

SEP 11 2018

Office of the Secretary

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

In re)
GLR Southern California, LLC)
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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To: Secretary

Attn.: Chief, International Bureau

REPLY TO OPPOSITION TO PETITION TO DENY

I. Introduction

Chinese Sound of Oriental and West Heritage Inc. ("CSO"), licensee of low power FM station KQEV-LP, Walnut, California, by its attorneys, hereby files this Reply to the Opposition to Petition to Deny ("Opposition"), filed by H&H Group USA LLC and GLR Southern California, LLC ("H&H") on August 29, 2018. The Opposition was filed in response to the Petition to Deny filed on August 8, 2018 by CSO ("Petition") which demonstrated that a grant of a Section 325 Permit to H&H would not serve the public interest, inter alia, because of a detrimental economic impact upon CSO, and because H&H is an agent for the People's Republic of China ("PRC"), the latter on a global campaign attempting to use propaganda programming to

influence Chinese Americans in Southern California. On September 4, 2018, CSO filed its Supplement, providing additional information in support of the Petition ("Supplement").

The Opposition asserts that the Petition is wholly unsupported, contains self-serving allegations and is contrary to Commission precedent. More specifically, the Opposition asserts it is irrelevant if economic harm occurs to KQEV-LP and that the assertion there are propaganda efforts by the Government of China is unfounded. Opposition, at 1, 4-5.

II. Summary

CSO in this Reply will completely rebut H&H's assertion that Phoenix TV is not a propaganda agent for the PRC. Attached hereto as Exhibit 1, is the Declaration of Chung Pong who, based on personal knowledge and experience, attests to specific instructions previously given by the PRC to Phoenix TV, and followed by Phoenix TV, to manipulate and create news stories to serve the political objectives of the PRC. He has thirty three years of news experience and was employed at Phoenix TV in Hong Kong for seven years, until June 2002, in various news gathering positions, rising to the position of News Director with responsibilities for worldwide news gathering, broadcasting and supervision of a sixty person news staff. Declaration, par. 2-3. He declares that he and Phoenix TV officials were instructed directly by officials from the PRC as to what to broadcast and what not to broadcast, based on the objectives of the PRC. Declaration, at par. 4-7. He was instructed by the PRC to report favorably on the PRC and unfavorably on the United States and events in the United States. *Id.* He was instructed to broadcast certain programs to negatively reflect on certain groups, even when there was no factual basis to support the negative reports. *Id.* He declares that the news staff who resisted such directives from the PRC were involuntarily terminated. *Id.*

Further, as detailed in the Supplement and summarized below, findings of Congress, and multiple government agencies and nongovernmental entities support the assertion that Phoenix TV broadcasts propaganda programming. The government agencies and offices include the U.S. National Security Agency, the National Security Advisor, the U.S. Central Intelligence Agency, the Committee on Investments in the United States, the Office of the U.S. Special Trade Representative, the U.S.-China Economic Security and Review Commission, specified research institutes and non-governmental agencies detailed in the Supplement fully support the assertions of CSO. As such, the Opposition lacks merit and should be dismissed.

As detailed in the Petition, and more fully detailed in the Supplement and in this Reply, the North American Free Trade Agreement (“NAFTA”) between the U.S. and Mexico specifically requires fair competition in trade and transactions between the countries and the countries’ entities. Thus, characterizing the economic harm that will inure to CSO as irrelevant ignores this important U.S. Government policy.

III. Economic Impact Upon KQEV-LP

The Opposition maintains that “The Commission Does Not Assess the Economic Impact in Assessing Broadcast Applications,” relying generally upon *Policies Regarding Detrimental Effects of Proposed New Broadcast Stations on Existing Stations*, Report and Order, 3 FCC Red 638 (1988) (“1988 Report”) and its progeny. Opposition, at 3-4.

