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OFFICE OF  
CHAIRMAN GENACHOWSKI

Please reply to JOHN M. PELKEY  
jpelkey@gsblaw.com TEL EXT 2528

December 6, 2010

Chairman Julius Genachowski  
Commissioner Michael J. Copps  
Commissioner Robert M. McDowell  
Commissioner Mignon Clyburn  
Commissioner Meredith Attwell Baker  
Federal Communications Commission  
445 12th Street, SW  
Washington, DC 20554

Re: Application of Ontario Broadcasting, LLC  
For a Modification of the Facilities of  
KSPA(AM)  
Ontario, CA  
BPH-20041115AFC

Request for Special Temporary Authority

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Federal Communications Commission  
Bureau / Office

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2010 SERVICES DIVISION

Dear Chairman Genachowski and Commissioners Copps, McDowell, Clyburn and Baker:

This letter is being written at the request of Ontario Broadcasting, LLC, which is the licensee of KSPA(AM) in Ontario, California. It is, quite frankly, a plea written in desperation, a plea that asks the Commission to take effective action now so as to preserve a small, local broadcaster who has spent fifty-five years in broadcasting, but who may be forced out of business because of the desperate straits into which he has been placed by Commission inaction. The consequences of that inaction can be remedied, but the remedy requires effective, immediate and innovative Commission action and Ontario Broadcasting is submitting this letter to the Commission in the hope that the Commission can see its way clear to take such action so as to avoid a loss of service to tens of thousands of people and a loss of jobs to dozens of employees.

KSPA(AM) is an AM station that is licensed to operate with 10kw during the day and 1kw at night. It operates directionally both day and night, which means that the station necessarily must struggle with the fact that it reaches different audiences at different times of the day. The station is licensed to Ontario, California, which is located in the far southwestern corner of San Bernardino County – a location that places it between, but not part of either, the Los Angeles and Riverside-San Bernardino, California, Metro Markets. The station's low power and directional pattern, coupled with the fact that it operates at the high end of the AM dial, result in coverage that places it at a distinct



competitive disadvantage in trying to compete with its higher-powered neighbors to the west and the east. Increasing the station's power would permit it to expand its service to better serve the residents of western Riverside, southwestern San Bernardino and eastern Los Angeles counties and, thus, permit it to provide a more robust local voice that would be better able to compete with those stations that are based in these neighboring major and mid-sized markets.

Seeking to provide this robust local voice, Ontario Broadcasting filed an application on November 15, 2004, in which it sought authority to significantly increase its authorized power. During the six years that have elapsed since that facilities modification application was filed, KSPA(AM) has amended it as opportunities have arisen to improve upon the original November 2004 proposal, with the result that, in its current form, the application seeks Commission approval to construct a facility that would operate at 50kw during the day, 45kw during critical hours, and 6kw at night. Moreover, Ontario Broadcasting is proposing to provide local transmission service to Chino, California, a community that, like KSPA(AM)'s current community of license of Ontario, California, is located in far southwestern San Bernardino County, but that, unlike Ontario, is not home to any other broadcast transmission service. First local service to Chino is essential given the fact that it is a rapidly-growing community. The U.S. Census Bureau estimates that Chino's 2008 population rose to 83,031 people, a more than 20 percent increase compared to the population reported in the 2000 Census, a rate of increase that is more than double that experienced by Ontario.

Despite the fact that Ontario Broadcasting's application has now been on file for more than six years, no action has been taken on the application because it is mutually-exclusive with two applications filed during the January, 2004, Auction 84 AM filing window. Those two applications propose facilities that are ungrantable – a fact that was pointed out to the Commission in a petition to deny filed by Ontario Broadcasting last May. Moreover, Ontario Broadcasting has been advised by its engineers that, even if either one of those two applications were granted, the facilities specified therein could never be built because they both require multi-tower arrays to be constructed in Los Angeles and there is about as much likelihood of being able to construct a multi-tower array in Los Angeles as there is to construct a multi-tower array within the Beltway.

Even though there are real questions as to whether either one of those two applications can be granted and, if granted, lead to the actual construction of facilities, the simple fact of the matter is that answers to those questions may not be forthcoming for many years. In two months, those applications will be celebrating their seventh anniversary at the Commission. Because the Commission does not in the normal course make determinations as to the grantability of applications filed in an auction window until after the auction has taken place, applications filed by existing stations that wish to, and need to, improve their facilities are simply backed up in a queue at the Commission with no expectation that they will receive attention until after the auction has occurred. This is true even if the applications that are blocking the proposed upgrade are irremediably defective. Moreover, because of the Commission's auction rules, the parties cannot discuss among themselves arrangements whereby a settlement could lead to the breakup of the logjam. In the meantime, informal advice provided by the Commission staff indicates that Auction 84 may well not be held for at least another year. While the Auction 84 applications await Commission action, the value of AM stations continues to plummet, thus further decreasing the likelihood that the facilities requested in the two applications blocking the KSPA(AM)



upgrade will, even if granted, ever be constructed and minimizing the possibility that the US Treasury will see any significant revenues from the auction.

