholders totals only 27.9 percent. Neither shareholder has ever been involved in any way in the daily operations the television or radio services that Phoenix Limited or its subsidiaries provide. By contrast, Phoenix's largest shareholder, Today's Asia, which is primarily owned by Phoenix's founder, Liu Changle, owns 37.07% of Phoenix's stock. The fourth largest stockholder is TPG China Media, L.P., which is ultimately controlled by David Bonderman and James G. Coulter, co-founders of TCP Capital, a US-based company that is one of the world's largest private equity firms.

3. Phoenix Limited is licensed in Hong Kong. The activities of Phoenix Limited and its subsidiaries (including Phoenix US and its wholly-owned subsidiary Phoenix Radio LLC, a Delaware limited liability company ("Phoenix Radio")) are not supervised, controlled, directed or regulated by the Chinese Government or the CCP. On the contrary, the programming content of Phoenix Limited often differs from the programming provided by broadcasting companies on the Chinese Mainland. For example, when the last presidential election in Taiwan took place, government-run television services in China were not allowed to cover or report on it, but Phoenix Limited covered the whole process live. Similarly, when the US was attacked on

September 11, 2001, Phoenix Limited provided 60 hours of live coverage, while the Chinese state broadcaster, CCTV, gave the event only three minutes of airtime. The activities of Phoenix Limited and its subsidiaries are not financed or subsidized by the Chinese government or the CCP.

4. Phoenix has won viewers and advertisers by providing quality programming. In the United States, Phoenix currently provides its programming on DISH, DIRECTV and the leading cable companies. As a result, more than 100 million U.S. homes have access to Phoenix TV channels. In the Los Angeles area, Spectrum (formerly Charter) has placed Phoenix programming on its basic tier, making it available to all Spectrum subscribers at no additional charge.

5. Phoenix radio is party to an agreement with H&H and GLR Southern California LLC ("GLR"). On information and belief :

- (a) Ms. Vivian Huo, through her attorneys (and without involvement from Phoenix and its lawyers) negotiated and completed a transaction for H&H to acquire 100% of the equity of GLR.
- (b) H&H and its newly acquired subsidiary GLR are parties to an agreement (a copy of which is on file with the Commission) with W3 Concesionaria, S.A. de C.V., a Mexican corporation ("Licensee") that holds the radio concession title granted by the Instituto Federal de Comunicaciones of the United States of Mexico to operate radio station XEWW, located in Tijuana, Mexico ("XEWW" or the "Station")("Concession Agreement");
- (c) The Concession Agreement grants GLR the right to cause programming delivered to XEWW by GLR to be broadcast on the Station.
- (d) GLR owns a Mexican subsidiary which owns the technical and operational facilities of the Station in Mexico, including the real property underlying the Station's transmission facilities and studio in Mexico and has an equity interest in the Licensee consistent with Mexican law;
- (e) Ms. Huo, who is a United States citizen, owns 97 percent of H&H which, in turn, owns 100% of GLR.
- (f) Ms. Huo acquired GLR (and thereby GLR's rights in the Concession Agreement) for the purpose of converting the programming broadcast by XEWW from the Spanish language to the Chinese language targeting the Chinese-American population in Southern California.
- (g) Other than the Programming Agreement described below, neither H&H, GLR nor Ms. Huo currently have or have had in the past any employment or other contractual relationship with Phoenix US or Phoenix Limited.

6. Ms. Huo was introduced to me by Mark Jorgenson, an American media broker who had previously introduced her to GLR. Ms. Huo approached Phoenix US about possibly providing programming to her company to be broadcast on the Station. After due diligence and negotiations, H&H and GLR signed a programming agreement with Phoenix US (the "Programming Agreement").

7. Pursuant to the Programming Agreement, Phoenix US provides programming for broadcast on XEWW. Phoenix hands off the program to an agent appointed by H&H, who is physically based in the Phoenix Studio in Los Angeles. The agent is responsible for delivering the programming from the Studio to XEWW in Tijuana. The studio and transmission facilities in Tijuana are operated, controlled and financed by GLR (through the Licensee) and without input, oversight or control by Phoenix. Phoenix does not have employees or contractors who work at the Station's facilities in Mexico.

