



Federal Communications Commission
Washington, D.C. 20554

March 9, 2018

DA 18-235
Released: March 9, 2018

Via Electronic Mail

Meredith S. Senter, Jr.
Lerman Senter PLLC
2001 L Street, NW, Suite 400
Washington, DC 20036
msenter@lermansenter.com

Re: Petition for Declaratory Ruling by Spanish Broadcasting System, Inc. Pursuant to 47 CFR. § 1.5004(f)(3).

Dear Counsel:

This is in regard to the status report filed by Spanish Broadcasting System, Inc. (SBS) on February 26, 2018,¹ concerning its petition for declaratory ruling seeking Commission approval to exceed the foreign ownership benchmark in Section 310(b)(4) of the Communications Act of 1934, as Amended² (the Act) or, in the alternative, to find that the remedial actions SBS has taken to come into compliance with Section 310(b)(4) are sufficient.³ We are also in receipt of a letter from counsel for certain holders of SBS's Series B Cumulative Exchangeable Redeemable Preferred Stock (Dissident Shareholders)⁴ requesting an extension of time to file a response to our letter directing SBS to file its Amended PDR by February 26, 2018 or a status report explaining why it was unable to do so.⁵ For the reasons stated below, we grant a temporary extension of time for SBS to file its Amended PDR.

¹ Letter to Michelle M. Carey, Chief, Media Bureau, from Meredith Senter, dated February 26, 2018 (*Status Report*). In its *Status Report*, SBS has stated that it will file an additional status report no later than March 26, 2018, but has not indicated when it will file its amended petition for declaratory ruling (Amended PDR).

² 47 U.S.C. § 310(b)(4) ("No broadcast or common carrier or aeronautical en route or aeronautical fixed radio station license shall be granted to or held by . . . any corporation directly or indirectly controlled by any other corporation of which more than one-fourth of the capital stock is owned of record or voted by aliens, their representatives, or by a foreign government or representative thereof, or by any corporation organized under the laws of a foreign country, if the Commission finds that the public interest will be served by the refusal or revocation of such license.").

³ Spanish Broadcasting System, Inc., Petition for Declaratory Ruling, filed December 4, 2017 (PDR) at 1.

⁴ Letter from Mark D. Schneider to Michelle M. Carey, Chief, Media Bureau, dated February 23, 2018 (*Schneider Letter*).

⁵ Letter to Meredith S. Senter, Jr. from Michelle M. Carey, Chief, Media Bureau, dated January 25, 2018 (*Abeyance Letter*). The Schneider Letter requests that the response deadline be extended until March 19, 2018.

Background. As fully explained in the *Abeyance Letter*, SBS and the Dissident Shareholders are engaged in litigation in the Delaware Chancery Court.⁶ In its PDR, SBS states that it first learned that it could be out of compliance with our foreign ownership rules as a result of this litigation and did not know the identity of the Dissident Shareholders prior to that time.⁷ In response to the possible violation, on December 4, 2017, SBS filed a remedial PDR under 47 FR§1.5000(a)(1),⁸ as permitted by 1.5004(f)(3),⁹ seeking permission to temporarily exceed the limits of Section 310(b)(4) or, in the alternative, for the Commission to find that its remedial actions to correct the violation has brought it into compliance with the Act.¹⁰

On December 29, 2017, the Commission received a letter filed on behalf of the Dissident Shareholders asserting their right and intent to participate in this proceeding.¹¹ The *December 29th Letter*, which states that, although the Dissident Shareholders, “disagree that their individual or collective interests cause SBS to exceed the 25% benchmark in 310(b)(4),” they “intend to cooperate in ensuring that SBS complies with the FCC’s foreign ownership rules.”¹²

In the *Abeyance Letter*, we found that the PDR did not provide enough information for us to proceed with a comprehensive review or to address SBS’s prayer for relief.¹³ We noted that SBS stated that it had been unable to obtain foreign ownership information from the Dissident Shareholders and was only able to obtain the information that it had from the Complaint.¹⁴ However, SBS did not concede the truth of that information.¹⁵ We found that, even had the ownership information in the Complaint been accurate, the PDR lacked other information that rendered it incomplete for review and required that it be

⁶ See, Verified Complaint, Cedarview Opportunities Master Fund, L.P., et al. v. Spanish Broadcasting System, Inc., C.A. No. 2017-0785 (Del. Chanc. Nov. 2, 2017), 2017 WL 575691. (Complaint).

⁷ PDR at 5.

⁸ 47 CFR§1.5000(a)(1) (“A broadcast, common carrier, aeronautical en route or aeronautical fixed radio station licensee or common carrier spectrum lessee shall file a petition for declaratory ruling to obtain Commission approval under section 310(b)(4) of the Act, and obtain such approval, before the aggregate foreign ownership of any controlling, U.S.-organized parent company exceeds, directly and/or indirectly, 25 percent of the U.S. parent’s equity interests and/or 25 percent of its voting interests. An applicant for a broadcast, common carrier, aeronautical en route or aeronautical fixed radio station license or common carrier spectrum leasing arrangement shall file the petition for declaratory ruling required by this paragraph at the same time that it files its application.”)

