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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

MAY 29 2013

Federal Communications Commission
Bureau / Office

In Re: Applications for Consent to
Assignment of Broadcast Station Licenses:

KDAY(FM), Redondo Beach, California
(Facility ID 10100)

KDEY-FM, Ontario, California
(Facility ID 10099)

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)
) FCC File No. BALH-20130408ACL
)
)
) FCC File No. BALH-20130408ACM
)

To: Office of the Secretary
Attn: Audio Division, Media Bureau

OPPOSITION TO PETITIONS TO DENY

By this Opposition, RBC License, LLC, through its counsel, responds to and opposes the Petitions to Deny (the "Petitions") filed with the Commission by Brett Hamilton (the "Petitioner") with respect to the above-captioned applications (the "Assignment Applications").¹

The Petitioner asserts that the Commission is required to conduct some sort of investigation into the ownership of Phoenix Satellite Television (U.S.), Inc. (erroneously referred

¹ The Petitioner claims standing to file the Petitions as "a resident of Manhattan Beach, California and a listener to the station." Petitions at p. 1, n. 1. However, the 60 dBu contour of station KDEY-FM does not come close to reaching Manhattan Beach, and the Petitioner fails to demonstrate how he can be a regular listener of KDEY-FM, as opposed to the simulcast programming on station KDAY-FM, making his claim of standing with respect to the Petition against the KDEY-FM Assignment Application suspect at best. See *Citadel Broadcasting, Co.*, 22 FCC Rcd 7083, 7087-88 (2007) (To be accorded party-in-interest status, a petitioner either must reside within the station's service area, or be a regular listener of the station and demonstrate that such listening is not the result of transient contacts with the station.)

Perhaps not surprisingly, given the Petitioner's shaky claim of standing, the Petition against the KDEY-FM Assignment Application appears to be procedurally deficient in another respect in that the copies served on both counsel to the assignee and to the assignor do not include an affidavit or declaration of the Petitioner. See 47 U.S.C. §309(d)(1); 47 C.F.R. §1.16.

to as “Phoenix Satellite Television, Inc.” in the Petitions), a United States entity which holds an indirect, non-cognizable ownership interest in the proposed assignee. The Petitioner presents absolutely no basis, in law or in fact, to support that assertion.

I. Background

The Assignment Applications were filed to request the Commission’s consent to the assignment of the Commission licenses for commercial radio stations KDAY(FM), Redondo Beach, California, and KDEY-FM, Ontario, California, from their respective licensees to RBC License, LLC, a Delaware limited liability company and a wholly-owned subsidiary of RBC Communications, Inc., a Delaware corporation (RBC License, LLC and RBC Communications, Inc. are referred to herein, collectively, as “RBC”). RBC Investments, LLC, a Delaware limited liability company holds and has the power to vote 80% of the capital stock of RBC Communications, Inc. The sole member of RBC Investments, LLC is Mr. Anthony Yuen, a United States citizen. Phoenix Satellite Television (U.S.), Inc., a Delaware corporation (“Phoenix”), holds and has the power to vote the remaining 20% of the capital stock of RBC Communications, Inc. The interest in RBC held by Phoenix therefore is non-cognizable under the Commission’s multiple ownership rules by virtue of the “single majority shareholder rule.”²

Phoenix is wholly-owned by Phoenix Satellite Television Universal Limited, a British Virgin Islands entity, which ultimately is wholly-owned by Phoenix Satellite Television Holdings Limited, a Cayman Islands company the stock of which is publicly traded and listed on the Hong Kong Stock Exchange. However, this non-United States ownership is in full compliance with the provisions of Section 310(b) of the Communications Act of 1934, as

² *Review of Commission’s Regulations Governing Attribution of Broadcast and Cable/MDS Interests*, 16 FCC Rcd 22310 (2001).

amended (the “Communications Act”), which limits to 20% the non-United States ownership of the capital stock of an entity which holds a broadcast radio license issued by the Commission.³

II. Discussion

Section 310(d) of the Communications Act provides that no station license may be transferred or assigned until the Commission, upon application, determines that the public interest, convenience and necessity will be served thereby.⁴ In making that assessment, the Commission first must determine whether the proposed transaction would comply with the provisions of the Communications Act, other applicable statutes, and the Commission’s rules.⁵ If it determines that the proposed transaction would not violate a statute or rule, the Commission then considers whether it could result in public interest harm by substantially frustrating or impairing the objectives or implementation of the Communications Act or related statutes.⁶