The Opposition misses a pivotal point: the policies articulated in the 1988 Report applied to complaints as to *allocations* of new broadcast stations and impacts upon existing stations. 1988 Policy, *infra*. Critically, the Commission has concluded that the 1988 Policy was intended as a shield to protect then infant UHF stations from VHF competition, as VHF stations were filing complaints against new UHF stations. The Commission concluded:

With respect to Commission protection of UHF stations, we eliminated the UHF Impact Policy in 1988. *Policies Regarding Detrimental Effects of Proposed New Stations on Existing Stations*. 3 FCC Red 638 (1988). Under that policy, adopted during UHF's infancy, it was at one time contrary to the public interest to improve domestic VHF service if that service would have an adverse economic impact on a UHF station. In 1972, the Commission applied the UHF policy in a foreign programming context. *American Broadcasting Companies*, 35 FCC 2d 1 (1972). By 1988, however, the Commission found that the development of UHF television had reached a point where there was no longer a public interest need to restrict competition to UHF stations by VHF stations. *Policies Regarding Detrimental Effects of Proposed New Stations on Existing Stations*. 3 FCC Red 638, 642 (1988). That conclusion seems particularly applicable in the current case, given that 80% of San Diego television households subscribe to cable and channel 51's signal appears as Channel 9 or Channel 2 on local cable systems. Further, a Commission decision favoring American stations due to such an economic competitive factor might well constitute an unnecessary restriction on trade, prohibited by NAFTA. Channel 51's argument concerning Advanced Television seeks to have the Commission favor an American broadcaster over a foreign station for the purpose of affiliation with a U.S. programmer, and therefore is also inconsistent with NAFTA.¹

As neither the H&H application nor the status of KQEV-LP involve a new allocation for a UHF or VHF television station, reliance on the 1988 Policy is misplaced.

The Opposition also maintains that CSO's economic harm arguments are "specious" as KQEV-LP is only a minor station covering a small area, while denying a Permit that would allow broadcasting to a much larger audience is not in the public interest. Opposition, 3-4. That argument proves too much: it would support the adoption of a Commission policy to enable a million-watt single H&H-Phoenix TV radio station covering the entire U.S. to be in the public interest, even if that decimated all other stations. That argument also belies the Commission's decades-old policies promoting diversity of ownership and programming, and creating classes of AM, FM and TV stations based upon output power. Those policies favor local communities - and to a lesser degree marketing areas - not 77,000-watt stations like XEWW-AM covering

¹ *Fox Television Stations, Inc.*, 10 FCC Rcd 4055, 4069 (1995).

several hundreds of miles. Indeed, the maximum wattage allowed under Commission Rules for an AM station is 50,000 watts. See, AM Station Classes, and Clear, Regional, and Local Channels. Classes of US AM Stations, Class A Station.²

The Opposition also suggests that KQEV-LP, a Mandarin language station, is not in competition with XEWW-AM, a Mandarin language station. Specifically, the Opposition asserts "...as an LPFM station, KQEV-LP is not permitted to be a profit-making enterprise."

Opposition, at 3-4. H&H misses the point. CSO is of course a not-for-profit noncommercial entity as required by Commission Rules, and the Opposition does not challenge that status. Instead, the assertion is that CSO may not be "profit making." The Commission specifically has rejected the argument that noncommercial stations may not make a profit. The Commission decades ago concluded:

With regard to the claim that UDC, as an NCE licensee, should not be permitted to maximize its "profit" by selling WDCU(FM) to the highest bidder, we note that "profit per se in assignment of licensed broadcast properties has never been held to be contrary to the public interest...." See Robert E. Sewell, 19 FCC 2d 872, 874 (1969). We find no basis for precluding an NCE licensee from maximizing profits on the sale of its stations unless there is evidence that the receipt of such profits would affect the licensee's nonprofit status. The informal objectors submit no evidence demonstrating that a profit from the sale of WDCU(FM) would jeopardize UDC's nonprofit status. See *Certain Broadcast Stations Licensed to Communities in Maryland, Virginia, West Virginia and the District of Columbia*, 9 FCC Rcd 2143, 2145 (1994) (informal objections like petitions to deny must contain adequate and specific factual allegations sufficient to warrant the relief requested). We decline to deny the assignment application on this basis. (internal footnotes omitted.) *Letter to Henry Goldberg Esq, Edward Hayes Jr.*, 12 FCC Rcd. 15242 (1997).

Therefore, whether XEWW-AM will negatively impact financial support for KQEV-LP is a relevant issue.

² 47 CFR §73.21.

IV. Foreign Influence and Agents

A. Influence

H&H says CSO's concerns as to foreign influence and the broadcast by XEWW-AM are unfounded and that the Petition provides only "generalized concerns" and that reliance may not be made upon news reports about other stations. Opposition, at 4-5.

