



Federal Communications Commission
Washington, D.C. 20554

DA 18-73
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Via Electronic Mail

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

Dear Counsel:

This is in regard to the remedial petition for declaratory ruling filed by Spanish Broadcasting System, Inc. (SBS) seeking Commission approval to exceed the foreign ownership benchmark in Section 310(b)(4) of the Communications Act of 1934, as Amended¹ (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.² For the reasons stated below, we find that SBS's PDR requires additional information that is essential for our review.

Background. On November 13, 2017, SBS, the parent company of entities holding television and radio broadcast licenses, filed a notice³ with the Media Bureau pursuant to § 1.5004(f)(3)(i) of our Rules,⁴ which requires a licensee to inform the Commission within 10 days if it discovers that it is out of compliance with the foreign ownership restrictions of the Act. In the Notice, SBS claims that it learned that it could be out of compliance with the Commission's foreign ownership rules after it was served with

¹ 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.").

² Spanish Broadcasting System, Inc., Petition for Declaratory Ruling, filed December 4, 2017 (PDR) at 1.

³ Letter to Michelle M. Carey, Chief, Media Bureau, from Meredith Senter, dated November 13, 2017 (Notice).

⁴ 47 C.F.R. § 1.5004(f)(3)(i) ("The licensee shall notify the relevant Bureau by letter no later than 10 days after learning of the investment(s) that rendered the licensee non-compliant with its foreign ownership ruling or the Commission's rules relating to foreign ownership and specify in the letter that it will file a petition for declaratory ruling under § 1.5000(a)(1) or, alternatively, take remedial action to come into compliance within 30 days of the date it learned of the non-compliant foreign interest(s).").

a lawsuit⁵ (the Complaint) filed in the Delaware Chancery Court by certain holders of its Series B Cumulative Exchangeable Redeemable Preferred Stock (Dissident Shareholders).⁶ On November 28, 2017, SBS filed an SEC Form 8-K, in which it explained that it had notified the holders of its Series B Cumulative Exchangeable Redeemable Preferred Stock (Series B Shareholders) that it had suspended all of their rights other than the right to transfer their shares to a citizen of the United States.⁷ In its SEC filing, SBS said that those shares had been exchanged for “Foreign Share Certificates.”⁸ According to SBS, the holder of a Foreign Share Certificate has no rights other than to (1) provide SBS with information sufficient to establish that the shareholder is a U.S. citizen; or (2) transfer the shares to a U.S. citizen.⁹ Holders of Foreign Share Certificates had until December 4, 2017, to provide certain information, including citizenship or place of incorporation, to SBS.¹⁰ If the holder of the Foreign Share Certificate refused to provide the requested information, SBS stated in the Form 8-K that it reserved the right to take further action.¹¹ According to SBS, the suspension of rights generally will only be lifted once the level of foreign ownership in the company falls below 25% and SBS is in compliance with 310(b)(4).¹² In its PDR, SBS also states that it has requested that its stock transfer agent coordinate with the Depository Trust Corporation (DTC) to suspend all trading in the Series B Shares.¹³

On December 4, 2017, SBS filed its remedial PDR under 47 C.F.R. § 1.5000(a)(1),¹⁴ as permitted by 1.5004(f)(3),¹⁵ seeking permission to temporarily exceed the limits of Section 310(b)(4) or, in the

⁵ 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).

⁶ Notice at 2. SBS says that it was served with the lawsuit on November 4, 2017. *Id.*

⁷ Spanish Broadcasting System, Inc., SEC Form 8-K, November 28, 2017 (SBS Form 8-K).

⁸ *Id.*

⁹ PDR at 6.

¹⁰ SBS Form 8-K.

¹¹ *Id.*

¹² PDR at 6.

¹³ *Id.*

¹⁴ 47 C.F.R. § 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.”)

¹⁵ 47 C.F.R. § 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.”)

alternative, for the Commission to find that its remedial action suspending the rights of the Series B Shareholders and exchanging their shares for Foreign Share Certificates had brought it into compliance with the Act.¹⁶ SBS asserts that prior to being served with the Complaint, it did not know the identity of the Dissident Shareholders.¹⁷ 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.¹⁸ 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.”¹⁹ The letter also states that the Dissident Shareholders plan to file comments or other requests in response to SBS allegations.²⁰

Discussion. The PDR does not provide enough information for us to proceed with a comprehensive review or to address SBS’s prayer for relief. SBS states that it requested ownership information from the Dissident Shareholders and that they failed to provide it.²¹ Because of their alleged lack of cooperation, SBS claims the only ownership information it had available regarding these shareholders came from the Complaint, and SBS does not concede the truth of the statements in the Complaint.²² Even if the ownership information in the Complaint is accurate, the PDR, *inter alia*:

- Does not provide an estimate of the overall level of foreign ownership in SBS;
- Does not identify and give the necessary information regarding the disclosable interest holders in SBS, including any disclosable interest holders that may need to be identified within the Dissident Shareholders, and the actual voting status of any such disclosable interest holders;
- Does not address whether any individuals or entities require specific approval.