In assessing allegations as to whether a proposed transaction would violate a statute or rule, or whether it is otherwise contrary to the public interest, the Commission uses a two-step process. First, the petition to deny must contain specific allegations of fact sufficient to show that a grant of the application would be *prima facie* inconsistent with the public interest.⁷ If the petition meets the first step, the Commission will designate the application for hearing if the allegations, together with any opposing evidence before the Commission, raise a substantial and

³ 47 U.S.C. §310(b)(2). In fact, because the Commission licenses actually will be held by RBC License, LLC, a wholly-owned subsidiary of RBC Communications, Inc., the ownership in the licensee through RBC Communications, Inc. is indirect and a non-United States entity would be permitted to hold as much as 25% of the stock of RBC Communications, Inc. 47 U.S.C. §310(b)(4).

⁴ 47 U.S.C. §310(d).

⁵ See *SBC Communications Inc. and AT&T Corp.*, Applications for Approval of Transfer of Control, 20 FCC Rcd 18290, 18300 (2005); *Verizon Communications, Inc. and MCI, Inc.*, Applications for Approval of Transfer of Control, 20 FCC Rcd 18433, 18442-43 (2005).

⁶ *Id.*

⁷ 47 U.S.C. §309(d)(1). See also *Astroline Communications Co. Ltd. Partnership v. FCC*, 857 F.2d 1556, 1561 (D.C. Cir. 1988) (“*Astroline*”).

material question of fact as to whether grant would serve the public interest, or if the Commission is otherwise unable to conclude that granting the application would serve the public interest.⁸

This first step of the public interest analysis "is much like that performed by a trial judge considering a motion for directed verdict: if all the supporting facts alleged in the affidavit were true, could a reasonable factfinder conclude that the ultimate fact in dispute had been established."⁹ Allegations that consist of "ultimate, conclusionary facts or more general allegations on information and belief, supported by general affidavits ... are not sufficient" to establish a *prima facie* case.¹⁰

Against this standard of review, the Petitioner appears to make two assertions. First, that the grant of the Assignment Applications may violate the provisions of Section 310(b) of the Communications Act, either: (i) because of the indirect ownership interests and positions held by Chinese persons or entities in the assignee, (ii) because Mr. Yuen is "representing the interests of the Chinese government,"¹¹ or (iii) because there may be some sort of unspecified financial arrangements or instruments involving non-United States persons which the Commission might characterize as being the equivalent of capital stock within the meaning of Section 310(b).¹² The Petitioner's second assertion appears to be that even if the proposed transaction raises no

⁸ 47 U.S.C. §309(e); *Astroline*.

⁹ *Gencom, Inc. v. FCC*, 832 F.2d 171, 181 (D.C. Cir. 1987). See also *Serafyn v. FCC*, 149 F.3d 1213, 1216 (D.C. Cir. 1998) (affirming two-step public interest analysis).

¹⁰ *North Idaho Broadcasting Co.*, 8 FCC Rcd 1637,1638 (1993) (quoting *Gencom, Inc.*, 832 F 2d at 180, n. 11).

¹¹ Petitions at p. 4.

¹² See Petitions generally at pp. 3-9.

issue with respect to violation of a statute or rule, the transaction nevertheless is contrary to the public interest because of the involvement of Chinese parties.¹³

A. Assertion that the Proposed Transaction Violates the Communications Act

With respect to the first of those assertions, the Petitioner proffers absolutely no specific allegations of fact to demonstrate that there is a violation of any statute or rule. To the contrary, the only fact that the Petitioner alleges at all is that Phoenix has in its ownership chain investors which are citizens of, or entities located in, the People's Republic of China, some of which are affiliated with the government of that nation. Provided that, as is the case here, the ownership interests held by non-United States persons are within the percentage limitations set forth in Section 310(b) of the Communications Act, such ownership in no way violates any statute or FCC rule.

The Petitioner's remaining allegations are the barest sort of speculation. His assertion that Mr. Yuen, a United States citizen, is a representative of the Chinese government merely because he was employed by Phoenix's parent company, some of the shareholders of which are investment vehicles controlled by the Chinese government, is completely unsupported and borders on scurrilous. The Petitioner then goes to great lengths to show that the Commission has characterized certain indirect investments in a licensee as capital stock for purposes of Section 310(b), despite the fact that such investments were purported to be non-stock instruments.¹⁴ While that is true, the Petitioner provides no facts which would indicate that any investment in RBC, other than the common stock held by RBC Investments, LLC and by Phoenix, should be characterized as capital stock, or that RBC's certification in the Assignment Applications as to

¹³ See Petitions at pp. 3-4 and 11.

