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

In re)
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GLR Southern California, LLC)
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Application for Transfer of Control from)
GLR Services, Inc. to)
H&H Group USA, LLC)
)
)
)
For Delivery of Programming to)
Mexican Station XEWW-AM.)
Rosarita, Baja California Norte, Mexico)

File No. 325-NEW-20180614-00001

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OCT 17 2018

Federal Communications Commission
Office of the Secretary

To: Secretary
Attn.: Chief, International Bureau

REPLY TO RESPONSE TO UNAUTHORIZED FILINGS

CHINESE SOUND OF ORIENTAL AND
WEST HERITAGE

By its Attorneys,

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October 17, 2018

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SUMMARY

CSO maintains that H&H is a front for Phoenix TV, which is a front for China, which is on a campaign to undermine U.S. national interests and interfere with U.S. elections by broadcasting propaganda to Chinese Americans in Southern California. The grant of the Permit application would enable the foregoing. The Permit application process traditionally involves minor questions not invoking the national interests and threats to the electoral system, the latter issues that the Administration advises are present with respect to China and for which multiple agencies have responded by employing greater scrutiny to financial and media transactions involving China.

H&H asserts that the Commission need not be concerned by a grant of the Permit, because H&H and Phoenix TV can be trusted to behave. H&H asserts: it provided all required information on the Form 308; there are no factors requiring denial of the Permit; national security risks are not present; neither it nor its programming partner, Phoenix TV, or any individual involved, is a front for China; no propaganda will be broadcast; registration as foreign agents is not required; this is not a financial transaction requiring inter-agency review; the Commission may not consider program content; any interference caused by XEWW-AM is belated; and most of the arguments CSO advances to deny the Permit are belated.

In reply, CSO maintains that the Permit application Form 308 provides that the data requested on the form is not exhaustive; national security issues presented are part of the public interest and must be considered; Phoenix TV controls staffing and programming, important functions reflecting that H&H has delegated *de facto* control to Phoenix TV; that inter-locked staffing of H&H and Phoenix TV further indicates *de facto* control; both the programming agreement providing compensation to H&H and Phoenix TV's payment of programming

production costs constitutes a CFIUS covered financial transaction; judicial precedent specifically authorizes denial of the Permit in lieu of content regulation; the Permit application triggered the right to file a petition to deny as to the interference caused by XEWW-AM as to two Arizona AM co-channel stations; and Commission precedent allows the consideration of non-specified pleadings where necessary for a robust and accurate record.

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REPLY TO RESPONSE TO UNAUTHORIZED FILINGS

I. Introduction

Chinese Sound of Oriental and West Heritage (“CSO”), licensee of KQEV-LP, Walnut, California, by its attorneys, hereby files this reply (“Reply to Response”) to the pleading styled “Response to Unauthorized Pleadings” (“Response”), filed on September 24, 2018, by GLR Southern California LLC (GLR), and its parent company H&H Group USA LLC (hereinafter, collectively H&H).¹

II. Background

In an Application filed on June 13, 2018, H&H seeks approval under Section 325 of the Communications Act, 47 U.S.C. § 325, for a Permit to deliver, via internet protocol, Mandarin

¹ Pursuant to Section 1.3 of the Commission’s Rules, CSO requests leave to file this Reply to Response. As H&H provided substantial new material in its Response, CSO requests leave to respond to that new material.

language programming from a studio in the Los Angeles area to radio station XEWW-AM, Rosarita, Baja California Norte, Mexico, which signal can be received in all of Southern California and beyond.

In its Petition to Deny, filed on August 8, 2018 ("Petition"), and a Supplement to the Petition to Deny, filed on September 4, 2018 ("Supplement") and a Reply to the Opposition to the Petition to Deny ("Reply") filed on September 11, 2018, CSO demonstrated that the People's Republic of China ("PRC" or "China") is conducting a multi-prong, broad overseas campaign, using media organizations to undermine American national interests, including efforts to interfere with American elections. In support of its position, CSO cited findings and warnings of and by multiple U.S. security and intelligence agencies, governmental monitoring agencies, research institutions, media advocates and human rights representatives. Supplement, at 2, 4, 5, 6.

CSO also demonstrated via a sworn declaration of the former senior manager and News Director for Phoenix TV USA Ltd. ("Phoenix TV") that Phoenix TV is a Cayman Islands-chartered and Hong Kong based-entity, subject to the sovereignty of the PRC, and that H&H has delegated near universal programming rights and financial sales management to Phoenix TV. two of three factors that the Commission has held constitute *de facto* control, in violation of the Commission Rules. As to the third factor- financing - CSO maintains that, as H&H has not provided any documentation as to the source of funding for the acquisition and operations of XEWW-AM, and given the *de facto* control of the first two factors, the Commission is unable to decide as to the third factor; and thus, the Commission cannot conclude that a grant of the Permit would serve the public interest.

III. H&H Response

In response to the above, H&H asserts that the Supplement and Reply are untimely and beyond the arguments and factors detailed in the Petition; and, as such, they are “unauthorized” and should not be considered. Response, at 4-6.

On the merits of the CSO assertions, H&H’s general response is that CSO advances self-serving, anti-competitive, unsupported allegations; and the government and CSO are making fear-mongering and racially-tinged assertions in their efforts to consider legitimate national security interest findings. Response, at 2.

More specifically, H&H has four responses. H&H says: a) it has demonstrated sufficient evidence for a grant of the Permit and CSO has not demonstrated any grounds for denial of the Permit; b) neither H&H nor GLR is or will be an agent for the PRC; c) the CSO interference claims as to KCEE(AM), Tucson, Arizona, and the new proposed AM station at Flagstaff, Arizona, are belated, and CSO lacks standing to complain; and d) the Supplement and Reply offer new information and are untimely. Response, 3, 7, 17.

As detailed below, the H&H Response ignores the record in this proceeding, and its assertions and arguments are evasive and disingenuous. Pivotaly, H&H ignores that the public interest standard for accepting non-rule specified pleadings and the substantive factors for detailing the public interest are broad and flexible, liberally permitting robust pleadings not specifically authorized and considering and allowing the consideration of a variable, adjusting and evolving *ad hoc* public interest standard.

