

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

In re)
)
GLR Southern California, LLC)
)
Application for Extension of Special) File No. 325-STA-20180710-00002
Temporary Authority for Delivery of)
Programming to)
Mexican Station XEWW-AM,)
Rosarita, Baja California Norte, Mexico)
)

To: Secretary
Attn.: Chief, International Bureau

**SUPPLEMENT TO
OPPOSITION TO SPECIAL TEMPORARY AUTHORITY EXTENSION**

I. Introduction

Chinese Sound of Oriental and West Heritage (“CSO”), licensee of KQEV-LP, Walnut, California, by its attorneys, hereby files this Supplement¹ to its Opposition to Special Temporary Authority Extension, filed January 29, 2019 (“Opposition”), in which CSO will address both the request to extend the STA (“Request to Extend STA”) filed on January 28, 2019 and the Reply to Opposition to Special Temporary Authority Extension, filed February 8, 2019, by GLR Southern

¹CSO hereby requests leave to submit this Supplement. As explained herein, the CSO Opposition was filed before seeing the GLR Request to Extend STA. CSO filed its Opposition out of concern for the practice of the Commission to grant an STA without providing a thirty-day public notice as required by Section 309 of the Act. The original GLR STA request was filed on July 20, 2018 and granted on July 24, 2018. *Public Notice Permit to Deliver Programs to Foreign Broadcast Stations*, Report No. 325-00216 (2018). Thus, to assure the critical issues were presented prior to Commission action, the CSO Opposition was anticipatory. Further, the issues presented are critical as they address core Commission authority. Also, consideration of this information is warranted to provide the Commission with a full and robust record. In *Re Application of Television Wisconsin Inc.*, 58 FCC 2d 1232, par. 3 (1975).

California LLC ("GLR") and its parent company, H&H Group USA LLC ("H&H"),² with respect to the above-referenced Special Temporary Authority ("STA").

The GLR Request to Extend the STA was filed on January 28, 2019, the day the Commission reopened after the federal government shutdown. The original STA expired on January 19, 2019, during the federal government shutdown. The original STA was granted without being placed on thirty-day public notice, and the request for that STA has never been posted on the Commission's website. Anticipating that an extension could be granted without public notice, CSO filed its Opposition on January 29, 2019, without seeing GLR's Request to Extend STA. Therefore, as CSO had no opportunity to address the content of the Request to Extend STA, CSO is submitting this Supplement to its Opposition to respond to both the content of the Request to Extend STA and to GLR's Reply.

In its Reply, GLR maintains that CSO (a) raises an untimely objection to the grant of the STA; (b) fails to provide any evidence that the programming delivered to XEWW-AM is not in the public interest; (c) does not present cognizable interference claims as to the operations of XEWW-AM; and (d) does not raise any national security issues. As detailed below, the Reply ignores the plain reading of the Communications Act and of the voluminous facts in the record and ignores specific controlling Commission precedent. As such, the Reply is devoid of merit.

II. Discussion

A. The Communications Act and Commission precedent mandate denial of the STA extension application

GLR submits that there is no reason to deny the STA extension. Reply, at 2. That submission conveniently ignores that Section 309(b) of the Communications Act requires that

² As shall be discussed herein, the filing of the STA request by GLR as now controlled by H&H raises a serious issue of an unauthorized transfer of control of the Permit.

before any license or permit may be granted, the Commission must first provide thirty-day notice thereof and determine that a grant is in the public interest. See Opposition to Special Temporary Authority Extension, filed by CSO on January 29, 2019 (Opposition), at 4-7.

Section 309(c) provides an exception to the mandate of Section 309(b), authorizing the Commission to grant an STA without a thirty-day public notice, *provided* “the programs to be transmitted are special events not of a continuing nature.” Section 309(c)(2)(F). The STA was not conditioned in this manner and therefore was issued in violation of Section 309.