8. H&H and GLR retain ultimate control over the programming under the Programming Agreement. The Programming Agreement provides that all programming supplied by Phoenix will comply with H&H's programming standards and expressly requires that all programming meet all applicable US and Mexican legal requirements and serve the public interest. H&H and GLR retain the right to reject any programming that does not satisfy these criteria.

9. Neither Phoenix Limited nor Phoenix US nor Phoenix Radio has any debt, equity or voting ownership interest in H&H, GLR, or the Licensee nor do they intend to acquire such a voting interest, directly or indirectly.

10. XEWW began broadcasting in Mandarin Chinese in late July, 2018. Phoenix has not received any complaints about the Chinese-language programming broadcast by XEWW.

11. Approximately eighty (80) percent of the total programming broadcast by XEWW in Chinese over the course of a week is un-hosted music, punctuated by commercials and station identifications. The remaining programming includes news and information content. For the most part, this content addresses local issues in southern California (e.g., local traffic and weather), as well as entertainment and programming about lifestyle matters such as personal relationships, food and technology. All non-music content is produced by Phoenix US at its studio located near Los Angeles, California. News headlines are sometimes broadcast as part of world news updates. These are drawn from a variety of reputable sources, including Asian-language broadcasters and publishers in Hong Kong and Taiwan, as well as internationally recognized providers in the US and UK such as the Associated Press, the LA Times, NPR and the BBC.

12. Phoenix US has assembled a multinational team to develop the content for broadcast on XEWW. The team consists of: a Director, Che Wei Cheng, who is from Taiwan; a Senior Program Planner, Hazel Kuang, a U.S. citizen, who is originally from Taiwan; a Program Planner, Po Hsien Lee, who also is from Taiwan; a Music Editor, Min Jia, who is from China; and a Marketing Planner, Kelly Fang, who is from China.

13. Jackie Pang, also known as Zhe Pang, is an employee of Phoenix US. She has been employed as a reporter by Phoenix since 2001. Ms. Pang has signed the Phoenix TV handbook, which requires full time employees to disclose any employment with employers other than Phoenix TV. She has not made any such disclosure. Phoenix has not directed, instructed, or permitted Ms. Pang to work with H&H. Ms. Pang has not been involved with the XEWW project.

I swear under penalty of perjury that the foregoing is true and correct.

Wu Xiaoyong
Xiaoyong Wu

9-18-2018

Date

EXHIBIT B

DECLARATION

I, Vivian Huo, hereby declare under penalty of perjury:

1. I am the President and 97% owner of H&H Group USA, LLC (“H&H”) which acquired 100% of the equity interests of GLR Southern California, LLC (“GLR”), an applicant for a Section 325 authorization to deliver radio programming from a studio in Southern California to radio station XEWW(AM), Rosarito, Baja California Norte, Mexico (“Station”).
2. I offer this declaration to address two matters raised by Chinese Sound of Oriental and West Heritage in their Supplement to Petition to Deny, FCC File No. 325-NEW-20180614-00001 (filed Sept. 4, 2018) (“Supplement”).
3. First, questions have been raised about the role of Jackie Pang with H&H and with H&H’s acquisition of its interest in GLR and the Station.
4. Jackie Pang is not currently nor has she ever been an employee or paid consultant of H&H nor does she have any financial interest in H&H or GLR.
5. I met Ms. Pang in New York when I was in graduate school in the early 2000s and she was recruiting Chinese students to help her with reporting and video production matters to promote a new business she was co-founding called Wall Street Multimedia, Inc.
6. Due to timing and other matters, I did not ever work for Wall Street Multimedia, Inc. Jackie and I stayed in contact with each other after those initial meetings and have helped each other with networking opportunities over the years.
7. In 2012, I formed a financial advisory firm called H&H Partners, LLC (“Partners”), which is a predecessor to H&H. Partners provided advisory services to connect U.S. and Chinese businesses and investors. A sample of some of the projects the company was involved with over the years include (i) working with a privately owned beer company in China to locate an American beer partner to work with the Chinese vendor to either export U.S. beer to China or to create a U.S. branded beer produced in China for sale in China, (ii) assisting a publically traded Hong Kong company locate food and beverage products in the United States that could be exported for sale in Hong Kong (for example Arizona Tea and Snapple) and (iii) helping a private real estate developer in China to locate real estate development opportunities in the United States. None of the ventures in question involved the Chinese government or monies invested by the Chinese government.
8. Early in the development stages of forming Partners, Jackie was one of several people whom I asked to serve in an unpaid advisory role. Ms. Pang is well known and respected in the Chinese community in New York.