IV. Argument

A. *The Permit Application Request for Information Is Not Exhaustive and National Security Factors Can Be Supplemented*

1. The Permit Application Form Provides Notice That Additional Data May Be Required

H&H argues that it has submitted all the information requested on the Permit Form 308 and that is enough for a grant of the Permit, as it is not required to submit anything more.

Restated, H&H submits that the Permit form data requests are exhaustive, and the Commission may not ask for additional data. Response, at 3.

H&H ignores its own citation of Section 325 of the Communications Act, which requires that before the Commission may grant a Permit, the Commission must find a grant to be in the public interest. Nothing in Permit Form 308, or the Commission Rules, precludes the Commission from seeking additional data. Further and decisively, the Instructions to the Permit Application specifically provide notice that the Commission may require additional information. See Instructions for Form 308, pars. 3-4, at p. 2. Indeed, absent additional data, the Commission could (and should) designate the Permit application for an evidentiary hearing to secure substantially greater information. See Instructions for Form 308, par. 3, at p. 2.

2. Petitioner has detailed overwhelming evidence to support denial of the Permit. or alternatively, the need for an evidentiary hearing

H&H maintains that CSO has not provided any grounds to deny the Permit. Response, at 3. H&H further asserts that the national security interests demonstrated by CSO are insufficient grounds and/or evidence to deny the Permit, given that such a standard would be new. Response, at 3-4, Note 9. The reply is that H&H ignores that the traditional broad public interest standard is not fixed, but dynamic and variable depending upon the industry, the time period and the specific

factors presented. In a *Letter from Chairman Tom Wheeler to the Honorable John D.*

Rockefeller, et. al., 2014 WL 1345949, March 27, 2014, at 2, the Chairman noted:

Congress' express statutory command is that license transfers must satisfy the "public interest, convenience, and necessity," a standard that is always informed by regulatory standards, but which necessarily involves, as our licensing decisions have long noted, the use of a "case-by-case" approach...[A]pplicants and interested parties should not forget that our public interest mandate encompasses giving careful attention to the economic effects of, and incentives created by, a proposed transaction taken as a whole and its consistency with the Commission's policies under the Act, including our policies in favor of competition, diversity, and localism.

The Chairman went on to say:

[We] reaffirm the congressional command that the legal standard for deciding the transfer of licenses under Section 301(d) is the "public interest, convenience, and necessity" and that, of course, no single set of unwritten, little understood formulations can replace the Commission's responsibility to apply that standard with an understanding of the totality of the facts. That is no change of policy: it is the policy enacted by Congress and the statute that I have sworn to enforce....

As such, H&H's reliance on the proposition that national security interests may not be used to require information beyond the Permit form or used to decide the merits of the H&H Permit application is misplaced.

Additionally, H&H maintains that, as a national security standard is not applicable, there is no basis to rescind the Special Temporary Authority ("STA") granted to H&H to commence delivery of the Phoenix TV programming to XEWW-AM for rebroadcasting in Southern California. Response, note 10. However, given the above, demonstrating that the application of the national security standard applies, as previously demonstrated, the Commission should rescind the STA.

H&H maintains that CSO has not demonstrated any grounds to support a denial of the Permit. Response, at 3-4. The argument is disingenuous and evasive. CSO has provided the warnings and findings of the National Security Agency, the Office of the National Security

Advisor, Office of the Special Trade Representative, the U.S.-China Security and Review Commission and others. Supplement. at 4-5. H&H would have the Commission ignore these findings. The Commission cannot. They represent vital factors as to the common defense and general welfare, matters constitutionally within the public interest.

Additionally, from his vantage point as a Member of the Armed Forces Committee of the United States Senate, Senator Ted Cruz has cautioned the Commission that China will use propaganda to undermine American interests and influence American elections. See Letter to Chairman Ajit Pai, dated September 11, 2018. (As the letter does not show as a docket entry on the Commission's website, it is attached hereto as an Exhibit.) This provides further support and evidence that national security should be considered here. H&H would have the Commission ignore this caution, summarily dismissing the Senator's assertions as unfounded. Response. note 24.

3. National Security is the Federal Government's core raison d'être

The H&H position, seeking to have the Commission ignore national security issues defies logic and history. A core reason for the federal government's existence is to provide for the general welfare and the common defense,² the latter of which includes protection against the aggression of foreign governments and their manipulated entities. There are multiple means by which the federal government may ensure such national security, including the monitoring of intelligence practices of foreign entities to ensure the lack of infiltration. One of the statutes set forth to implement protection is the National Security Act of 1947 which established the National Security Council and the Central Intelligence Agency, agencies which recently have

² Article I, Section 8, United States Constitution.

found that the PRC is attempting to undermine American interests, including using media it controls to interfere with American elections. Supplement, at 6-7, 10.

In *New York Times v. United States*, 403 U.S. 713 (1971), the Supreme Court held that national security issues are a basis for denial of privileges, even overriding First Amendment concerns, and the test for such denials in print media³ is a “grave and irreparable danger.” However, in that case, the Government failed to satisfy the standard based on the record before the Court. While the case is generally considered a victory for an expansive reading of the First Amendment, its decision did not void the Espionage Act underlying the Government’s core need for national security tools to protect against foreign entities. *Id.*, at 730-740 (Justices White and Brennan, concurring). As such, the H&H assertion, implicit or otherwise, that national security interests are “insufficient” to deny a Permit ignores history and precedent.

4. The Vice President Also Warns That China Is Interfering in Upcoming Elections

If the findings of those agencies and entities detailed above and in the Supplement and Reply were not compelling enough, just thirteen days ago, on October 4, 2018, the Vice President underscored and enhanced those findings. In “Remarks by Vice President Pence on the Administration’s Policy Toward China” (“Remarks”) before the Hudson Institute, the Vice President declared an *inflection point* in U.S.-China relations.⁴ The Vice President, echoing other government findings, declared that China abuses its economic clout; bullies American companies into transferring to it American technology; intimidates its neighbors; and persecutes religious and spiritual believers in its own country. In stark language, made particularly relevant here, the

³ Here, as broadcasting and not print media is involved, the standard is lower. A more complete discussion is given below at sub-Section 5, a.