Because the grant of the STA was not permitted by statute, its grant was ultra vires. The Supreme Court has previously found an act done by the Commission to be ultra vires:

Both their power to act and how they are to act is authoritatively prescribed by Congress, so that when they act improperly, no less than when they act beyond their jurisdiction, what they do is ultra vires.³

It is black-letter law that, where a governmental action is ultra vires, that act is *void ab initio* and has no legal effect. Legally, the act never happened. *Federal Crop Ins. Corp. v. Merrill*, 332 U.S. 380 (1947). As such, in not giving thirty-day public notice and not limiting the STA to special events not of a continuing nature, the original STA was a legal nullity and extending it would also be a legal nullity. GLR attempts to evade this legal nullity by arguing that CSO is filing an untimely petition for reconsideration of the original STA. GLR misses the critical point.⁴ The CSO Opposition is to the currently pending STA extension request. To be clear, CSO does not ask the Commission to reconsider and somehow “undo” the grant of the STA made in July 2018, as GLR suggests. Reply, note 3. Instead, the pivotal point is that the

³ *City of Arlington v. FCC*, 133 S. Ct. 1863, 1869 (2013).

⁴ GLR supports its untimeliness argument with citations, presented at note 5 of the Reply, that are irrelevant, as they concern procedures as to pleading cycles, not ultra vires actions.

Commission lacks authority to grant the current STA extension application filed on January 28, 2019.

GLR argues that CSO is incorrect to maintain that a STA may be granted only for special events not of a continuing nature. Reply, at 3. GLR ignores Section 309(c)(2)(F) of the Communications Act, which very specifically requires that any STA issued without giving a thirty-day public notice must conform to the “special events not of a continuing nature” condition. The Reply attempts to circumvent this condition and does not address the Commission’s discussion of this condition in detail in *Molly Pauker*,⁵ which was cited by CSO. Opposition, at 4-7.

In an effort to evade the “special events not of a continuing nature” condition, GLR says CSO failed to take note of the subsequent history of the *Molly Pauker* case citing *Channel 51 of San Diego Inc. v. FCC*, 79 F3d 1187 (D.C. Cir 1996) and *Fox Television Stations Inc.*, 11 FCC Red 14870, par. 23 (1996). GLR misleads. The subsequent history is irrelevant to the issue presented by the Request to Extend STA, as there is nothing in *Channel 51* that overrules, vacates or modifies the “special events not of a continuing nature” holding detailed in *Molly Pauker*. In *Channel 51*, that issue was not presented to or discussed by the Court.⁶ In that case, the Court addressed the need for issue responsive programming, not the legal standard for

⁵ 9 FCC Red 4394 (MB 1994)

⁶ The issuance of an STA was mentioned in Part II, History of Current Proceedings of the Court’s four parts decision. The Court noted: “Because Fox anticipated a lengthy FCC decision process on its permit applications, it sought and obtained Special Temporary Authority (STA) to transmit the NFL games to XETV through the end of the 1994 season, or until the FCC ruled on its permit application, whichever came earlier. The FCC granted the STA request on August 11, 1994, and Fox transmitted the 1994 football games to XETV.” *Channel 51* at 1190. At no point did the Court discuss the legal standard for issuance of an STA without public notice.

granting an STA without giving thirty-day public notice of the STA application.⁷ In that case the Court concluded:

We simply conclude that the FCC erred in holding that NAFTA's Annex VI prohibits application of ABC 1972's §325 issue-responsive programming requirement....

In light of our holding that the FCC misinterpreted NAFTA's impact on the role of the issue-responsive programming requirement in §325 proceedings, we vacate that portion of the FCC's Order that grants a §325 permit to Fox for cross-border transmission to XETV. We remand the case to the FCC for treatment consistent with this opinion. See 47 U.S.C. §402(h).⁸

Also, GLR ignores that, if an unlimited STA was granted in the subsequent case history, it was to Fox, which was then a permit holder, eligible for an unlimited STA. Here, H&H is not a permit holder and has not been found qualified to deliver programming to XEWW-AM to be broadcast back into the U.S.

GLR asserts that the Commission has routinely granted STAs for Section 325 permits since the decisions in *Molly Pauker* and *Fox Television* and -- says GLR -- there is no reason to change. Reply, at 4. GLR cites instances in which the Commission granted STAs but provides no details from those cases. Thus, GLR has not demonstrated that the STAs were not granted for special events not of a continuing nature. More importantly, if STAs have been granted for the delivery of programming that is not "special events not of a continuing nature" without a thirty-day public notice, those grants were issued illegally also. No matter the current practice, prior unlawful actions cannot sustain continuation of new unlawful actions. It is fundamental "that an agency may not bootstrap itself into an area in which it has no jurisdiction." *Adams Fruit Co. v. Barrett*, 494 U.S. 638, 650 (1990).