9. Jackie is not and has never been an owner, employee or paid consultant of H&H or Partners. She has had no involvement or financial interest in the XEWW radio project (or the initial radio station in New York that I tried to acquire). While she was listed as an advisor to Partners, she was never called upon for any project specific advice for this or any other project. In fact, Ms. Pang was not aware about my purchase of XEWW until after that transaction was closed. Doing so would have violated confidentiality restrictions I had agreed to with the Seller.
10. Upon learning that Jackie had been named as an employee of H&H in public documents, and knowing that reports of her involvement with H&H were factually untrue, I promptly removed Jackie and all other unpaid advisors from the website. Neither Jackie nor any of the other removed directors have an economic, business or personal interest in H&H or the XEWW project.
11. Another allegation was raised about my alleged employment at a Chinese newspaper. I have never been an employee of any Chinese government newspaper. In graduate school, to make some money, I did act as a “contractor” and wrote between five and ten freelance articles that were submitted for publication in China. These articles primarily focused on New York lifestyle matters such as reviewing New York restaurants and covering other social and cultural events in New York City. I have had not written any such articles in well over a decade and have no other contractual or employment relationship with any Chinese-government newspaper or any other Chinese government media company.

[SIGNATURE PAGE FOLLOWS]

[SIGNATURE PAGE TO DECLARATION OF VIVIAN HUO]

The foregoing Declaration is true and correct to the best of my knowledge and belief.

Vivian Huo

A handwritten signature in black ink, appearing to read 'Vivian Huo', written over a horizontal line.

Dated: September 24, 2018

EXHIBIT C

Memo

Daniel E. Waltz
T +1 202 457 5651
daniel.waltz@squirepb.com

To: File

From: Daniel E. Waltz

Date: September 21, 2018

Subject: Is Phoenix Satellite Television US Required to register under FARA or to File a Report with the FCC as a "United States-Based Foreign Media Outlet"?

In a proceeding initiated by China Sound of Oriental and West Heritage ("CSO") before the Federal Communications Commission ("FCC") seeking FCC denial of an Application for Authorization to Deliver Programs to a Foreign Broadcast Station, CSO alleged that Phoenix Satellite Television US ("Phoenix US") must register with the Department of Justice under the Foreign Agents Registration Act ("FARA") because it is a "front" for the Government of the People's Republic of China ("PRC") that allegedly will spread Chinese "propaganda" in the US unless the Application is denied. This memorandum reviews and rebuts that allegation. This memorandum also addresses the question whether Phoenix US is required to file a report with the FCC as a United States-based foreign media outlet. The memorandum concludes that, because Phoenix US is not directed or controlled by the Government of the Peoples Republic of China ("Chinese Government") or the Chinese Communist Party ("CCP"), it is not required to register under FARA or file a report with the FCC as a United States-based foreign media outlet.