⁴ The text of the Remarks is available online at <https://www.whitehouse.gov/briefings-statements/remarks-vice-president-pence-administrations-policy-toward-china/>

Vice President concludes that China is attempting to interfere in the 2018 midterm election, adding that China uses its influence and powers by "...rewarding or coercing American businesses, movies studios, universities, think tanks, scholars, and journalists...." Pointedly, and especially applicable as to the Permit, the Vice President detailed:

Beijing is employing a whole-of-government approach, using political, economic, and military tools, *as well as propaganda*, to advance its influence and benefit its interests in the United States.

* * *

And China is also directly appealing to the American voters. Last week, the Chinese government paid to have a multipage supplement inserted into the *Des Moines Register* — the paper of record of the home state of our Ambassador to China, and a pivotal state in 2018 and 2020. The supplement, designed to look like the news articles, cast our trade policies as reckless and harmful to Iowans.⁵

Following the declared position of the Administration, on October 10, 2018, the Treasury Department announced that it had expanded the review of foreign investment in American entities, particularly by China.⁶ The next day, the Energy Department announced heightened controls on energy technology transfers to the PRC.⁷ And, as noted by H&H, previously, the Justice Department announced it had ordered Xinhua News Agency and CGTN, the international arm of state broadcaster CCTV to register as foreign agents. Response at 15, note 52.⁸

⁵ Remarks, sixth and fifty-fifth paragraphs. [Emphasis supplied.]

⁶ See https://home.treasury.gov/system/files/206/FR-2018-22182_1786904.pdf

⁷ "DOE Announces Measures to Prevent China's Illegal Diversion of U.S. Civil Nuclear Technology for Military or Other Unauthorized Purposes," at <https://www.energy.gov/articles/doe-announces-measures-prevent-china-s-illegal-diversion-us-civil-nuclear-technology>

⁸ H&H attempts to distinguish itself from these two publications, maintaining that unlike Phoenix TV, the PRC maintains *de jure* control over these entities. Response, at 13-14. That difference is not of decisional significance, as the PRC maintains prohibited *de facto* control over Phoenix TV as CSO has demonstrated.

Given the evidence detailed in the Petition, the Supplement and the Reply, and as enhanced by the remarks of the Vice President, CSO submits that sufficient evidence exists of national security implications, particularly as to efforts to use propaganda to influence Chinese Americans in Southern California during the upcoming elections and thereafter, that the Commission may deny the Permit as not in the public interest. Alternatively, CSO submits that sufficient evidence exists that material and substantial questions of fact exist justifying an evidentiary hearing before the Commission can conclude that a grant of the Permit would be in the public interest.

B. H&H is a Front for Phoenix TV which is Controlled by the PRC and the Commission Should Not Trust Phoenix TV to Defy the Dictates of its Sovereign nor Trust H&H to Defy the Economic Compensation of Phoenix TV nor the Aggression of the PRC

CSO has demonstrated in its Petition, Supplement and Reply that Phoenix TV is controlled by the PRC. CSO has demonstrated also that Vivian Huo the controlling shareholder of H&H has delegated all programming decisions to Phoenix TV, save the minimalist right to preempt programs, but without detailing how such preemption will be accomplished.⁹ CSO further has demonstrated how Phoenix TV controls the hiring of journalists and sales financial management at XEWW-AM, owned by H&H. Supplement, at Exhibit 1, Supplemental Declaration of Xiaowei, par. 3. The Commission has concluded that these factors constitute *de facto* control. Supplement, at 10, citing *Aspen FM Inc.*, 6 FCC Rcd 1602 (1991) That makes H&H a front for Phoenix TV. While H&H denies being controlled by Phoenix TV, it has failed to address the factors that the Commission has held constitute *de facto* control.

1. Economic Incentives of Compensation and Profits Propel H&H and Phoenix TV Compliance with the Directives of the PRC

⁹ Supplement, at 11-14.

H&H asserts that it will not be a front for the PRC. Response, at 7-8. H&H ignores how the world and economics works. As H&H acknowledges, Phoenix TV is a multi-million dollar global empire, broadcasting multiple channels on multiple continents.¹⁰ Based in Hong Kong, it is subject to governance by its sovereign, the PRC,

H&H would have the Commission believe that Phoenix TV, the only entity in China that has the privilege of being a privately owned media company grossing hundreds of millions of dollars – an absolute monopoly – with sole access to the Chinese population, would risk the wrath of the PRC, which could, if it chose, close Phoenix TV and thereby destroy the influence and affluence provided. H&H also would have the Commission believe that H&H would defy and risk the wrath of Phoenix TV which provides H&H with compensation for the right to program XEWW-AM.¹¹ The H&H argument is not credible. It defies logic. Importantly, the argument asks the Commission to ignore the findings and warnings of the National Security Advisor, the Central Intelligence Agency, the Special Trade Representative, the Vice President and other government agencies. The Commission should not be so misled.