¹⁴ Petitions at pp. 5-9, discussing *Fox Television Stations, Inc.*, 10 FCC Rcd 8452 (1995), and *Fox Television Stations, Inc.*, 11 FCC Rcd 5714 (1995).

compliance with the Communications Act limitations on foreign ownership and control is inaccurate.¹⁵ A finding by the Commission that such fact-barren allegations and speculation constitute a *prima facie* case on a foreign ownership issue would be entirely inconsistent with Commission precedent.¹⁶

Having alleged nothing more than that there is some indirect Chinese investment in the assignee, the Petitioner has fallen far short of the requirement that he proffer specific allegations of fact sufficient to make a *prima facie* case that the proposed transaction would result in a violation of a statute or Commission rule.

B. Assertion that the Proposed Transaction is Inconsistent with the Public Interest

The second of the Petitioner's apparent assertions, that even in the absence of a violation of a statute or rule the transaction is contrary to the public interest, is based on no more than the fact that Chinese parties are indirect shareholders and directors in Phoenix. The Petitioner does not even attempt to explain why this would be contrary to the public interest, and many United States companies are owned, in whole or in part, by Chinese entities.¹⁷ There is little to say about this assertion other than that the Petitioner has not come close to meeting his burden to make specific allegations of fact sufficient to show that a grant of the Assignment Applications would be *prima facie* inconsistent with the public interest, convenience and necessity.

However, to the extent the Commission may have any concerns regarding the national security implications of involvement by Chinese parties or the Chinese government with the

¹⁵ See Section III.9 of the Assignment Applications.

¹⁶ See, e.g., *WKVO(AM), Columbus, Ohio, et. al.*, 28 FCC Rcd 126 (Media Bureau 2013) (Allegations of foreign ownership violations based on speculation regarding financial transactions were insufficient to raise a *prima facie* foreign ownership issue).

¹⁷ See, e.g., *Los Angeles Times*, Business Section, September 4, 2012 (regarding the purchase of AMC Entertainment by Chinese conglomerate Dalian Wanda Group for \$2.6 billion).
<http://articles.latimes.com/2012/sep/04/business/la-fi-ct-amc-china-20120905>

operation of the stations, RBC notes that on May 24, 2013 the parties filed a preliminary notification with the Committee on Foreign Investment in the United States (“CFIUS”) with respect to the proposed transaction. Counsel to the parties have had discussions with CFIUS representatives regarding the transaction, and the parties intend to file a formal notification with CFIUS on or about May 31, 2013.¹⁸ The CFIUS process commenced voluntarily by the parties will result in a careful review of the proposed transaction by the appropriate expert government agencies with respect to any national security concerns.

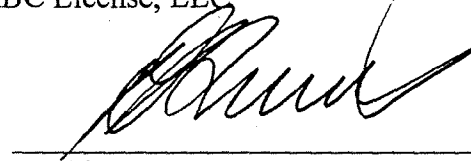
III. Conclusion

The Petitioner has failed to provide specific allegations of fact sufficient to show that a grant of the Assignment Applications would be *prima facie* inconsistent with the public interest, whether due to a violation of a statute or rule, or for any other reason. As shown above, the Petitioner has done no more than assert indirect Chinese investment in the assignee and make bald speculations as to the financial arrangements involved in the transaction. The Commission need go no further than step one of the *Astroline* analysis to provide a basis for the denial of the Petitions.

¹⁸ The fact that the parties will be commencing a process before CFIUS should have been known to the Petitioner as it is set forth in the Asset Purchase Agreement which is included with the Assignment Applications. See Asset Purchase Agreement at Exhibit 5 to each of the Assignment Applications; Sections 4.1(b) and 5.1(b).

Respectfully submitted,

RBC License, LLC

A handwritten signature in black ink, appearing to read "David D. Burns", written over a horizontal line.

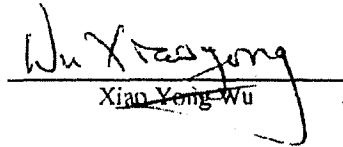
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Its Counsel

Dated: May 29, 2013

DECLARATION OF XIAO YONG WU

I, Xiao Yong Wu, Vice President of RBC Communications, Inc. the sole member of RBC License, LLC, declare under penalty of perjury that I have read the foregoing Opposition to Petitions to Deny, and the statements contained therein are true and correct to the best of my knowledge, information and belief.

May ²⁸ 2013


Xiao Yong Wu

CERTIFICATE OF SERVICE

I, David D. Burns, hereby certify that a copy of the foregoing Opposition to Petitions to Deny was served via first-class mail to the following on May 29, 2013:

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