FACTS

The Petition submitted to the FCC by CSO relates to an application submitted by GLR Southern California, LLC ("GLR") for authorization to deliver programs from the United States to a foreign broadcast station for broadcast into the United States. The foreign broadcast station at issue is XEWW (AM), located in Tijuana, Baja California Norte, Mexico ("XEWW" or "the Station"), but whose lawful broadcast coverage area includes parts of southern California, including the Los Angeles metropolitan area. GLR is party to an agreement with W3 Concesionaria, S.A. de C.V., a Mexican corporation that holds the radio concession title for the Station granted by the Instituto Federal de Comunicaciones of the United States of Mexico. The agreement grants GLR the right to cause programming delivered to XEWW by GLR to be broadcast on the Station. GLR has contracted with Phoenix Radio LLC, a Delaware limited liability company ("Phoenix Radio"), to provide the programming that is broadcast by XEWW. (Phoenix Radio is a subsidiary of Phoenix US). Phoenix Radio pays the parent company of GLR, H&H Group USA, LLC ("H&H"), for the contractual right to have the programming broadcast by XEWW. In

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return, Phoenix Radio retains the advertising revenue it receives from advertisers who advertise on XEWW.

XEWW has been broadcasting the content provided by Phoenix Radio since July 20, 2018. The programming is broadcast in Mandarin Chinese and is intended for the Chinese-American community in southern California. Eighty percent of the total programming over the course of a week is un-hosted music, punctuated by commercials and station identifications. The remaining programming includes news and information content. For the most part, this content addresses local issues in southern California (e.g., local traffic and weather), as well as entertainment and programming about lifestyle matters such as personal relationships, food and technology. The non-music content is produced by Phoenix Radio at its studio in California. News headlines are broadcast as part of world news updates. These are drawn from a variety of reputable sources, including Asian-language broadcasters and publishers in Hong Kong and Taiwan, as well as internationally recognized providers in the US and UK, such as the Associated Press, the LA Times, NPR and the BBC. The broadcasts have not occasioned any complaints or controversy.

Phoenix US is ultimately wholly-owned by Phoenix Media Investment (Holdings) Limited ("Phoenix Limited"), a company that is publicly traded on the Hong Kong Stock Exchange. The company operates six different Chinese language channels across the globe and currently has an audience in excess of 360 million viewers worldwide. In the United States, Phoenix US currently provides its programming on numerous multi-channel video program distribution platforms, including DISH, DIRECTV and the leading cable companies. As a result, more than 100 million U.S. homes have access to Phoenix TV channels. Phoenix US programming also is available on internet-based services, such as Amazon, Apple TV, and Netflix. Past investors in Phoenix Limited include Star TV, a wholly owned Hong Kong subsidiary of Rupert Murdoch's News Corporation.

CSO notes that the founder of Phoenix Limited, Liu Changle, was a Colonel in the Chinese army. This is hardly remarkable; many successful Chinese business leaders began their career in the military. Mr Liu left the Chinese army years ago and founded Phoenix Limited with its Headquarters in Hong Kong in 1996. He has worked ever since as a private entrepreneur, and has succeeded in building an impressive Hong Kong-based media company.

As a company listed on the Hong Kong Stock Exchange, information about the largest shareholders of Phoenix Limited is publicly available and easily obtainable. According to the most recently available Phoenix Limited Annual Report, there are three shareholders who own more than 10 percent of Phoenix Limited. In total, those three shareholders own 68.87% of the outstanding shares of Phoenix Limited. Those shareholders are:

Today's Asia Limited	37.07%
Extra Step Investments Limited	19.66%
TPG China Media, L.P.	12.14%

Today's Asia Limited is beneficially owned by Phoenix's founder, Liu Changle, and Mr. Chan Wing Kee, a prominent Hong Kong business and civic leader, as to 93.30% and 6.70% respectively.

Extra Step Investments Limited is a wholly-owned subsidiary of China Mobile (Hong Kong) Group Limited ("CMHKG") which, in turn, is a subsidiary of China Mobile Communications Group Co., Ltd. ("CMCC"), which is directly owned by the Chinese government. Under Hong

Kong securities law, CMCC and CMHKG are deemed to be interested in the 983,000,000 Shares held by Extra Step Investments Limited. Mr. Sha Yuejia and Mr. Xia Bing, both non-executive Directors of Phoenix Limited, are respectively executive director and vice president of China Mobile Limited and general manager of the Marketing Department of CMCC.