In the Supplement, CSO provided additional support for its assertions including findings and documentation from Congress, the U.S. National Security Agency, the National Security Advisor, the U.S. Central Intelligence Agency, the Committee on Investments in the United States, the Office of the U.S. Special Trade Representative, the U.S.-China Economic Security and Review Commission and research institutes and non-governmental agencies. Supplement, Section III, Background Statement. The Supplement is incorporated herein by reference.

B. PRC Agents and De Facto Control

The Opposition also maintains that, because Vivian Huo is a U.S. citizen and was presented the opportunity to purchase XEWW-AM by a broker, she is not an agent of the PRC. Opposition, at 5. The short response is none of that supports – let alone compels - the conclusion that *de facto* control and operation of the station is not at the direction of the PRC. The argument is a non-sequitur. It is evasive.

Contrary to the assertions in the Opposition, CSO does not argue that, simply because Ms. Huo is Chinese, she is an agent of the PRC. CSO makes clear that ethnicity alone is not its point, as that plainly would be a reprehensible assertion. Instead, CSO assertions are based on the very particularized factors herein: the direct links that Ms. Huo and Jackie Pang have with Phoenix TV, which has direct links with the PRC; the lack of any H&H studio location in California; and

the enabling of Phoenix TV to program the station and to recruit and employ staffing for H&H. See Supplement, at 13-15.

The Commission has held that a licensee may delegate certain functions on a day-to-day basis to an agent, but such delegation cannot be wholesale. See, e.g., *In re Harris*, 15 FCC Rcd 12933 (2000), citing *Southwest Texas Public Broadcasting Council*, 85 FCC 2d 713, 715 (1981). That standard applies to agreements such as the one H&H has with Phoenix TV. See *Choctaw Broadcasting Corporation*, 12 FCC Rcd 8534, 8538 (1997). While the Commission has held that there is no exact formula by which operational control of a broadcast station can be determined, it has clarified that “control,” as used in the Communications Act and Commission rules, encompasses all forms of control, actual or legal, direct or indirect, negative or affirmative, *de jure* or *de facto*. See, *Quetzal Bilingual Communications Inc.*, 14 FCC Rcd 9717 (1999). Specifically, three essential areas of station operation are pivotal: programming, personnel and finances. See, e.g., *Stereo Broadcasters, Inc.*, 87 FCC 2d 87 (1981), recon. denied, 50 RR 2d 1346, par. 4 (1982).

CSO submits H&H has delegated all of its key functions to Phoenix TV. As to programming, H&H concedes it has delegated to Phoenix TV the right to produce and broadcast all of its programming, reserving for itself only the function to preempt any program H&H finds to violate a Commission rule.³ Opposition, at 5-6, 8. Ad hoc preemption is minimalist when compared to the functions delegated to Phoenix TV. And H&H has delegated to Phoenix TV the function of hiring personnel for news and sales management, as reflected in the recruitment advertisement Phoenix TV caused to be posted on WeChat. See Supplemental Declaration of

³ Despite this assertion, H&H does not demonstrate how it plans to implement any such preemptions. Thus, the Commission should not take it at face value.

Xiaowei Xia, Exhibit 1, Supplement. This is a key function completely delegated to Phoenix TV. As to finances, H&H has delegated revenue generation or sale management to Phoenix TV. CSO submits that revenue generation is a core determinant of a station's financial viability. Key functions have been delegated in whole or substantial part to Phoenix TV. The only function facially reserved to H&H is the *ad hoc* preemption of offensive programming. Opposition, at 8. CSO submits that that is woefully inadequate. Under the precedent cited above, Phoenix TV has *de facto* control of the station.

Further, in the context of *de facto* control issues, the Court of Appeals has affirmed the Commission holding that the likelihood of control is greatly increased where a large company such as Phoenix TV is involved. The court concludes :

The Commission began with its own settled regulations and precedent. Established FCC precedent highlights that the likelihood of a *de facto* control finding is 'greatly increased' in cases like this one, where a large company...is the 'single entity provid[ing] most of the capital and management services' for smaller companies.⁴

That is the case here, as Phoenix TV is a publicly-traded company in Hong Kong operating globally with an audience of 360 million viewers worldwide,⁵ while H&H apparently is a relatively small boutique investment firm, which describes itself as being controlled by one individual.