2. The PRC Previously Has Embedded PRC Agents into Phoenix TV to Undermine American Interests

In 2007, Tai Wang Mak, then Director of Broadcasting and Engineering for Phoenix TV and his brother, Chi Mak, an engineer at Power Paragon, a defense contractor, were both sentenced respectively to ten and twenty-four years for conspiracy to commit espionage and for

¹⁰ See Supplement, at 12; Response, Exhibit C, Memo of Counsel, second and third pages. Financial data available online at <http://ir.ifeng.com/phoenix.zh.html?c=242799&p=irol-fundIncom>

¹¹ See Response, Exhibit C, second page.

spying to transfer American naval secrets to the PRC.¹² The charges also included acting as unregistered agents of a foreign government. They both had been “sleeper” spies for the PRC for decades.¹³ This reflects that Phoenix TV has been – and can be – used by the PRC to advance the aggression of the PRC.¹⁴

3. Jackie Pang Is a Principal of Phoenix TV and H&H. Paid or Unpaid

In its Supplement, at 10, 14, and Exhibit 4, CSO documented how H&H employs Jackie Pang as an on-air journalist by providing a sworn declaration together with a photograph of Jackie Pang delivering on-air information. In its Response, H&H asserts that the CSO position is “a demonstrably false claim” and that Phoenix TV does not employ Jackie Pang or ex-Phoenix TV on-air hosts. But H&H does not provide any supporting documentation to support its position. H&H concedes that 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.” Response, at 7. That response is inconsistent with the Declaration of Chung Pong provided by CSO¹⁵ – and the issue is critical in showing *de facto* control. Given the factual

¹² See, Chi Mak, Tai Wang Mak, U.S. District Court, Central District of California, Case No. CR-00293-CJC, March 26, 2008; and April 21, 2008, Tai Wang Mak, U.S. District Court Central District of California.

See also, “How the F.B.I. Cracked a Chinese Spy Ring,” *The New Yorker*, May 12, 2014. Available online at <https://www.newyorker.com/news/news-desk/how-the-f-b-i-cracked-a-chinese-spy-ring>

¹³ *Id.*

¹⁴ CSO hastens to add, and emphatically so, that it is not suggesting that either of the individual principals of H&H, or any other individual involved in the Permit application proceeding, are conducting espionage. The point is that Phoenix TV previously has been used as a front for the PRC.

¹⁵ CSO Reply, Exhibit 1.

dispute, a material and substantial question of fact requiring an evidentiary hearing is required to resolve whether Jackie Pang is an agent of the PRC.

H&H maintains that its controlling principal is an American citizen pursuing a legitimate business opportunity, not a front for Phoenix TV or the PRC. Response, at 8. CSO does not contest that Vivian Huo is an American citizen or that the venture involved is a business opportunity. CSO maintains that Phoenix TV is *de facto* controlled by the PRC, which uses its influence to undermine American interests, including the broadcasting of propaganda. Critically, H&H does not contest specifically that Phoenix TV exercises *de facto* control over H&H. Its response is only that its shareholders have *de jure* control. That is classic evasion.

H&H ridicules CSO's demonstrated evidence of *de facto* control of H&H by Phoenix TV and the PRC's control of Phoenix TV as no more than that Phoenix TV is listed on the Hong Kong Stock Exchange, has a global presence, and is headed by one of the richest men in China. Response, at 8. H&H evades the point. Matters as to the entity's breath and the wealth of the CEO are contextual, reflecting economic incentives. Listing on the Hong Kong stock exchange reflects sovereignty of the PRC and the need for oversight by the Committee on Foreign Investment in the United States ("CFIUS") and the need for registration as a foreign media agent, as was RT, previously known as Russia Today.

H&H attempts to minimize the compelling significance of the contents of the Chung Pong Declaration, which demonstrates that the PRC exercises journalistic control over Phoenix TV, by dismissing PRC directives to terminate Phoenix TV staff that resist or defy PRC directives. H&H characterizes those directives as "a single incident." Response, Note 31, at 9. There are two responses. First, one incident of firing a journalist for failure to manipulate news, is one too many, as that one incident reflects a willingness to fire more journalists and that one

incident becomes a strong deterrent to others who might have considered not complying with instructions to produce future misinformation and propaganda. The global reaction by journalists, political leaders and governments to the recent disappearance and possible death of *Washington Post* journalist Jamal Khashoggi, who likely defied directives to manipulate his stories to satisfy government interests, illustrates the magnitude and significance of a single incident.¹⁶ CSO submits that the “it’s only one incident” defense of H&H reflects a willingness by H&H to accept manipulative misinformation, so long as some unspecified number of incidents remain containable.

Second, the use of *ad hoc* guidelines for reporting favorably on the PRC and unfavorably (or not at all) on specified news events is not isolated. The propaganda guidelines applied universally to the entire Phoenix TV staff. That only one employee defied the PRC directives demonstrates the force of the PRC chilling effect on the other journalists.

Further, H&H represents that Phoenix TV does not broadcast propaganda as there are no complaints from its viewers or listeners. Response, at 11-12. The absence of complaints, if so, is likely attributable to the fact that the PRC punishes and suppresses dissent among its own people and overseas ethnic Chinese, the latter of whom may have friends, family and businesses in China.¹⁷

¹⁶ “Saudis are Said to have Lain in Wait for Jamal Khashoggi,” *Washington Post*, October 9, 2018, at https://www.washingtonpost.com/world/saudis-lay-in-wait-for-jamal-khashoggi-and-left-turkey-quickly-sources-say/2018/10/09/0e283e2e-cbc5-11e8-ad0a-0e01efba3cc1_story.html?utm_term=.bf245933c3dd

¹⁷ In order to avoid additional pleadings and responses, CSO will file, only if requested by the Commission, declarations under oath from multiple persons who reside in Los Angeles County stating that each of them listened to Phoenix U AM 690 (Phoenix TV) and found the programs to contain propaganda. The specific programs were broadcast as follows: on October 3rd, 4th, 5th, 9th, 10th and 11th. The exact times of the latter programs were not recorded on paper, but the individual made and can provide audio recordings of the programs.

H&H additionally provides the affidavit of that the Assistant CEO declaring that Phoenix TV has never authorized Jackie Pang to work for H&H. Response, at 11. That is not credible, and it is evasive. Pivotaly, CSO submits that whether as an employee, or advisor, or volunteer, Jackie Pang is an on-camera journalist for Phoenix TV, as demonstrated in the Supplemental Declaration of Xiaowei Xia, together with the attached photograph reflecting her on air appearance.¹⁸ Under the circumstances, the Commission cannot grant the Permit without resolving whether Phoenix TV exercises control over H&H. Given all the foregoing, the Commission cannot rely simply on trust.