TPG China Media, L.P. ("TPG") is controlled by TPG Asia Advisors VI DE, Inc., which in turn is ultimately controlled by David Bonderman and James G. Coulter. Messrs. Bonderman and Coulter are co-founders TCP Capital (formerly the Texas Pacific Group), a US-based company that is one of the world's largest private equity firms. Under Hong Kong securities law, TPG Asia Advisors VI DE, Inc., Mr. Bonderman and Mr. Coulter are all deemed to be interested in the 607,000,000 Shares held by TPG China Media, L.P. Mr. Sun Yanjun and Mr. Lau Wai Kei Ricky, a non-executive Director and alternate Director of Phoenix Limited respectively, are both managing director and partner of TPG.

The fourth largest shareholder of Phoenix Limited is China Wise International Limited ("CWIL"), which owns 8.24% of the outstanding shares of Phoenix Limited. It appears that CWIL is ultimately controlled by the Bank of China Limited ("BCIL") which is wholly-owned by the Chinese government, although the ownership chain includes subsidiaries, at least one of which is listed publicly, with a majority of its shares held by a parent that is ultimately 100% owned by the Chinese government, but a substantial minority of which are publicly traded. Of the remaining shareholders, none owns more than 1.2% of the outstanding shares of Phoenix Limited.

Even assuming that Extra Step Investments Limited and CWIL are ultimately controlled by the Chinese Government, their combined percentage ownership of Phoenix Limited totals only 27.9%. This hardly gives these two shareholders the ability to control the operations or policies of Phoenix Limited. Indeed, their combined ownership is dwarfed by the 37.07% owned by Today's Asia Limited, which is in turn controlled by the founder of Phoenix Limited, Mr. Liu.

The corporate governance of Phoenix Limited is consistent with the listing standards of the Hong Kong Stock Exchange and provides further protection against improper interference of individual shareholders or foreign governments. The Board of Directors of Phoenix Limited consists of 11 individuals and one alternate. Of these, four are independent. The three Executive Directors include Mr. Liu, the founder of Phoenix Limited, and two others, both of whom joined Phoenix Limited when it was first founded in 1996. Of the four non-Executive Directors, two hold positions with China Mobile, one holds a position at Bank of China Group, and one other (and his alternate) holds a position with TPG. This is entirely consistent with the relative shareholdings of the four largest shareholders of Phoenix Limited, of which the founder's company remains the largest.

FARA

FARA provides that natural or legal persons who, within the United States, engage in "political activities" on behalf of a foreign government or foreign political party, first register under FARA, then comply with FARA's disclosure requirements. FARA defines the term "political activities" as "any activity that the person engaging in believes will, or that the person intends to, in any way influence any agency or official of the Government of the United States or any section of the public within the United States with reference to formulating, adopting, or changing the domestic or foreign policies of the United States or with reference to the political or public interests, policies, or relations of a government of a foreign country or a foreign political party." 22 USC § 611(o). In other words, lobbying the federal government or disseminating information

in the US that is intended to influence public opinion in the US on behalf of a foreign government or foreign political party requires registration under FARA. In contrast, freely expressing one's own views about such subjects requires no FARA registration if one is not directed or controlled by foreign government or foreign political party.

DISCUSSION

Phoenix US is not required to register under FARA.¹ In making this assessment, the threshold question is whether, in its programming for distribution to a US audience, Phoenix US is acting under the direction or control of the PRC government or the CCP. As stated in the "Facts" section above, there is nothing in the ownership structure or corporate governing characteristics to suggest that the Chinese Government or the CCP has the ability to control the programming of Phoenix Limited, much less the programming of Phoenix US.