⁷ Similarly, the Commission did not discuss in *Fox Television*, 11 FCC Red at par. 23, the legal standard for grant of an STA without public notice.

⁸ *Channel 51* at 1192.

B. There has been an Unauthorized Transfer of Control of the Permit

The Request to Extend STA demonstrates that there has been an unauthorized transfer of control of the Permit. The Application to transfer control of the Permit requested permission to transfer control of GLR Southern California, LLC, which holds the Permit, from GLR Services, Inc. to H&H Group USA LLC. That Application has not been granted. On July 24, 2018, the Commission Granted GLR Southern California, LLC an STA to deliver broadcast programs to XEWW-AM. As the transfer of control has not been authorized, the party in control of GLR Southern California should still be GLR Services. However, the Request to Extend STA indicates that GLR Southern California is now owned and controlled by H&H.

This clearly demonstrates that there has been an unauthorized transfer of control of the Permit. Indeed, the January 28, 2019 STA request is signed by Vivian Huo as President of GLR Southern California. Moreover, the Reply filed on February 8, 2019, asserts that it is filed on behalf of GLR Southern California and its parent company H&H. Thus, H&H has plainly stated that it has assumed ownership of GLR Southern California, and control of the Permit, without Commission approval. All of the Commission precedent applying Section 325(c) make clear that control of a permit is not allowed until the Commission acts upon an application for the transfer. *Molly Pauker, Channel 51, Fox Television*. Therefore, the Commission must direct the parties to undue the transfer of control to H&H, and the Commission should institute sanction actions, under Section 312 of the Act, against the parties for having engaged in an unauthorized transfer of control.⁹

⁹ The Commission has allowed parties to an application for a transfer of control of a broadcast station license to enter into local marketing agreements and time brokerage agreements such that the transferee could begin programming a station prior to grant of the transfer of control application. However, in all such instances, the licensee must maintain control of the station until the transfer of control is granted. See, *Optima Communications, Inc., Assignor, and Pikes*

C. *Extending the STA to continue operations will cause interference and pose risks to national security*

1. The Tucson station is at minimalist power, lest it cause interference to the border blasting Mexican station; and the Flagstaff station is not operational, lest it cause interference to the border blaster

GLR maintains that no interference occurs by a grant of the extension application. Reply, at 4-5. GLR ignores that CSO provided factual engineering documentation that XEWW-AM limits the power of KCEE(AM) 690, Tucson and new facilities on AM 690 at Flagstaff, Arizona.¹⁰ This interference is avoided only because of the dominant power of XEWW-AM and the subservient power of the two other AM 690 stations. If the power of XEWW-AM was fairly balanced as to the Arizona stations as required by the North American Free Trade Agreement -- which overrides the Commission's Agreement with Mexico -- all three stations would better serve their respective public interests.¹¹ XEWW-AM simply drowns out in whole and/or in significant parts the capacity of the two Arizona stations to serve their respective communities. This imbalance is inconsistent with the purpose of NAFTA and is relevant to a grant of the underlying Permit Application and to an extension of the STA. Further, contrary to the GLR argument, CSO has standing as a station in the coverage area of XEWW-AM to complain as to any and all portions of both AM station applications.¹²

Peak Television, Inc., Assignee for Consent to Assignment of License of Station KRDO-FM, Security, Colorado, 30 FCC Rcd. 14130 (MB 2015). Here there has been a transfer of control prior to a grant by the Commission, in violation of Section 325(c).

¹⁰ CSO Supplement to Petition to Deny, filed September 4, 2018, pp. 22-24, Exhs. 2-3.

¹¹ By no means is this to suggest that the proposal to permit China-controlled Phoenix TV USA Ltd. To provide programming to XEWW-AM is in any way in the public interest of American listeners.

¹² CSO Reply to Response to Unauthorized Filings, filed October 17, 2018, pp. 21-22.

