



**Federal Communications Commission
Washington, D.C. 20554**

April 30, 2009

DA 09-990

In Reply Refer to:

1800B3-ATS

Released: April 30, 2009

Scott C. Cinnamon, Esq.
Law Office of Scott C. Cinnamon, PLLC
1250 Connecticut Ave., N.W., Suite 200, #144
Washington, D.C. 20036

In re: KSPA(AM), Ontario, CA
Facility ID No. 13899
File No. BSTA-20081212ACQ
Petition for Reconsideration

Dear Mr. Cinnamon:

We have before us the Petition for Reconsideration ("Petition") filed on January 26, 2009, by Ontario Broadcasting, LLC ("Ontario"), directed to the action of the Audio Division staff denying its December 12, 2008, request for Special Temporary Authorization ("STA") to operate Station KSPA (AM), 1510 KHz, Ontario, California (the "Station"), with facilities proposed in a pending minor change application¹ (the "Application").² For the reasons set forth below, we deny the Petition.

Background. On November 15, 2004, Ontario filed the Application seeking to change the community of license of the Station from Ontario, California, to Chino, California, in order to provide a first local service to Chino. The staff has not been able to act on the Application because Ontario's Chino proposal conflicts with two prior-filed mutually exclusive short-form auction applications for Culver City, California in AM Auction No. 84 MX Group 84-31.³

On December 12, 2008, Ontario requested an STA to allow it to operate the Station in the same manner as proposed in its modification application, specifically by changing the station's community of license from Ontario to Chino.⁴ The Letter denied the STA request, stating that an STA was "not the appropriate vehicle for the establishment of new broadcast service in circumvention of the two-step

¹ (BP-20041115AFC).

² See *Letter to Ontario Broadcasting, LLC, Audio Division, Media Bureau* (December 16, 2008) ("Letter").

³ See *Letter Regarding AM Auction No. 84 MX Group 84-31* (MB Feb. 8, 2008). The staff determined that two of the proposals in this group should go to auction: Levin/Schwab Partnership's ("LSP") Culver City, California, proposal (File No. BNP-20040130ATD) and Royce Internal Broadcasting Company's Culver City, California proposal (File No. BNP-20040130BMC). Both propose operation on 1500 KHz. That auction has not yet been scheduled.

⁴ See BSTA-20081212ACQ

construction permit and license process which is mandated by the Communication Act of 1934.”⁵ The staff further stated that Ontario had failed to demonstrate that the public interest would be served by the grant of an STA.

Ontario filed the Petition on January 26, 2009, arguing that the staff incorrectly denied its STA request. Ontario presents its public interest argument against the backdrop of the history of Station KIEV(AM) on first-adjacent channel 1500 KHz in Burbank, California.⁶ That history is thoroughly summarized in the Commission’s 2008 *Memorandum Opinion and Order* involving that station and need not be repeated here.⁷ The gravamen of Ontario’s Petition is that, on October 23, 1984, Royce International Broadcasting Co. (“Royce”) was granted a construction permit to build a new station with Burbank, California, as its city of license and an original deadline of October 23, 1985.⁸ Royce failed to construct KIEV(AM), but instead filed a series of requests for extension of time to construct and administrative appeals that were not finally resolved by the Commission until the 2008 Memorandum and Opinion Order.

Ontario notes that Royce’s actions effectively left the 1500 kHz (and adjacent-channel) spectrum in the Burbank area unused for 20 years. Ontario argues that grant of the STA request while the channel remains unused pending the outcome of the auction is in the public interest since it would “allow [Ontario] to expand the reach of KSPA and provide first local service to the community of Chino while the two mutually exclusive Culver City application battle through a yet-to-be scheduled auction”⁹

Discussion. Reconsideration is appropriate only where the petitioner either demonstrates a material error or omission in the underlying order or raises additional facts not known or not existing until after the petitioner’s last opportunity to present such matters.¹⁰

The Communications Act of 1934, as amended, states that STAs may be issued where there are “extraordinary circumstances requiring temporary operations in the public interest and that delay in the institution of such temporary operations would seriously prejudice the public interest.”¹¹ Ontario states that “unique circumstances” exist because the 1500 kHz band has been unused since 1984 because of delays by Royce, which had been awarded a construction permit to build a new station licensed to Burbank, California, but has yet to build that station.¹² We do not believe this is an “extraordinary circumstance” warranting an STA. Although Royce’s attempts to preserve its authorization to construct KIEV(AM) present an extreme example and serve to underscore the Commission’s wisdom in setting a

⁵ Letter at 1.

⁶ Petition at 3.

⁷ See *Royce International Broadcasting Co.*, Memorandum Opinion and Order, 23 FCC Rcd 9010 (2008)

⁸ *Id.* at 9010, ¶ 2.

⁹ Petition at 1.

¹⁰ See 47 C.F.R. § 1.106; *WWIZ, Inc.*, Memorandum Opinion and Order, 37 FCC 685, 686 (1964), *aff’d sub nom, Lorain Journal Co. v. FCC*, 351 F.2d 824 (D.C. Cir. 1965), *cert. denied*, 387 U.S. 967 (1966); *National Ass’n of Broadcasters*, Memorandum Opinion and Order, 18 FCC Rcd 24414, 24415 (2003).

¹¹ 47 U.S.C. § 309(f).

¹² See File No. BP-20111.

finite construction period with limited exceptions,¹³ there is no evidence or finding that Royce abused the Commission's processes. Royce's lawful conduct cannot justify the relief sought here.

Ontario seeks to use STA procedures to avoid the delays inherent in the AM licensing process. Although Ontario's frustration is understandable, similar arguments could be advanced by numerous AM auction applicants proposing to provide new AM service. Ontario cites no instance, and the staff is not aware of any, in which the Commission has issued an STA for a broadcaster to temporarily utilize unused spectrum as a means to "provided expanded service"¹⁴ while awaiting the grant of an application to provide that service.

Ontario has also not made any such showing of error in the Letter, nor has it presented any new facts of which the staff was unaware at the time it made its decision to deny the STA request. Ontario has likewise not presented any unusual circumstances that otherwise warrant reconsideration. We therefore deny the Petition.

Conclusion/Actions. Accordingly, IT IS ORDERED, that the January 26, 2009, Petition for Reconsideration of Ontario Broadcasting, LLC, IS HEREBY DENIED.

Sincerely,

Peter H. Doyle
Chief, Audio Division
Media Bureau

cc: Ontario Broadcasting, LLC

¹³ See 47 C.F.R. § 73.3598(a).

¹⁴ Petition at 1.