

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

In re )  
 )  
GLR Southern California, LLC )  
 )  
Application for Transfer of Control from ) File No. 325-STA-20180710-00002  
GLR Services, Inc. to )  
H&H Γροθπ ΘΣΑ, ΛΛΨ )  
 )  
Special Temporary Authority )  
For Delivery of Programming to )  
Mexican Station XEWW-AM, )  
Rosarita, Baja California Norte, México )

To: Secretary  
Attn.: Chief, International Bureau

**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 Opposition to Special Temporary Authority (“STA”) Extension with respect to above-referenced STA. By its terms, the STA expired on January 19, 2019.<sup>1</sup> This Opposition is filed in support of the Petition to Deny<sup>2</sup> and additional pleadings filed against the Application for Permit to Deliver Programs to Foreign Broadcast Stations (“Application”), filed by Transferors, GLR Southern California LLC and its parent company, GLR Services, Inc., (jointly referred to herein as “GLR”), and Transferee, H&H Group USA LLC (“H&H”), File No. 325-NEW-20180614-00001.

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<sup>1</sup> Pursuant to “Impact of Potential Lapse in Funding on Commission Operations, Public Notice, DA 19-10, released January 2, 2019, the effectiveness of outstanding STAs that expired during the just-ended government shutdown were extended until January 29, 2019. CSO is filing this Opposition in anticipation of an extension request.

<sup>2</sup> CSO Petition to Deny filed August 8, 2018, regarding File No. 325-NEW-20180614-00001.

The STA should not be extended for several reasons. First, the GLR request for STA does not meet the requirements of Section 309(c)(2)(F). The STA was not limited to specific programming at specific times as required by Section 309(c)(2)(F), which is the only exception to the requirements of Sections 309(a) and (b). Instead it allowed the unlimited broadcast of programming. There was no legal basis for such an STA grant. Because the STA grant did not meet the requirements of Section 309(c)(2)(F), the STA could not be granted without complying with Sections 309(a) and (b), which required a thirty-day public notice and an opportunity for public comment before the STA could be granted. Therefore, the original STA lacked a legal basis for its grant, and there is no legal basis to extend it.

Second, a renewal of the STA will cause objectionable interference to two U.S. AM stations. Third, there are national security issues presented that pose demonstrated risks to U.S. listeners. These national security issues require a Commission determination as to whether assuming these risks is in the public interest.

## **II. Background**

On July 24, 2018, the International Bureau released Public Notice Report No. 325-00216, (PN) granting an STA to GLR to deliver programming to XEWW-AM, Rosarita, Baja California Norte, Mexico. The STA was to be valid during the duration of its processing by the Commission; or, alternatively, for a period of 180 days, whichever first occurred. PN, par. 2. The PN also stated that it was granted without prejudice to any action that the Commission may take regarding the underlying Application.

With respect to the Application, CSO has filed its Petition to Deny, a Supplement to the Petition to Deny, filed on September 4, 2018 (“Supplement”), a Reply to the Opposition to the Petition to Deny, filed on September 11, 2018, and Reply to Response to Unauthorized Filings,

filed October 17, 2018. CSO hereby incorporates those documents by reference in support of this Opposition.

CSO now presents additional background information that is materially related to the issues presented in the underlying Application, and therefore material to the STA request.<sup>3</sup> Subsequent to the filing of the last pleading, researchers at the Hoover Institute at Stanford University and the Center of US- China Relations Asia Society have published materials that confirm that the PRC is engaged in a campaign to undermine American interests generally and via the news media particularly. The researchers maintain that even if the two countries manage to negotiate new terms for trade, stark detrimental media relationships will continue. See Orville Schell and Larry Diamond: “*China Gets Its Message to Americans but Doesn’t Want to Reciprocate*, *Wall Street Journal*, December 21, 2018.<sup>4</sup> They advise:

Beijing has established both a radio network and a television network, which distribute state-controlled programming to American audiences. China also publishes newspapers and magazines here in Chinese and English, Chinese websites are available to Americans online, and the U.S. readily gives work visas to Chinese reporters, who then feed content back to state-run propaganda organs at home. By contrast, American media aren’t permitted to operate any television or radio networks in China, and the government partially or completely blocks the websites of most major U.S. news organizations...

The Chinese government freely engages American audiences and spreads its propaganda by buying expensive advertising inserts in American newspapers, but it heavily constrains the public diplomatic outreach of the U.S. in China...

While the hope of Chinas as a more responsible “global stake holder had life, American policy makers were willing to cut the country’s communist leaders some slack on such issues as human rights, Tibet and Taiwan. Progress might be

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<sup>3</sup> As presentation of these new developments is not specifically authorized, CSO requests leave of the Commission to present them as material information occurring subsequent to the last pleading. This information documents PRC action following the November 2018 congressional elections. Consideration of this information is warranted to provide the Commission with a robust record. *In Re Application of Television Wisconsin Inc.*, 58 FCC 2d 1232, par. 3 (1975).