2. The GLR argument that the Phoenix TV programming does not pose risks to U.S. national security defies the collective research and studied judgments of government experts

GLR claims the programming provided to XEWW-AM and broadcast back into the U.S. is purely neutral Chinese language music and entertainment. Reply, at 5. That is flatly inconsistent with the documents, research, declarations of others, including scholars, economic and trade analysts, security analysts, think tanks and, importantly, government officials whose responsibilities include national security.¹³ Other than the self-serving declaration of principals of Phoenix TV USA Ltd., GLR has failed to produce any factual support for its position.

GLR would have the Commission believe that CSO simply is engaged in stereotyping. Reply, at 6. Yet, GLR has not provided any research, expert opinions, scholarly analyses or studies in support of its position. As such, there is a factual dispute as to the risks to national security. The Commission must designate the contested factual issues for an evidentiary hearing to resolve the disputes in accordance with Section 309(e) of the Act.

III. Conclusion

As a Chinese-American entity, CSO's primary goal is ensure the best possible service to the Chinese-American community. CSO has examined the fundamental evidence and governmental analyses of the People's Republic of China ("PRC") propaganda machine and has submitted that evidence and governmental analyses to the Commission. The evidence and government analyses show that the PRC considers the Chinese diaspora as "belonging to China." The PRC believes overseas Chinese should support China and the goals of the Chinese

¹³ See CSO Petition to Deny, filed August 8, 2018, pp. 4-8; CSO Supplement to Petition to Deny, filed September 4, 2018, pp. 3-10; CSO Reply to Opposition to Petition to Deny, filed September 11, 2018, pp. 10-11, Exh. 1, Declaration of Chung Pong; Reply to Response to Unauthorized Filings, filed October 17, 2018, pp. 4-9.

Communist Party to dominate American and global interests. The PRC does not hesitate to enlist overseas ethnic Chinese to do its bidding, as evidenced by the conviction of former Phoenix TV employee-spies.¹⁴ The expert evidence demonstrates that we now live in a world of two superpowers, and China -- a deeply intolerant authoritarian regime -- has global ambitions, including the domination of U.S. interests. The PRC seeks to improperly influence the attitudes of Chinese Americans toward the U.S. In this case, Phoenix TV, the designated programmer, has a history of broadcasting pro-PRC propaganda. The Commission must be vigilant and not allow propaganda risks to undermine U.S. elections and/or national interests.

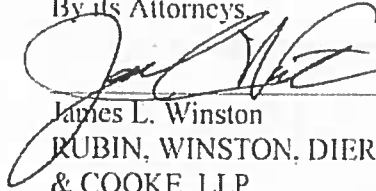
In this case, we have an unauthorized transfer of control of the Permit. This alone demonstrates that H&H should not be granted the Permit and should not be allowed to continue the STA. There is no statutory basis upon which the STA can be extended or renewed. The Commission is statutorily precluded from granting an STA without a thirty-day public notice of the request unless the STA is for "special events not of a continuing nature." Moreover, as CSO has demonstrated in its pleadings filed in this proceeding, the Commission lacks a record before it upon which it can determine that a grant of the Application and the STA are in the public interest. Pivotaly, a grant extending a void STA grant would be ultra vires and void. The STA and the Application must both be denied.

¹⁴ CSO Reply to Response to Unauthorized Filings, filed October 17, 2018, pp 10-11, Phoenix TV engineer convicted of spying for PRC.

Respectfully submitted.

**CHINESE SOUND OF ORIENTAL AND
WEST HERITAGE**

By its Attorneys,

A handwritten signature in black ink, appearing to read 'James L. Winston', is written over a horizontal line. The signature is stylized and cursive.

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February 19, 2019

CERTIFICATE OF SERVICE

I, Sheree Kellogg, do hereby certify that I sent via U.S. mail (except where indicated), on this 19th day of February, 2019, copies of the foregoing SUPPLEMENT TO OPPOSITION TO SPECIAL TEMPORARY AUTHORITY EXTENSION to the following:

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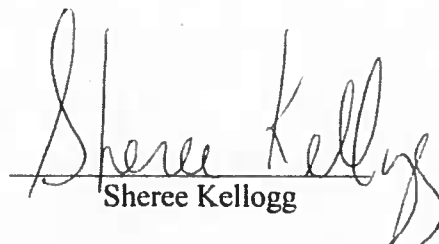
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