4. Phoenix TV Shareholders Have Direct and Substantial Ties to the PRC

H&H parenthetically notes that two Phoenix TV shareholders owning a combined percentage ownership of 28% in Phoenix TV "...are linked "indirectly" to the Chinese Government through ownership." Response, Exhibit C. H&H is hiding something. Twenty-eight percent of a large public company traditionally is a very substantial amount and in some instances allows for actual control. Yet, there is no detailing of what "indirectly" means, or the class of shares – whether common or preferred, or whether there is capacity of those shareholders to impact control of the entity. H&H declares that, because of the listing rules of the Hong Kong Stock Exchange, Phoenix TV is not capable of being unduly influenced by any possible linkage to the Chinese Government or the Chinese Communist Party. Response, Note 26, at 8. First, that mere stock exchange rules could prevent Chinese Government influence, seems highly unlikely. The power that the Chinese Government influences over media has been well documented in great detail in the CSO's previous pleadings. Second, CSO notes that *de*

¹⁸ See, Supplement, Exhibit 4.

jure shareholders of Phoenix TV previously have attempted to purchase KDAY(AM). Redondo Beach to gain access to the Southern California market, but failed. Supplement. at 15.

Third, the Commission recognizes that a *de jure* legal structure does not preclude *de facto* control. Application of *Tribune Media Company and Sinclair Broadcasting Co.*, Hearing Designation Order, DA 18-100, MB Docket 17-179, released July 10, 2018, par. 29. The idea that 28% ownership lacks any type of influence defies the rationale and conclusions underlying the Commission's requirement that any party holding 10% interest or more, or that has an indirect capacity to exert control, be identified. 47 C.F.R. § 1.2112(a) (1) and (7). Indeed, the entire construct and dichotomy of *de jure* and *de facto* control is predicated on the acknowledgement that actual control may not be reflected in named shareholders. *Id.*

5. The Commission's Consideration of Content in a Section 325(c) Proceeding is Constitutionally Permitted and Expressly Judicially Authorized

- a. H&H does not have the absolute right to deliver offensive programming via American telecommunications infrastructure to XEWW-AM in Mexico

H&H maintains that the under the First Amendment, the Commission does not consider programming content in considering a Permit application. Response, at 12, note 40. H&H overstates applicable precedent.

In *New York Times, supra*, the Supreme Court extended broad protection from prior restraints upon publication by newspapers of national security secrets. However, the Court left in place the permissibility of prior restraint, despite the First Amendment, where the government could demonstrate an "immediate and grave danger" to national security by foreign actors. However, *New York Times* applies to print news publications only. A lesser standard applies to government licensed broadcast stations. *Red Lion Broadcasting Co. v. FCC*, 395 U. S. 367 (1969); *FCC v. Pacifica Foundation*, 438 U. S. 726 (1978). Here, a broadcasting permit is at

issue and CSO is not seeking a prior restraint. As the Court of Appeals has specifically held as to Section 325(c) permit applications, the Commission *may consider that the programming is offensive*, and, if so, the Commission is not obligated to expand the audience for the offensive programming and may deny the Permit application. See, Supplement, at 20-22.

b. A Full Schedule of Programs Does Not Defeat the Capacity to Broadcast Propaganda

H&H claims it has a full schedule of mostly music programs for broadcasting from a variety of quality sources and there is no room left for propaganda.¹⁹ Response, at 12. The implication is that propaganda originates and accompanies only political commentary or discussion programming. The argument is disingenuous. Moreover, H&H intends political commentary and discussion programs. Response, at 12-13. Thus, H&H could broadcast such propaganda. Further, CSO submits that the choice of nationalistic music with or without lyrics can be propaganda. CSO cited *Black's Law Dictionary* for the legal definition of propaganda, which supports the assertion that music can be propaganda. Supplement, at 12-13. That definition does not exclude music.

H&H also asserts that because it will not broadcast programs from the China mainland, there will not be propaganda. Response, at 9. That is a *non-sequitur*, as the geographic origination is not part of the definition of propaganda. H&H also maintains that the PRC's directives not to broadcast live the events of the fifth anniversary of the restoration of Hong Kong to the PRC occurred in the PRC only. As Phoenix TV has global distribution, CSO submits

¹⁹ That Phoenix TV also broadcast quality programming does not defeat its broadcasting of propaganda programming, as quality programming may well be the factor that induces viewers and listeners to digest propaganda.

that the directive may have been delivered in China, but the suppression of the news event was global.

Next, H&H suggests that the *Black's Law Dictionary* is not authoritative and irrelevant. Response, at 12. While the dictionary is not a *primary* source for legal authority, it is a *secondary* source; and, *Black's Law Dictionary* is the most widely used such source for legal concepts not defined in primary sources. Notably, the Supreme Court routinely relies upon dictionaries, including *Black's Law Dictionary*, in its opinions. See, e.g., *Bullock v. BankChampaign, N. A.*, 569 U.S. 267, 268 (2013); *Stanford University v. Roche Molecular Systems, Inc.*, 563 U.S. 776, 786-87 (2011).

6. H&H on Behalf of Phoenix TV and the PRC Are Attempting to Influence Public Opinion And Thusly Are Foreign Agents and the Phoenix TV Investment in H&H Is a CFIUS Covered Transaction

CSO has shown that Phoenix TV is an agent for China, just as RT is an agent for Russia. H&H counters that, because it is "...freely expressing [or broadcasting] one's own views, H&H is not required to register pursuant to the Foreign Agents Registration Act." Response, at 13. However, the views broadcast by XEWW-AM are those of Phoenix TV, which programs the station, and Phoenix TV is controlled by the PRC, as demonstrated in the Petition, the Supplement (including the Chung Pong Declaration) and the Reply.

