

**FEDERAL COMMUNICATIONS COMMISSION**  
**445 TWELFTH STREET SW**  
**WASHINGTON DC 20554**

**MEDIA BUREAU**  
**AUDIO DIVISION**  
**APPLICATION STATUS:** (202) 418-2730  
**HOME PAGE:** [www.fcc.gov/mb/audio/](http://www.fcc.gov/mb/audio/)

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December 16, 2008

Scott C. Cinnamon, Esq.  
1250 Connecticut Avenue NW  
Suite 200, #144  
Washington DC 20036

Re: KSPA(AM), Ontario, California  
Facility Identification Number: 13899  
Ontario Broadcasting, LLC  
Special Temporary Authorization

Dear Counsel:

This is in reference to the request filed December 12, 2008, on behalf of Ontario Broadcasting, LLC ("OB"). OB requests special temporary authority ("STA") to operate Station KSPA with facilities proposed in pending Application BP-20041115AFC.<sup>1</sup> For reasons which are discussed herein, the request is denied.

In support of the request, OB states that its application, which would provide a first local transmission service to the city of Chino, has been pending for more than four years due to a conflict with two applications for Culver city, CA, filed in AM Auction No. 84. OB gives three examples where "The FCC has granted STAs in the past in cimilar circumstances..."<sup>2</sup> i.e., Stations WGDL(AM), Lares, PR;<sup>3</sup> WJZG(FM), Cuelebra, PR<sup>4</sup> and KSKY(AM) Balch City, TX.<sup>5</sup>

Our review indicates that OB has failed to demonstrate that the Public Interest would be served by grant of its request. STA is not the appropriate vehicle for the establishment of new broadcast service in circumvention of the two-step construction permit and license process which is mandated by the Communications Act of 1934.<sup>6</sup> OB's technical proposal in BP-20041115AFC

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<sup>1</sup> KSPA is licensed to Ontario, California, for operation on 1510 kHz with 10 kW daytime and 1 kW nighttime, with different directional patterns day and night (DA-2-U). Application BP-20041115AFC, as amended, proposes changing the community of license to Chino, an increase in power to 50 kW daytime (45 kW critical hours) and 6 kW nighttime, and changes to the daytime and nighttime directional patterns.

<sup>2</sup> STA request, Exhibit 16, page 2, para. 2.

<sup>3</sup> See STA granted November 22, 1991, as subsequently extended.

<sup>4</sup> See BSTA-19980710WB, granted on December 22, 1998, as subsequently modified and extended.

<sup>5</sup> See BSTA-20080714ACH, BSTA-20080714ACK, BSTA-20080714ACHM

<sup>6</sup> See 47 U.S.C § 319.

has not been subjected to a thorough engineering review by the Staff, and there is no guarantee that the proposal is grantable. Moreover, OB's application is in queue behind the ultimate auction winner at Culver City.<sup>7</sup> Once the winner has been determined and its final technical proposal has been filed, OB must amend its application to protect the Culver City proposal, or risk dismissal. The proposed STA operation would involve a substantial extension of the daytime and nighttime coverage contours, with no guarantee that the service provided by the proposed STA operation could ever be licensed.

With respect to OB's reliance on the WGD, WJZG and KSKY STA grants, we note initially that unpublished staff letters are binding only on persons with actual notice of those letters and may not be relied upon, cited or used as precedent.<sup>8</sup> Even so, these cases are readily distinguishable from OB's proposal. Station WGD was licensed for operation on 1200 kHz with 0.25 kW, daytime hours only. It filed Application BP-19900326ID, which proposed operation on 1200 kHz with 1 kilowatt, unlimited hours.<sup>9</sup> A staff review of its application indicated that the only station which prevented grant of its proposal, HIBS, San Pedro de Macoris, Dominican Republic, had been authorized to change frequency from 1200 kHz to 670 kHz, and that Station HIBS had actually commenced operation on 670 kHz. However, the Dominican government did not remove the allocation formerly occupied by HIBS on 1200 kHz from the IFRB<sup>10</sup> records, even though no Dominican station was operating on that frequency. In coordination with the International Bureau, Station WGD was granted STA to operate with the facilities proposed in its application, with the condition that, should Station HIBS return to operation on 1200 kHz, Station WGD must revert to its licensed parameters. In contrast to the uncertainty of the outcome of the Culver City proposals which bar grant of KSPA's application, the single station in conflict with WGD's proposal had already relocated its operation to another channel; it was a virtual certainty that it would not return to its former frequency, and the only impediment to implementation of WGD's power increase was an apparent ministerial error on the part of the Dominican government.