⁹ 47 CFR§1.5000(f)(3) (“Where the controlling U.S. parent of a broadcast, common carrier, aeronautical en route, or aeronautical fixed radio station licensee or common carrier spectrum lessee is an eligible U.S. public company within the meaning of § 1.5000(e), the licensee may file a remedial petition for declaratory ruling under §1.5000(a)(1) seeking approval of particular foreign equity and/or voting interests that are non-compliant with the licensee’s foreign ownership ruling or the Commission’s rules relating to foreign ownership; or, alternatively, the licensee may remedy the non-compliance by, for example, redeeming the foreign interest(s) that rendered the licensee non-compliant with the licensee’s existing foreign ownership ruling. In either case, the Commission does not expect to take enforcement action related to the non-compliance subject to the requirements specified in paragraphs (f)(3)(i) and (f)(3)(ii) of this section and except as otherwise provided in paragraph (f)(3)(iii) of this section.”)

¹⁰ PDR at 1.

¹¹ Letter from Mark D. Schneider to Michelle M. Carey, Chief, Media Bureau, dated December 29, 2017 (*December 29th Letter*).

¹² *Id.*

¹³ *Abeyance Letter* at 2.

¹⁴ *Id.*

¹⁵ *Id.*

amended before we either began our review or put the PDR on public notice.¹⁶ We expected that this was not a burdensome requirement because the Dissident Shareholders had indicated that they would cooperate in the foreign ownership compliance process.¹⁷

The parties now indicate that they need additional time to file the Amended PDR. The Dissident Shareholders state that “they have not been able to finalize and have approved for disclosure to third parties and the public the individual ownership information that is relevant to the Petition.”¹⁸ They argue that this is understandable based on the timing of the requests, the novel nature of the FCC proceeding to the [Dissident Shareholders], and the complexity of the ownership holdings of the seven independent fund managers.¹⁹ They also say that SBS “has requested voluminous information and documents” and that these documents need to be provided to and then reviewed by SBS before any filing with the Commission.²⁰ For its part, SBS states that it cannot supplement its PDR until it has received and reviewed the information from the Dissident Shareholders.²¹

Discussion. We remind the parties that remedial petitions to deny are filed in instances where there is, or there is reason to believe that there may be, an ongoing statutory violation of Section 310(b)(4), which requires action by the Commission to remedy. That action can only be accomplished once a full and complete petition for declaratory ruling has been filed and has gone through the entire review process. Given the record received to date, we grant an extension of time until no later than April 27th for SBS to file its Amended PDR.²² In doing so, however, we are mindful that SBS has been on notice that a violation may exist for at least four months. Thus, we do not expect to grant any more extensions and are prepared to proceed to enforcement action after that point. As provided in the Commission’s rules and we stated in the *Abeyance Letter*, SBS will not be required to redeem the non-compliant foreign interest or to remedy the non-compliance while its PDR is pending.²³ However, it must have a mechanism in place to come into compliance within thirty (30) days following an adverse decision on its PDR.²⁴

Copies of the Amended PDR should be sent to David Roberts, Attorney-Advisor, Video Division; Christine Goepf, Attorney-Advisor, Audio Division; and Jamila Bess Johnson, Senior Legal Advisor, Industry Analysis Division.

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ *Schneider Letter* at 2.

¹⁹ *Id.*

²⁰ *Id.*

²¹ *Status Report* at 1.

²² Although this is more time than either party asked for, we want to ensure that SBS has more than enough time to submit the Amended PDR. SBS may file earlier than April 27th and start the public notice process sooner.

²³ 47 CFR § 1.5004(f)(3)(iii) (“Where the licensee has opted to file a petition for declaratory ruling under §1.5000(a)(1), the Commission will not, as a general rule, require that the licensee redeem the non-compliant foreign interest(s) or take other action to remedy the non-compliance during the pendency of its petition. If the Commission ultimately declines to approve the petition, however, the licensee must have a mechanism available to come into compliance with the terms of its existing ruling within 30 days following the Commission’s decision. The Commission reserves the right to require immediate remedial action by the licensee where the Commission finds in a particular case that the public interest requires such action—for example, where, after consultation with the relevant Executive Branch agencies, the Commission finds that the non-compliant foreign interest presents national security or other significant concerns that require immediate mitigation.”); *Abeyance Letter* at 2.

²⁴ *Id.*

If you have any questions regarding this matter, please contact David Brown, Deputy Chief, Video Division, Media Bureau, at (202) 418-1645 or David Roberts, Video Division, Media Bureau, at (202) 418-1618.

Sincerely,

Michelle M. Carey
Chief, Media Bureau

cc: Mark D. Schneider