<sup>4</sup> Available online at <https://www.wsj.com/articles/china-gets-its-message-to-americans-but-doesnt-want-to-reciprocate-11545407490>

slow, they rationalized, but as long as China was committed to a “peaceful rise,” engagement still seemed like a sound bet...

What began upending this bargain was China’s turn over the past decade in a more mercantilist, military aggressive and politically authoritarian direction, a trend that has only gained momentum since the ascent of Xi Jinping in 2012...

Given the above, the researchers conclude that the U.S. is left only to hope that the PRC will agree to a level of “fairness and reciprocity.”

### III. Discussion

#### A. The STA has not met the requirements of Section 309(c)(2)(F)

The STA was granted pending Commission action on the underlying application for transfer of control of the Section 325 Permit. The PN detailing the grant of the STA provides only that the STA was granted “...pursuant to delegated authority.” PN, par. 2. The PN does not detail any statutory basis for grant of the STA.

The Commission’s general authority to grant any permit for any broadcast facility is subject to the provisions of Section 309 of the Communications Act, 47 U.S.C. 309. That section details the conditions and factors required to support the grant of an application.<sup>5</sup> Section 309, incorporates Section 308 which provides that the Commission may grant a permit in cases of emergencies involving danger to life or property; national emergencies proclaimed by the President or Congress in furtherance of a war effort. The Commission decades ago also concluded that it could grant an STA where there is “an extraordinary circumstance” such as an emergency that seriously impacts the public interest. See *In re Superior Broadcasting Co*, 44

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<sup>5</sup> Section 309 provides: “Subject to the provisions of this section, the Commission shall determine, in the case of each application filed with it to which section 308 of this title applies, whether the public interest, convenience, and necessity will be served by the granting of such application, and, if the Commission, upon examination of such application and upon consideration of such other matters as the Commission may officially notice, shall find that public interest, convenience, and necessity would be served by the granting thereof, it shall grant such application.”

FCC 2712 (1963). However, as discussed below, none of those prerequisites are present herein.

As such, the STA cannot be extended based on the Commission's general authority.

Under Section 309(a) of the Act, before the Commission may grant any application for a broadcast permit or license, the Commission must find the grant to be in the public interest, convenience or necessity. Further, Subsection 309(b)(1) specially denies the Commission granting authority of all applications in the broadcast service unless the Commission first provides thirty days advance public notice of the filing of the application. Section 309(c)(2)(F) provides an exception to these requirements with respect to Section 325 permit applications. That section provides that the thirty-day public notice requirement of Section 309(b) shall not apply to any application for:

(F) authorizations pursuant to Section 325(c) of this title where the programs to be transmitted are special events not of a continuing nature

The Commission granted the GLR STA request without providing a thirty-day public notice. The Commission did not state any basis for granting the STA in the Public Notice. CSO is therefore left to assume that the Commission relied upon Section 309(c)(2)(F) in granting the STA.

CSO submits that the grant of the STA was without legal support, as the STA does not meet the requirements of Section 309(c)(2)(F). By its terms, Section 309(c)(2)(F) allows grant of an STA only when the programs to be transmitted are "special events not of a continuing nature." The Public Notice does not limit the programs to be broadcast under the STA to special events not of a continuing nature. In fact, the STA places absolutely no limitations on the programming that may be broadcast. As such the STA has no legal basis in Section 309(c)(2)(F). Therefore, the STA should not have been granted, and it cannot be extended.

This conclusion is supported by Commission precedent. In *Molly Pauker*<sup>6</sup> the Commission addressed the requirements of Section 309(c)(2)(F). In that case, Fox Television Stations, Inc. requested an STA under Section 325 to transmit NFL football games to three Mexican television stations. The request was opposed by Channel 51 of San Diego. In granting the STA, the Commission began its analysis by stating:

First, with respect to public notice, the authority to export programming to foreign stations for rebroadcasts to the United States generally can be granted only after public notice and opportunity for comment. See 47 USC 309(b). Section 309(c)(2)(F) of the Communications Act, however, provides an exemption to this requirement for "authorizations pursuant to Section 325[c] where the programs to be transmitted are special events not of a continuing nature." This exemption permits us, under the general public interest standard in Section 309(a) of the Communications Act, to consider the urgency arguments of an applicant for an STA and, where those arguments warrant, to grant such authority without public notice or comment, provided that the relief granted is limited in scope and duration.<sup>7</sup>

The Commission granted Fox an STA to broadcast a set number of games over a specific period of time. In doing so the Commission stated, "The Commission has consistently interpreted the Section 309(c)(2)(F) exemption to encompass multiple sports events that occur over a limited period of time or that involve a fixed number of games."<sup>8</sup> The STA granted to GLR contained no such limitations. GLR has been granted unlimited authority to broadcast programming since July 24, 2018. The failure of the STA to limit the amount of programming that could be broadcast renders the STA unsupported by Section 309(c)(2)(F) and case precedent interpreting that provision.