In *SNR* the court noted that the larger company contributed "most of the capital," In the case before the Commission, there is no information about contributions of capital. H&H asserts that, Ms. Huo arranged the financing for the acquisition, but provides no details on the sources of financing. The Application fails to detail the capital invested by H&H and whether Phoenix TV

⁴ *SNR Wireless License Co, LLC v. FCC*, 868 F.3d 1021 (D.C. Cir. 2017) ("*SNR*").

⁵ See Opposition, at note 9.

or any other entity provided capital to Ms. Huo or to H&H. This denies the Commission a full record upon which to make a finding that grant of a Section 325(c) Permit would be in the public interest. As Phoenix TV will hire the staff, and produce and broadcast all of the programming, Phoenix TV bears substantial costs of operations and programming. That produces a material question of fact as to the financing for the operations of the station. *SNR, supra*. An evidentiary hearing is necessary to resolve these issues.

C. Propaganda

The Opposition maintains that the programming on XEWW-AM is not propaganda. Instead, the Opposition, at 7, asserts :

...nearly eighty percent of the program content broadcast on XEWW is and will continue to be "un-hosted" Chinese music, punctuated by commercials and station identifications. The remaining programming will include news and information content. That news and information content for the most part addresses local issues in Southern California (e.g., local traffic and weather), as well as entertainment and programming about lifestyle matters (such as personal relationships, food, and technology) for Chinese-speaking residents in Southern California. While some hard news headlines may be broadcast as part of any world news updates, those updates will come from a variety of reputable sources, including Asian-language broadcasters and publishers in Hong Kong and Taiwan, as well internationally recognized providers in the United States and the United Kingdom, such as the Associated Press, the LA Times, NPR and the BBC.

The Opposition evades the meaning of propaganda. In the most basic sense, propaganda is "...the systematic dissemination of doctrine, rumor, or selected information to promote or injure a particular doctrine, view, or cause." *Black's Law Dictionary*, Tenth Edition, at 1401 (2014). Or, restated, it is "...messaging aimed at a specific audience that will try to change the audiences' opinions, often containing disinformation to promote a certain viewpoint in politics." *Black's Online Free Law Dictionary*, Second Edition, at 1401 (2014).⁶ Nothing in the definition precludes usage of propaganda within programming focused on music, entertainment, local

⁶ Available at <https://thelawdictionary.org/propaganda/>

issues and *especially news and information*. Additionally, a meaning in the public international law context provides guidance. The *Oxford International Public Law* defines propaganda as:

Propaganda can be described as a method of communication, by State organs or individuals, aimed at influencing and manipulating the behaviour of people in a certain predefined way. The element of influence and manipulation is at the centre of the concept, and distinguishes it from mere factual information. The notion of propaganda remains, however, relatively unclear from an international law perspective, since propaganda is not on the whole regulated by international law. *Oxford International Public Law*, Oxford University Press (2014).⁷

The Oxford definition leads with the element of a “method of communications by State organs.” The elements of “beyond mere factual information” and “manipulation” are important parts of the definition. As detailed in the Supplement and the Declaration of Chung Pong, Phoenix TV bends to the dictates of the PRC, which is pledged to undermine U.S. interests in the service of its own interests. Nothing in the itemization of programming by H&H in the Response demonstrates that propaganda will not be broadcast. Further, the Opposition acknowledges that there will be political commentary, but asserts that it will not be “substantial.” Opposition, at 7. That is a huge loophole. The term “substantial” is not quantified, nor are the hours of broadcast of the substantial and insubstantial programs. The Commission can only guess.