The case of Station WJZG is likewise readily distinguishable from OB's instant proposal. On June 23, 1995, the Commission granted Construction Permit BPH-19911114MS, which authorized a new FM station at Culebra, PR, on Channel 293A (106.5 MHz), to Aurio A. Matos ("Matos"). Shortly thereafter, the Commission modified the operating frequency of the new, unbuilt station from Channel 293 to Channel 254 (98.7 MHz) in order to accommodate a multiple-station channel swap in MM Docket No. 91-259.<sup>11</sup> While the original permit on Channel 293 contained no special operating condition which prevented immediate

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<sup>7</sup> See 47 C.F.R. § 73.3571(f).

<sup>8</sup> See 47 C.F.R. § 0.445(e).

<sup>9</sup> Contrary to OB's representation, Station WGD did not propose a frequency change, either in its application or in its STA request, and WGD did not receive interference due to the frequency change by HIBS.

<sup>10</sup> International Frequency Registration Board

<sup>11</sup> See BMPH-19970828IB.

commencement of operation, the modified permit for Channel 254 was conditioned on implementation of a channel change for Station WSAN in MM Docket No. 91-259. Rather than implement the channel changes ordered in MM Docket No. 91-259, the several stations became embroiled in a legal dispute over reimbursement of the expenses incurred in the channel changes. The dispute dragged on until, in April, 1998, Matos commenced operation on its original channel and filed an application for license. The Commission dismissed the license application as patently defective and initiated an enforcement proceeding against Matos for operating on an unauthorized channel, which resulted in a monetary forfeiture.<sup>12</sup> After receiving several thousand letters from the public protesting the removal of the new radio service from Culebra, the Commission granted STA to Matos to resume operation on Channel 293. The distinction between the matter of WJZG and OB's instant proposal is that Station WJZG had received a construction permit for its operation on Channel 293 before the permit was modified to specify operation on Channel 254 in MM Docket No. 91-259 and that its STA facilities were, in effect, those previously authorized by the Commission. In contrast, Station KSPA has never been granted a construction permit for its proposed operation at Chino.

Station KSKY sought and was granted STA to rebroadcast the AM station's programming on three FM translators, due to massive interference received from two Mexican AM stations operating in contravention of their notified parameters. As such, this case has no bearing on OB's proposal to increase the power of its AM operation via STA.

Finally, nothing in OB's request indicates that Station KSPA is unable to continue operating as licensed and thereby to provide service to the community of Ontario. Thus, the "extraordinary circumstances"<sup>13</sup> which warrant operation at variance from currently licensed parameters via STA do not exist.

Accordingly, the request for STA IS HEREBY DENIED. This action is taken pursuant to 47 CFR Section 0.283.

Sincerely,

A handwritten signature in black ink, appearing to read "Charles N. Miller". The signature is fluid and cursive, with a long horizontal line extending to the right.

Charles N. Miller, Engineer  
Audio Division  
Media Bureau

cc: Ontario Broadcasting, LLC

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<sup>12</sup> See Notice of Apparent Liability from Chief, Mass Media Bureau to Aurio A. Matos, 1800C1-KMS, July 7, 1999. (Imposed monetary forfeiture of \$14,500; subsequently reduced to \$5,000.)

<sup>13</sup> See 47 U.S.C Section 309(f).