Further, CSO demonstrated in the Supplement, at 17, that the Department of Justice required T&R Production LLC to register as a foreign agent of Russia, because that entity was an American-based studio production company, which delivers programming via American telecommunications infrastructure from studios in New York and Washington to Russia for retransmission and broadcasting back into the U.S. by RT. In that case, the federal government concluded that these programming, production and delivery functions, as detailed by the

government security agencies and others, were intended to undermine American interests and influence American elections for the benefit of the Russian Government. These are the same functions and objectives as those being performed by H&H and Phoenix TV in the U.S. and XEWW-AM in Mexico. Yet, H&H does not even address these factors. That avoidance is a clear indication that H&H knows that it cannot escape the same conclusion – it must register.

H&H suggests that the relevant CFIUS provisions are not yet effective, suggesting that the Commission may not consider those provisions.²⁰ However, seven days ago, the Treasury Department, as Chair of CFIUS issued “urgent and compelling” temporary regulations to implement provisions of FIRRMA amending certain CFIUS regulations, which became effective on October 11, 2018, and detailed as a Pilot Program additional CFIUS regulation changes, which will become effective on November 10, 2018, mooted the H&H argument.²¹ With respect to the Pilot Program, the Treasury Department stated:

This interim rule sets forth the scope of, and procedures for, a pilot program of the Committee on Foreign Investment in the United States (CFIUS, or the Committee) under section 721 of the Defense Production Act of 1950, as amended by the Foreign Investment Risk Review Modernization Act of 2018 (FIRRMA). Pursuant to section 1727(c) of FIRRMA, this pilot program implements the authorities provided in two sections of FIRRMA that did not take effect upon the statute’s enactment. First, the pilot program expands the scope of transactions subject to review by CFIUS to include certain investments involving foreign persons and critical technologies. Second, the pilot program makes effective FIRRMA’s mandatory declarations provision for all transactions that fall within the specific scope of the pilot program.²²

²⁰ Response, at 17.

²¹ The Press Release announcing the new regulations is at <https://home.treasury.gov/news/press-releases/sm506>. The regulations, 31 CFR Part 801, are available online at https://home.treasury.gov/system/files/206/FR-2018-22182_1786904.pdf.

²² *Id.*

The Pilot Program regulations cover H&H as a U.S. business that produces, designs, tests, manufactures, fabricates, or develops a critical technology that is utilized in connection with the U.S. business's activity in specified industries, including radio and television broadcasting. See Section 801.213 (incorporating Annex A, listing Radio and Television and Wireless Communications), 31 CFR § 801.213.

The Pilot Program also covers H&H as an investment company. Section 801.207 provides:

The term pilot program covered investment means an investment, *direct or indirect*, by a foreign person in an unaffiliated pilot program U.S. business that could not result in control by a foreign person of a pilot program U.S. business and that affords the foreign person: (c) Any involvement, other than through voting of shares, in substantive decision-making of the pilot program U.S. business regarding the use, development, acquisition, or release of critical technology.²³

The definitions and functions described in the Pilot Program are clearly applicable to H&H and Phoenix TV. As H&H describes itself as an investment company arranging for financial investments in U.S. businesses by mainland and Hong Kong-based Chinese, and as Phoenix TV as a foreign entity has made a direct investment in H&H and has indirect *de facto control* of H&H and as the PRC has indirect control of Phoenix TV, H&H is within the ambit of the Pilot Program regulations. Under the regulations, H&H is required to file requisite declarations with CFIUS by November 10, 2018. See Section 801.401(c)(1).²⁴ Absent proof of such a filing, the Commission should dismiss the Permit application.

²³ 31 CFR § 801.207.

²⁴ 31 CFR § 801.401(c)(1).

7. The Program Agreement and Required Investment by Phoenix TV for the Production of Programming in California for Transmission to Mexico and Retransmission via Broadcasting is a CFIUS Covered Transaction

H&H maintains that the economic investment that Phoenix TV, is making to produce programming in California is not an investment by a foreign entity into the U.S. and, therefore does not require authorization by CFIUS. Response, 16-17. Because Phoenix TV is a Cayman Islands chartered-Hong Kong-based entity, and its investment is into a U.S. entity, H&H, controlled by U.S. citizens, the H&H argument is devoid of merit.

H&H next argues that, even if it is required to seek a review from CFIUS, the Commission “*typically* does not coordinate with CFIUS on transaction reviews and need not wait [to grant a Permit] even if CFIUS is undertaking a review.” Response, at 16. [Emphasis supplied.]

The expression “typically” used by H&H is instructive. CSO submits that this is not the “typical” situation where the transaction may involve an electronic product from China or even create an antitrust monopolistic entity that could negatively impact consumer prices. This transaction creates grave and irreparable risks of distorting the U.S. electoral process in all of Southern California this year and in future elections. The H&H argument also ignores the reality that U.S.-PRC relationships have reached an *inflection point*, as detailed by the government agencies and the Vice President. The core point of these recent warnings is that “typical” no longer applies. Coordinated governmental close review is now needed to protect the public interest.

Further, CFIUS reviews “covered transactions,” which are defined as “any transaction by or with any foreign person that could result in control of any pilot program U.S. business” by a

foreign person.²⁵ The Commission has concluded that for purposes of the Communications Act, such control may be *de jure* or *de facto*. *Aspen FM, supra*. Other CFIUS regulations define “foreign person” as “any entity over which control is exercised or exercisable by a foreign national, foreign government, or foreign entity.”²⁶ And CFIUS regulations define a “foreign entity” as any entity “organized under the laws of a foreign state if either its principal place of business is outside the United States or its equity securities are primarily traded on one or more foreign exchanges.”²⁷ both factors which are presented with Phoenix TV. Under the program agreement with H&H, Phoenix TV has the authority to determine and direct the important core function of hiring, programming and sales financial management, subject only to *ad hoc* preemptions. Pursuant to the express terms of the CFIUS enabling Act and CFIUS regulations, the H&H-Phoenix TV Program Agreement is a covered transaction.