¹⁶ PDR at 1. The Commission’s foreign ownership rules do not provide for the Commission to grant a “temporary” waiver to exceed 310(b)(4). When SBS amends its PDR, it will need to clarify that it is asking for a declaratory ruling that asks the Commission to find that it is in the public interest for SBS to exceed the 310(b)(4) benchmark as permitted by the Commission’s order in *Review of Foreign Ownership Policies for Broadcast, Common Carrier and Aeronautical Radio Licensees under Section 310(b)(4) of the Communications Act of 1934, as Amended*, Report and Order, 31 FCC Rcd 11272, GN Docket 15-236 (2016)(*Foreign Ownership Order*), accompanied by a full showing as required under the rules, including all necessary requests for specific approval. This showing was not sufficient in the PDR. We will also defer action on the question of whether SBS’s action of exchanging its Series B Shareholders’ stock for Foreign Share Certificates, was sufficient to bring it into compliance with § 310(b)(4) until SBS has amended its showing and provided a complete PDR.

¹⁷ Notice at 1. The Complaint alleges that SBS’s failure to pay dividends to the Dissident Shareholders and other Series B Shareholders was a Voting Rights Triggering Event, subjecting SBS to restrictive covenants and giving specified rights to the Series B Shareholders. Complaint at 2. The pending litigation in the Delaware Chancery Court raises issues that involve the alleged rights of the Series B Shareholders and alleged breaches of those rights by SBS. We take no position on the outcome of any issue in that litigation and defer to the Court and its conclusions.

¹⁸ *Letter from Mark D. Schneider to Michelle M. Carey, Chief, Media Bureau*, dated December 29, 2017 (*December 29th Letter*).

¹⁹ *Id.*

²⁰ *Id.*

²¹ Notice at 2.

²² PDR 5-6.

Therefore, we require that the PDR be amended before we begin our review. We do not believe this is a burdensome requirement because the Dissident Shareholders indicated in the *December 29th Letter* that they would cooperate with SBS's foreign ownership compliance efforts.²³

As you know, broadcast licensees must self-monitor their compliance with Section 310(b)(4). While it is not clear at what point SBS had or reasonably should have had knowledge of its foreign ownership composition, based on the *December 29th Letter*, SBS should now be in a position to obtain any information that it needs from the Dissident Shareholders. Given that, it is reasonable to provide further time to SBS to obtain the additional information needed to make a full and complete foreign ownership showing and to amend its PDR. As provided in the Commission's rules, SBS will not be required to redeem the non-compliant foreign interest or to remedy the non-compliance while its PDR is pending.²⁴ However, it must have a mechanism in place to come into compliance within thirty (30) days following an adverse decision on its PDR.²⁵ We expect the Dissident Shareholders to cooperate with SBS in providing the necessary information to the Commission in order to keep the licensee from breaching the Commission's rules and the Act. Furthermore, we will not put the PDR on public notice at this time, in part, because doing so would trigger Executive Branch review, which would waste government resources as such review could not be completed until the identities of any parties needing specific approval are known.

We remind all involved parties, that, although it is unambiguously the duty of SBS to be able to demonstrate that it is in compliance with 310(b)(4) and the Commission's foreign ownership rules under the "known or reasonably should have known" standard as explained in the *Foreign Ownership Order*, that order contemplated that investors generally would cooperate with the licensee.²⁶ As one of the numerous methods for determining the citizenship of its investors, the *Foreign Ownership Order* states that a licensee "should make direct inquiries" to its identifiable interest holders as part of its citizenship analysis as necessary and encourages licensees to inform the Commission if those inquiries are not productive.²⁷ In doing so, the Commission demonstrated its concern that foreign investors might try to avoid the impact of 310(b)(4) by being uncooperative. That concern is even greater where the potential foreign investor is a disclosable interest holder or where it could require specific approval. Therefore, if, within a reasonable time, either SBS's inquiries to the Dissident Shareholders in this case are not productive or if SBS is unable to determine their citizenship by other means, SBS should advise us and we reserve the right, if needed, to direct SBS to regard all non-responsive Dissident Investors as alien for both equity and voting purposes in preparing its amended PDR.

²³ *December 29th Letter* at 1.

²⁴ 47 C.F.R. § 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.")

²⁵ *Id.*

²⁶ *Foreign Ownership Order*, 15 FCC Rcd at 11293-11305.

²⁷ *Id.* at 11305.

Considering that petitions filed pursuant to § 1.5004(f)(3) are intended to correct an ongoing violation, it is incumbent on SBS to act as quickly as possible to make sure that its filing is complete. To this end, we require SBS to file an amended PDR within thirty (30) days of this letter. If SBS, notwithstanding affirmative efforts, cannot make a complete foreign ownership showing and submit its amended PDR within thirty (30) days, it must instead file a written status report (Report) in (30) days on the progress of its efforts to obtain the information necessary to make a full and complete foreign ownership showing. The Report should also provide an update on status of the pending litigation between SBS and the Dissident Shareholders. Copies of the amended PDR and /or Report 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. To the extent that this matter cannot be resolved in a timely fashion, we reserve the right to take appropriate enforcement action.

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