In the language of the FARA statute, a foreign government or foreign political party is referred to as a "foreign principal," while persons required to register under FARA are referred to as an "agent of a foreign principal." 22 USC § 611(b) and (c). Specifically, the FARA statute defines "agent of a foreign principal" as a person who engages in "political activities" in the US "as an agent, representative, employee, or servant, or any person who acts in any other capacity at the order, request, or under the direction or control, of a foreign principal or of a person any of whose activities are directly or indirectly supervised, directed, controlled, financed, or subsidized in whole or in major part by a foreign principal." 22 USC § 611(c)(1).

Phoenix US does not act as an agent, representative, employee, or servant of the PRC government or the CCP. Phoenix US is a private profit-making company that acts independently of the Chinese Government and the CCP. Neither does Phoenix US act in any other capacity at the order, request, or under the direction or control, of the Chinese Government or the CCP, or of a person any of whose activities are directly or indirectly supervised, directed, controlled, financed, or subsidized in whole or in major part by the Chinese Government or the CCP.

Attached to this memorandum is the affidavit of Xiaoyong Wu, who has worked for Phoenix Limited since its founding in 1996 and currently serves as Chief Executive Officer of Phoenix US. In his affidavit, Mr. Wu confirms that Phoenix Limited is not supervised, controlled, directed, regulated, financed or subsidized by the Chinese Government or the CCP. His affidavit includes examples of instances in which the programming of Phoenix Limited differed markedly from that of broadcast services within the PRC, thus demonstrating Phoenix Limited's independence from the PRC government.

As noted above, Phoenix Radio pays H&H for the contractual right to provide the programming broadcast by XEWW. In return, Phoenix Radio retains the advertising revenue it receives from advertisers who advertise on XEWW. Phoenix US thus has a strong incentive to ensure that Phoenix Radio provides programming that will attract the widest possible audience. Broadcasting programming that includes Chinese Government or CCP "propaganda" would be antithetical to this goal.

¹ CSO's filings with the FCC are unclear as to whether CSO believes that Phoenix Limited or Phoenix US may be required to register under FARA. Phoenix Limited clearly is not required to register, as FARA requires registration of persons who engage in political activities "within the US," whereas Phoenix Limited does not engage in activities in the US. The balance of this analysis, therefore, addresses the registration obligation, if any, of Phoenix US.

National Defense Authorization Act

On August 13, 2018, the John S. McCain National Defense Authorization Act for Fiscal Year 2019, Pub. L. No. 115-232 (“NDAA”) was enacted. Section 1085 of the NDAA amends the Communications Act of 1934 to add section 722, which requires all “United States-based foreign media outlets” to submit to a report to the FCC. For purposes of the reporting requirement, the NDAA provides that the term “United States-based foreign media outlet” means, *inter alia*, an entity that is required to register under FARA because it acts under the direction or control of a foreign government or a foreign political party. The deadline for submission of the first such report is October 12, 2018. Because Phoenix US is not required to register under FARA, it is likewise not required to file a report with the FCC as a “United States-based foreign media outlet.”

CONCLUSION

The activities of Phoenix US are not directed or controlled by the Chinese Government or the CCP. Phoenix US is a private, profit-generating company. Because it does not act under the direction or control of the Chinese Government or the CCP, Phoenix US is not required to register under FARA and is not required to submit a report to the FCC pursuant to the NDAA.

CERTIFICATE OF SERVICE

I, Rhea Lytle, a legal secretary with the law firm of Wilkinson Barker Knauer, LLP, hereby certify that on this 24th day of September 2018, I served copies of the foregoing “SURREPLY” on the following via first-class United States mail, postage prepaid:

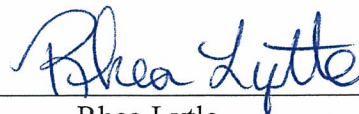
Reid Avett
Duane Morris, LLP
505 9th Street, N.W., Suite 1000
Washington, D.C. 20004-2166

James L. Winston
Rubin, Winston, Diercks, Harris & Cooke, LLP
1201 Connecticut Avenue, N.W., Suite 200
Washington, D.C. 20036

Brandon Moss*
International Bureau
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

Janice Shields*
International Bureau
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

*Via Email



Rhea Lytle