C. CSO Located Within the XEWW-AM Coverage Area Has Standing to Object to Any and All Parts of the Permit Application including Objectionable Interference

H&H maintains that CSO lacks standing to object to the interference caused by XEWW-AM to KCEE (AM), Tucson, Arizona, and the new AM facility on frequency 690 at Flagstaff, Arizona. Response, at 17-18. H&H fails to support its assertions with citations to any authorities. CSO demonstrated in its Petition to Deny that it will be in direct competition with XEWW-AM and will suffer economic injury if the Application is granted, and that is enough to demonstrate standing.²⁸ Having demonstrated standing, CSO is not limited in the issues it may raise with respect to the Application.

²⁵ 31 CFR § 801.210.

²⁶ 31 CFR § 800.216(b)

²⁷ 31 CFR § 800.212(a).

²⁸ Petition at 1, citing *Entercom License, LLC*, 31 FCC Rcd 12196, 12205 (2016).

Even if CSO lacked standing to raise the interference issues, the Commission has long held that informal objections can be filed by any person as to any application. See 47 C.F.R. 73.3587 and that a Petition to Deny filed by an entity without standing will be treated as an informal objection.²⁹ Further, H&H cites no authority for its proposition that objections based on interference are belated. To the contrary, the filing of the instant Permit application triggered the right to complain prior to a grant as to any portion of the Permit application. See 47 C.F.R. 1.939. As such, the interference complaints are timely.

D. New Matters in the Supplement and Reply Provide Context. Greater Accuracy to Which H&H Has Responded and thus Are Permitted

H&H complains that CSO in its Supplement and Reply filed after the filing of the Petition raised new matters and these matters should not be considered by the Commission. Response, at 4 -6. In support thereof, H&H cites Sections 1.41-1.51³⁰ of the Commission's Rules.

Section 1.45 of the Rules lists a Petition, Opposition and Reply which are expressly permitted pleadings. CSO submits that the listing is permissive, but not exhaustive. Additional pleadings may be filed if they are accompanied by a request for leave to file. *In re Application of Discussion Radio, Inc.*, 19 FCC Rcd 7433 (2004). Therein, the Commission noted that "Numerous improperly titled and unauthorized pleadings have been submitted...". *Id.*, par. 5. Even though no separate petitions for leave to file the unauthorized pleadings were made, the Commission considered *all the filed pleading*, including a Supplement to a prior filing, and

²⁹ *Entercom License, LLC Applications for Renewal of License for Station KDND(FM)*, 31 FCC Rcd 12196 at par. 23 (2016).

³⁰ While Section 1.45 of the Commission's Rules is relevant, the citation to the remaining sections is puzzling, as they lack relevance, as they concern informal requests for actions; complaint applications; stays; separate requests pleadings; text size; and number of copies.

thereafter treated the unauthorized pleadings as constructive permitted pleadings. [Emphasis added] *Id.*, at par. 6.

As to the Supplement, unlike the fact situation detailed above, concomitantly with its filing, CSO requested leave for its filing. Supplement, at 1, note 1. CSO notes that despite all its protests, H&H does not allege, let alone demonstrate, how it may have been prejudiced by the extra pleadings. As to the Reply, it is an expressly permitted filing under Section 1.45. H&H objects that it contains new matters beyond those detailed in the H&H opposition and should not be considered by the Commission. These new matters of which H&H complains include the Declaration of Chung Pong, the former Phoenix TV news executive, which demonstrates that the PRC exercises control over Phoenix TV. Response, at 6. This is clearly a decisionally significant addition to the record and should be considered by the Commission whenever submitted. Further, all of the other matters H&H designates as new and unacceptable (other than XEWW-AM interference to the Arizona stations) are in fact not new matters but are clarifications and enhancements of the matters detailed in the Petition – none are outside the ambit of the Petition.

In any event, the Commission has employed a balancing of competing regulatory objectives of a robust and accurate record and compliance with procedural rules. The Commission uses its discretion to accept and consider new matters raised in a reply pleading. In the *Television Wisconsin* case the Commission concluded:

“The licensee found that the reply contained new matter which was not previously raised in either BTM’s petition or its own opposition. On January 27, 1971, WISC therefore moved to strike the new matter contained in the reply, or, in the alternative, to consider the station’s simultaneously filed response to that new matter. Upon review of BTM’s reply pleading, we find that it does contain new allegations, not responsive to matters raised by the licensee in its opposition. While we recognize our obligation ‘to be informed as accurately as possible by reliable facts’ relating to the issues, *The Citizens Committee v. F.C.C.*, 436 F.2d 263 (1970), we also recognize the prohibition of our rules (47 C.F.R. 1.45(b)) limiting reply pleadings to ‘. . . matters raised in the opposition.’ As we have

stated in the past, we do not condone the use of any pleading for other than the designated purpose nor the submission of pleadings not contemplated by our rules (*Scripps-Howard Broadcasting Co.*, 26 FCC 2d 824 (1970)). The strict application of this rule is justified particularly, as here, where the petitioner has supplied no reason for its delay in raising these new matters. However, *since no additional delay will be caused by our acceptance of the full reply, and in view of the fact that the licensee has responded to the new matters*, we believe the public interest will best be served by a consideration of the new matters raised in BTM's Reply and WISC's response thereto. Accordingly, we will deny Television Wisconsin, Inc.'s motion to strike and accept its response to BTM's reply pleading." [Emphasis supplied.]³¹

Applying that precedent here, CSO submits that the new matters raised in the Reply will not add any additional delay to the processing of the Permit application: and the new matter provides the Commission with a full, robust and a more accurate record for consideration. Further, given that a) national security issues are presented, b) the new matter provides context for the matters detailed in the Petition, c) the new matter corroborates core assertions with specificity, and d) the new matters are of substantial importance, reflecting core public interest considerations, the Commission should consider the new matter. Pivotaly, H&H has already responded in detail to all the matters raised. As such, CSO urges the Commission to consider all the filed pleadings.