D. Pong Declaration

In his Declaration Chung Pong demonstrates specifically how news production at Phoenix TV was required to broadcast PRC propaganda. He has thirty three years of news experience and was employed at Phoenix TV in Hong Kong for seven years until he was terminated in June 2002 for not complying with PRC directives. Declaration at par. 7. During

⁷ Available at <http://opil.ouplaw.com/view/10.1093/law:epil/9780199231690/law-9780199231690-e978>

his tenure at Phoenix TV Mr. Pong held various news gathering positions, rising up to News Director with responsibilities for worldwide news gathering and broadcasting and supervision a sixty person news staff. Declaration, par. 2-3. He declares that he and Phoenix TV officials were instructed directly by officials from the PRC as to what to broadcast and what not to broadcast, based on unwritten objectives of the PRC. Declaration, at par. 4-7. He was instructed by the PRC to report favorably on the PRC and unfavorably on the United States and events in the United States. *Id.* He was instructed to broadcast certain programs to negatively reflect on certain groups, even when there was no factual basis to support the negative reports. *Id.* He declares that the employment of news staff that resisted such directives from the PRC were involuntarily terminated. *Id.* His Declaration provides very specific details and examples of the propaganda directives from the PRC followed by Phoenix TV:

3. Between 1996 and 2002, I served successively as Program Editor, Chief News Editor and News Director for Phoenix Satellite TV in Hong Kong. In the latter position, I was responsible for managing the selection of news and other content to be broadcast; the assignment of reports to specific individuals; the training of news staff; attending editorial meetings, solving problems and accuracy in reporting. I was responsible for the work produced by and I supervised, over 60 individuals, reporters and editors, in Hong Kong and worldwide. I reported directly to Liu Changle, the CEO and Wang Jiyan, the Vice President of Phoenix TV.
4. I know from personal experience that Phoenix TV's content is subject to the dictates of the leadership of the Central Communist Propaganda Department, Central Communist Overseas Propaganda Office and the Ministry of Foreign Affairs which often directly sent instructions to Phoenix Satellite TV which included directives to remove specific items of news that violated the "Party's news guidelines" or positively reported the United States or events in the United States. Those guidelines were not published or distributed to me but were done on an ad hoc basis.
5. Two instances illustrate how I was instructed to manipulate reporting. One included the live broadcast of the five-year anniversary of Hong Kong's returning to China. However, that live program had to be cancelled because of the fear by then-Communist Party General Secretary Jiang Zemin that events may not unfold as planned and there could be a lack of control of the events broadcast. Another

instance is when the Central Communist Propaganda Department directed Phoenix TV to produce a program for the continuing series, Great Phoenix Forum, that labeled the followers of the Buddhist spiritual/meditation/exercise group, Falun Gong, as an evil cult, even though we had no information that was true. I viewed these instructions as creating propaganda programs and tried to resist but eventually I had to comply with the instructions given me.

6. I have personal knowledge that Phoenix Satellite TV advised news staff that if they violated the guidelines or failed to implement directives of the Overseas Propaganda Division they had to resign from the company or be involuntarily terminated. One example is Ayi, a host of Great Phoenix Form, had to leave Phoenix TV because he refused to host a program where there was no factual basis to support the program's factual contents.
7. In June 2002, I was removed from my job and duties by Liu Changle, the Chief Executive Officer of Phoenix Satellite TV. I was told that the order to remove me from the position of News Director originated from then General Secretary of the Communist Party, Jiang Zemin. His instructions were delivered to Ding Guangren, the then Director of the Central Propaganda Department who so instructed Jiang Enzhu, the Director of Liaison Office of the Central People's Government in Hong Kong who then instructed Liu Changle, the CEO of Phoenix Satellite TV who implemented my removal.⁸

By any of the definitions of propaganda shown above, the instructions given by the PRC officials were propaganda. They directed Phoenix TV to broadcast falsehoods or information knowingly lacking a basis for its veracity, and the misinformation was intended to influence audiences and/or to cause injury to specific groups -- all by state actors. That is classic propaganda. As the programming on XEWW-AM will originate from and be produced by Phoenix TV, the Commission cannot rely upon Phoenix TV, a front for the PRC, not to broadcast offensive programming to Americans and permanent residents in Southern California.

E. H&H Concession

This case presents a simple but supremely important question. Will the Commission take the risk that the PRC will attempt to undermine U.S. interests? On that question, H&H has made

⁸ Exhibit 1.

a critical concession. It concedes that "...the Commission may take action against an application if there are national security grounds..." present. Opposition, at 8. That is CSO's prime point. As CSO has demonstrated that national security issues are present, the Commission should summarily deny the Application on this basis alone or designate it for a hearing.