For the STA grant to be lawful, the Commission must state the legal basis for its grant other than Section 309(c)(2)(F), because it fails to comply with the requirements of that section of the Act. However, as pointed out above, the Public Notice provides no citation of statutory

<sup>6</sup> *Molly Pauker*, 9 FCC Rcd 4393 (MB 1994).

<sup>7</sup> *Id.* at 4394

<sup>8</sup> *Id.*

authority for grant of the STA. In addition, if GLR provided a proposed statutory basis for grant of the STA that the Commission may have relied upon, that has not been made public either. A search of the Commission's website fails to produce a copy of the STA request. Therefore, it is not possible to learn from the Commission's Public Notice or from the arguments contained in the STA request a statutory basis for grant of the STA. Moreover, by failing to make the STA request public, and by failing to provide the public thirty days to respond to it, the Commission has deprived CSO and other potential interested parties an opportunity to comment on the STA request. Thus, the Commission has not provided the public notice of the STA filing, has not provided thirty days for the public to comment on the STA request, and has not provided the public a chance to even see the STA request. This clearly is a violation of Section 309 of the Act and has deprived CSO and the public of procedural due process by failing to give CSO and the public an opportunity to comment on the STA request.

In addition, now that the STA has been granted and implemented, a second issue has developed. The Public Notice states that the STA was granted to GLR, not H&H. However, since grant of the STA, XEWW-AM has been airing the programming proposed by H&H. This raises the question of who is delivering programming to XEWW-AM. Is it GLR or H&H? As H&H has not been granted a permit to deliver programming to XEWW-AM, it is possible that there has been an unauthorized transfer of control of the permit. The Commission must investigate the conduct of the parties since grant of the STA to answer this question.

*B. Renewal of the STA will cause interference to U.S. stations*

In its Supplement, at pages 22-24, CSO detailed how the signal of XEWW- AM would cause objectionable interference to KCEE(AM), Tucson, Arizona, and a new AM facility on

frequency AM 640 at Flagstaff, Arizona. CSO notes that the US-Mexico-Canada Agreement of 2018, the new trade agreement with Mexico and Canada to replace NAFTA, does not contain a different position than the North American Free Trade Agreement of 1994 (NAFTA), the prior agreement in effect at the time of the filing of the Section 325 application.<sup>9</sup> Thus, the 50,000 watt capacity of XEWW-AM should be revisited for a rebalancing consistent with the terms of the fair trade practices, as it blatantly is not a fair trade practice to allow a Section 325 Permit to import a border blaster to compete with AM stations whose output power is limited to a fraction of that power.<sup>10</sup>

C. Meritorious national security and other issues presented should not be submerged with an extension of the STA

In the pleadings and attached documents previously filed and detailed above, CSO demonstrated that the People's Republic of 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. CSO also demonstrated that H&H has delegated nearly 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

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<sup>9</sup> The new agreement is available at <https://ustr.gov/trade-agreements/free-trade-agreements/united-states-mexico-canada-agreement/united-states-mexico>

<sup>10</sup> For a full discussion of this issue, see Supplement, at 22-24.



maintained 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. These issues were not presented prior to the grant of the STA. However, they have now been presented and are meritorious. CSO submits that the Commission should not abort a decision on the issues by extending the STA to continue operations by H&H. A determination of whether H&H is a qualified applicant and whether a grant of a permit to H&H is in the public interest is first required.

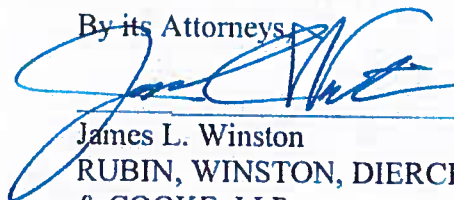
#### **IV. Conclusion**

Section 309(c)(2)(F) does not grant the Commission the authority to provide GLR the authority to deliver an unlimited amount of programming to XEWW-AM. Therefore, the STA granted to GLR has now statutory support. Because there is no statutory authority for the grant the original STA, there is no statutory basis upon which it can be extended. 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 is in the public interest. This is a second reason why the Commission should deny any extension of the STA. GLR and H&H have been able to engage in the delivery of an unlimited amount of programming controlled by the Chinese government since July 2018 with no determination by the Commission that such delivery is in the public interest as required by statute. The STA was invalid when issued, it cannot be determined that a grant of the underlying transfer of control application is in the public interest. Therefore, the Commission should deny any extension of the STA and deny the transfer of control application.

Respectfully submitted,

**CHINESE SOUND OF ORIENTAL AND  
WEST HERITAGE**

By its Attorneys



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January 29, 2019

**CERTIFICATE OF SERVICE**

I, Sheree Kellogg, do hereby certify that I sent via U.S. mail (except where indicated), on this 29th day of January, 2019, copies of the foregoing OPPOSITION TO SPECIAL TEMPORARY AUTHORITY EXTENSION to the following:

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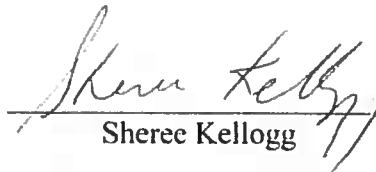
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