V. Conclusion

The United States has made a dramatic shift in its relations with China, jettisoning decades of policies with a more cautious approach which responds to China's aggression in undermining national security, including efforts to influence American elections. H&H acknowledges these efforts and it acknowledges that the Permit application can be denied based upon findings arising out of these considerations. Phoenix TV with direct control from China, and wishing to expand its television empire into radio broadcasting, has tried to buy its way into

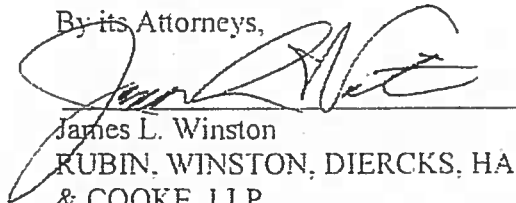
³¹ *In Re Application of Television Wisconsin Inc.*, 58 FCC 2d 1232, par. 3 (1975)

Southern California radio broadcasting with the aborted purchase of KDAY(AM). Now, it is trying again with H&H and XEWW-AM, albeit with indirect control from China. CSO has demonstrated a history of embedded agents for the PRC and a demonstrated history of manipulating the broadcast of news with selective news reporting by Phoenix TV, which is indirectly controlled by China. Given all this, the Commission should error on the side of protecting the national interest and deny the application; or, alternatively designate it for a hearing to address the material and significant questions presented.

Respectfully submitted,

**CHINESE SOUND OF ORIENTAL AND
WEST HERITAGE**

By its Attorneys,



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October 17, 2018

United States Senate

September 11, 2018

The Honorable Ajit Pai
Chairman
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

Dear Chairman Pai:

It has come to my attention that the Federal Communication Commission is currently reviewing an application (File Number: 325-NEW-20180514-00001), received June 20, involving H&H Group USA LLC and XFWW, a Mexican broadcasting station. The application requests a permit for to deliver programs to foreign broadcast stations pursuant to 47 U.S.C. 325(c). Approving the application would permit H&H Group USA LLC to use XFWW to broadcast: "a full range of Mandarin Chinese language programming on station XFWW-AM including music, entertainment, weather report, local (L.A.) traffic report and local Chinese community news."

The Commission has previously explained that Section 325(c) is "intended primarily to address two problems: objectionable programming and harmful interference by foreign stations." I am concerned that approving this application would enhance the ability of the Chinese Communist Party (CPC) to broadcast objectionable political propoganda into America and to interfere in domestic American politics. I respectfully request that the Commission deny the H&H Group's pending application.

The application states that the applicants are entirely domestic American persons and entities: "Applicant...will be 100% owned by H&H Group USA LLC, a New York limited liability company. Vivian Huo, a U.S. citizen owns 97% of the membership interests in H&H Group USA LLC". There are many troubling facts that are not included in the application, which deserve further review.

According to its corporate website, "H&H Capital assists PRC companies with finding strategic investors from around the globe" and "work[s] with Chinese companies interested in buying U.S. companies or the Chinese rights to U.S. brands." It was founded by Ms. Huo, who is described on the website as "native of Beijing" who "has conducted in-depth research and analysis of major financial, legal, and business news including... key legal issues facing Chinese state-owned enterprises, among other topics."

H&H Capital's corporate website also states that Ms. Huo "spent half a decade as the New York correspondent for one of China's largest publications." *Radio Free Asia* recently reported that Ms. Huo worked in New York as a correspondent for *Global Times*, which is owned by the *People's Daily*, an official newspaper of the CCP, registered under the Foreign Agents Registration Act.

The actual beneficiary owner of this deal is reportedly Phoenix Satellite TV. Though "Phoenix Satellite TV" does not appear anywhere in the H&H Group's application, the address listed for programing content – 3810 Durbin St., Irwindale, CA 91706 – is a building owned by Phoenix Satellite TV USA. According to the *Washington Free Beacon*, the H&H Group recently hired Jackie Pang, who has been a Phoenix television reporter for decades. According to the *Epoch Times* "a recruiting advertisement placed by Phoenix TV's U.S. branch on WeChat, the popular social media platform, seeks 'program producers, narrators, hosts, and ad sales managers' for 'AM 690, Phoenix U Radio.'"

Phoenix Satellite Television US is a subsidiary of Beijing Phoenix TV, based in Hong Kong. The People's Republic of China (PRC) exerts control over Chinese media and the control extends to Phoenix: in 2009 testimony to the U.S. Economic and Security Review Commission on China, Anne Marie-Brady, a Global Fellow at the Wilson Center, said, "Phoenix is nominally privately-owned; however its current main investor is the State-owned enterprise China Mobile." In 2016, for example, Phoenix broadcast the forced confessions of five Hong Kong booksellers for violating PRC censorship law.

CCP state-run China Radio International (CRI) president Wang Gengnian has described China's use of local media in foreign countries as "borrowing a boat to go out to sea." Wang emphasized the need for China to target foreign media to "compete to lead international public opinion" and "set the agenda" on the global stage. As part of the "borrowed boat" strategy CRI has previously partnered with foreign radio stations such as Turkish FM station Yönl Radyo which was utilized to present the CCP narrative in the aftermath of the 2009 Ürümqi riots. According to Wang, positive feedback from Turkish listeners demonstrated the benefits of "effective international broadcasting targeted at a specific group."

The Chinese Communist Party is waging an information warfare campaign to undermine American democracy. The decision before the Commission risks allowing the CPC to broadcast government-approved propaganda into Southern California, one of the most densely populated regions in America of Mandarin speakers, to boost that warfare campaign. The Commission should reject the application, given the unresolved and undisclosed details surrounding the application.

Sincerely,



Ted Cruz
United States Senator

cc: GLR Southern California LLC
H&H Group USA LLC
Chinese Sound of Oriental and West Heritage

CERTIFICATE OF SERVICE

I, Sheree Kellogg, do hereby certify that I sent via U.S. mail (except where indicated), on this 17th day of October, 2018, copies of the foregoing REPLY TO RESPONSE TO UNAUTHORIZED FILINGS to the following:

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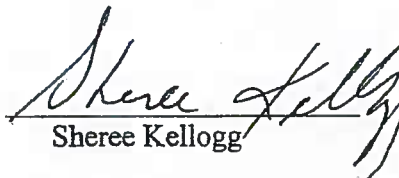
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