Confronted with what was, at that point, a five-year delay in the processing of its facilities modification application, Ontario Broadcasting asked the Commission in December 2008 for special temporary authority to permit it to operate KSPA(AM) with the facilities proposed in that application. See File No. BSTA-20081212ACQ. The Commission staff denied that request because it believed that Ontario Broadcasting had not demonstrated that there were “extraordinary circumstances” justifying a grant of the STA request<sup>1</sup> Although Ontario Broadcasting sought reconsideration of that staff decision, that reconsideration request was also denied because, in the staff’s view, there were no “extraordinary circumstances requiring temporary operations in the public interest.”<sup>2</sup>

KSPA(AM)’s rapidly deteriorating situation, coupled with indefinite delay in acting on the Auction 84 applications, provides the extraordinary circumstances warranting the issuance to Ontario Broadcasting of an STA to construct and operate, at its risk, the facilities requested by it in its facilities modification application. In the nearly two years that have elapsed since the denial of Ontario Broadcasting’s 2008 STA request, the economic circumstances at KSPA(AM) have become dire. As was reported in the Los Angeles Times in an October 8, 2010 article, the poverty rate in Ontario, Riverside and San Bernardino, California, surged by approximately 31% from 2007 to 2009, a rate that is one of the nation’s highest rates.<sup>3</sup> That Los Angeles Times article was based upon a recent study completed by the Brookings institution<sup>4</sup> and, according to the author of the Brookings study, Ontario, along with Riverside and San Bernardino, are “on the front lines of the Great Recession.”<sup>5</sup> That study places the Riverside-San Bernardino-Ontario, CA, metropolitan area among the top 10 metropolitan areas in the country with respect to the increase in urban poverty between 2007 and 2009 and ranks it as having the third highest rate of increase in suburban poverty during that time.<sup>6</sup>

The situation in which Ontario, Riverside and San Bernardino find themselves has had a direct effect on KSPA(AM). The station has not made any money in five years and, in fact, has lost \$10 million over the last six years. Moreover, this is not a case in which a station’s dire economic situation can be attributed to a lack of knowledge on the part of the station’s owner. In this case, the owner and operator of KSPA(AM) is Mr. Art Astor, an individual who has been in broadcasting for 55 years. Despite his best efforts, however, he has been unable to make the station viable. The problem stems

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<sup>1</sup> Letter of December 16, 2008, from Charles N. Miller, Engineer, Audio Division, Media Bureau, Federal Communications Commission, to Scott C. Cinnamon, Esq.

<sup>2</sup> Letter of April 30, 2009, from Peter H. Doyle, Chief, Audio Division, Media Bureau, Federal Communications Commission, to Scott C. Cinnamon, Esq.

<sup>3</sup> Howard Blume, *Poverty rises sharply in Inland Empire areas, study finds*, LOS ANGELES TIMES, Oct. 8, 2010, available at <http://www.latimes.com/news/local/la-me-inland-empire-poverty-20101008,0,5624685.story> (“Inland Empire”).

<sup>4</sup> ELIZABETH KNEEBONE, *THE GREAT RECESSION AND POVERTY IN METROPOLITAN AMERICA* (Brookings, 2010), available at [http://www.brookings.edu/papers/2010/1007\\_suburban\\_poverty\\_acs\\_kneebone.aspx](http://www.brookings.edu/papers/2010/1007_suburban_poverty_acs_kneebone.aspx) (“Brookings Report”).

<sup>5</sup> Inland Empire at 1.

<sup>6</sup> Brookings Report at 5.





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from the station's coverage – coverage that KSPA(AM) has been attempting to improve for more than six years, but which it has been unable to achieve because of the delays encountered at the Commission in the processing of the Auction 84 applications.

For those six years, Ontario Broadcasting's efforts to obtain authority to improve its coverage have been thwarted at every turn. Its application cannot be processed because there are two ungrantable Auction 84 applications for unbuildable facilities that stand in the way. Because the Commission does not normally act on petitions to deny auction applications until after the auction has been held, however the Commission has not taken action to dismiss those applications. To make matters worse, there is no indication that Auction 84 will be held anytime soon. Even if the two Auction 84 applicants were willing to discuss a settlement, such discussions are prohibited by the Commission's auction rules. Finally, although Ontario Broadcasting sought special temporary authority to construct and operate the facilities requested in its minor modification application until such time as the logjam created by the Auction 84 applications can be broken, the Commission staff denied that request because the situation did not present "extraordinary circumstances."

The result is that KSPA(AM) is on the cusp of being forced to go silent. Ontario Broadcasting understands the need for considered action by the Commission. At this point, however, the situation has truly become one of desperation. Understanding that the current situation is unusual and that the staff may not consider itself to have the authority to grant special temporary authority under the circumstances now presented, Ontario Broadcasting is respectfully requesting that the Commission itself become involved. Ontario Broadcasting is willing to incur the expense of constructing the facilities specified in its facilities modification application and to operate those facilities pursuant to special temporary authority. Ontario Broadcasting would take the full risk that it would not ultimately be granted a construction permit for such facilities. Ontario Broadcasting does not take this obligation lightly. It finds itself in a situation where it has no other choice, however.

Accordingly, Ontario Broadcasting respectfully requests that the Commission instruct the Media Bureau to grant an STA request to be filed by Ontario Broadcasting seeking special temporary authority to construct and operate the facilities requested by Ontario Broadcasting in its facilities modification application. Ontario Broadcasting stands ready, willing and able to submit such an STA request. If there are any questions concerning this request, Ontario Broadcasting would welcome the opportunity to respond.

Sincerely,

A handwritten signature in blue ink, appearing to read "John M. Pelkey".

John M. Pelkey

cc: William T. Lake, Esq.  
Peter H. Doyle, Esq.  
Bruce A. Olcott, Esq. (counsel for Royce International Broadcasting Company)  
Howard S. Levine, Esq. (counsel for Levine/Schwab Partnership)