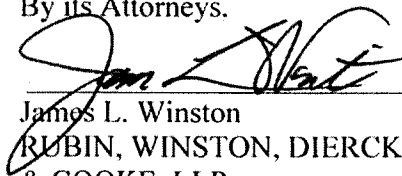
V. Conclusion

CSO submits that, given the direct links between H&H, Phoenix TV and the PRC and the demonstration that substantial national security risks are present, the Commission must hold an evidentiary hearing to resolve all of material and significant questions of fact. The Commission cannot rely on H&H, which will rely on Phoenix TV, which is a stalking horse for PRC, which is on an aggressive mission to undermine U.S. national security. Such reliance is not in the public interest of the U.S. as maintained by the various U.S. agencies and others. CSO urges the Commission to grant the relief requested by CSO as detailed in the Supplement. Specifically, CSO requests that the Commission designate the Application for hearing and rescind the Special Temporary Authority. Supplement at 25-27.

Respectfully submitted,

**CHINESE SOUND OF ORIENTAL AND
WEST HERITAGE**

By its Attorneys.



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September 11, 2018

**EXHIBIT 1
DECLARATION
OF
CHUNG PONG**

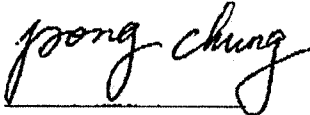
Declaration of Chung Pong

I, Chung Pong, declare as follows.

1. I am a resident of the New York. I was born in China and emigrated to the United States 16 years ago. I hold a certificate for permanent residence.
2. I have a master's degree in education from China Physical Education University. I have a total of 33 years of experience in journalism. I began working at China Central People Radio Station in China in 1984. I passed the certificate examination of general news reporting and editing and sports news reporting and editing in 1985 and 1987. I obtained the national state titles of "News Editor" in 1987 and "Chief News Editor" in 1991.
3. Between 1996 and 2002, I served successively as Program Editor, Chief News Editor and News Director for Phoenix Satellite TV in Hong Kong. In the latter position, I was responsible for managing the selection of news and other content to be broadcast; the assignment of reports to specific individuals; the training of news staff; attending editorial meetings, solving problems and accuracy in reporting. I was responsible for the work produced by and I supervised, over 60 individuals, reporters and editors, in Hong Kong and worldwide. I reported directly to Liu Change, the CEO and Wang Jiyan, the Vice President of Phoenix TV.
4. I know from personal experience that Phoenix TV's content is subject to the dictates of the leadership of the Central Communist Propaganda Department, Central Communist Overseas Propaganda Office and the Ministry of Foreign Affairs which often directly sent instructions to Phoenix Satellite TV which included directives to remove specific items of news that violated the "Party's news guidelines" or positively reported the United States or events in the United States. Those guidelines were not published or distributed to me but were done on an ad hoc basis.
5. Two instances illustrate how I was instructed to manipulate reporting. One included the live broadcast that I planned for the five-year anniversary of Hong Kong's returning to China. However, that live program had to be cancelled because of the fear by then-Communist Party General Secretary Jiang Zemin that events may not unfold as planned and there could be a lack of control of the events broadcast. Another instance is when the Central Communist Propaganda Department directed Phoenix TV to produce a program for the continuing series, Great Phoenix Forum, that labeled the followers of the Buddhist spiritual/meditation/exercise group, Falun Gong, as an evil cult, even though we had no information that was true. I viewed these instructions as creating propaganda programs and tried to resist but eventually I had to comply with the instructions given me.

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7. In June 2002, I was removed from my job and duties by Liu Changle, the Chief Executive Officer of Phoenix Satellite TV. I was told that the order to remove me from the position of News Director originated from then General Secretary of the Communist Party, Jiang Zemin. His instructions were delivered to Ding Guangen, the then Director of the Central Propaganda Department who so instructed Jiang Enzhu, the Director of Liaison Office of the Central People's Government in Hong Kong who then instructed Liu Changle, the CEO of Phoenix Satellite TV who implemented my removal.

I declare under penalty of perjury of the laws of the United States that the foregoing is true.



Chung Pong

September 10, 2019

CERTIFICATE OF SERVICE

I, Kathy Nickens, do hereby certify that I sent via U.S. mail (except where indicated), on this 11th day of September, 2018, copies of the foregoing REPLY TO OPPOSITION TO PETITION TO DENY to the following:

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