

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of )
Liberma Television of Dallas License LLC, ) File No. BALCDT-20190605ABL
Debtor-in-Possession )
Liberma Broadcasting of Dallas License LLC, ) File No. BALH-20190605ABD
Debtor-in-Possession )
Liberma Broadcasting of Houston License LLC, ) File No. BALH-20190605AAY
Debtor-in-Possession )
LBI Radio License LLC, ) File No. BAL-20190605AAQ
Debtor-in-Possession )
KRCA License LLC, ) File No. BALCDT-20190605ABM
Debtor-in-Possession )
KJZL Licensee LLC, ) File No. BALCDT-20190605ABJ
Debtor-in-Possession )

ORDER

Adopted: October 4, 2019

Released: October 4, 2019

By the Chief, Video Division:

I. INTRODUCTION

1. The Video Division has before it the above-captioned applications (Applications) seeking Commission consent to the assignment of broadcast licenses in several markets held by indirect, wholly-owned subsidiaries of Liberman Broadcasting, Inc., Debtor-in-Possession (LBI, and, together with affiliated entities, the LBI Debtors), from the licensees, as debtors in possession, to the same licensees, as non-debtors in possession, following the emergence of the LBI Debtors from bankruptcy. SLF LBI US Holdings I, LLC, and SLF LBI US Holdings II, LLC (collectively, the SLF Parties), which will control

1 The broadcast television stations, including low power television stations, are licensed to the following Nielsen Designated Market Areas: New York; Los Angeles; Chicago; Dallas-Ft. Worth; Houston; Phoenix (Prescott); Miami-Ft. Lauderdale; Denver; and San Diego. The radio stations are licensed to the following Nielsen Metros: Los Angeles; Dallas-Ft. Worth; Houston-Galveston; and Riverside-San Bernardino.

2 The SLF Parties, both domestic limited liability companies organized under the laws of Delaware, are funds affiliated with HPS Investment Partners, LLC (HPS), the first lien holder in the bankruptcy proceeding.

the reorganized LBI,<sup>3</sup> have requested a temporary and limited waiver of section 1.5000(a)(1) of the Commission's rules<sup>4</sup> to permit the LBI Debtors to emerge from bankruptcy before filing any petition for declaratory ruling that may be required to allow aggregate foreign ownership in excess of the 25% benchmark set forth in section 310(b)(4) of the Communications Act of 1934, as amended (Act).<sup>5</sup> Latinx for Equitable Media (LXEM) has petitioned to dismiss or deny the Applications.<sup>6</sup> For the reasons stated below, we deny the Petition, grant the requested waiver, and conditionally grant the Applications on the filing of a petition for declaratory ruling concerning foreign ownership within 30 days of the closing of the transaction.

## II. BACKGROUND

2. *Bankruptcy.* The LBI Debtors are currently being operated under protection of Chapter 11 of the United States Bankruptcy Code in consolidated cases before the United States Bankruptcy Court for the District of Delaware (Bankruptcy Court).<sup>7</sup> On April 17, 2019, the Bankruptcy Court approved the Plan, permitting the LBI Debtors to complete their restructuring and emerge from bankruptcy subject to, among other things, Commission consent to the Applications. According to the applicants, under the terms of the Plan, HPS and its affiliates and funds (collectively, HPS Parties) will internally reorganize to segregate their primarily foreign-owned investment vehicles prior to issuance of the capital stock of the reorganized LBI (New Equity Interests) and warrants to purchase New Equity Interests (Warrants), which will be issued to certain HPS Parties.<sup>8</sup> All New Equity Interests distributed at emergence from bankruptcy will be voting interests. The applicants state that the Warrants, however, will carry no voting rights and assert that the same is true with respect to rights to distributions, because the Warrants will, by their terms, prohibit a holder from exercising the Warrants if to do so would cause the licensees to violate the Act or the Commission's rules.<sup>9</sup> The SLF Parties will hold, collectively, more than 83% of the New Equity Interests, with the rest distributed to the HPS Parties. The applicants represent that none of the

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<sup>3</sup> See Third Amended Joint Chapter 11 Plan of Reorganization of LBI Media, Inc., and Its Affiliated Debtors, *In re LBI Media, Inc. et al.*, Case No. 1-18-bk-12655 (Chapter 11) (Bankr. D. Del. Apr. 12, 2019) (Jointly Administered) (Plan).

<sup>4</sup> 47 CFR § 1.5000(a)(1).

<sup>5</sup> 47 U.S.C. § 310(b)(4).

<sup>6</sup> Petition to Deny Or, In the Alternative, Informal Objection of Latinx for Equitable Media (filed July 10, 2019) (Petition). The SLF Parties filed an Opposition to Petition to Deny (Opposition) on July 22, 2019. LXEM replied on July 29, 2019.

<sup>7</sup> The Commission consented to the debtor-in-possession status of the Liberman licensees on December 19-20, 2018.

<sup>8</sup> The applicants state that “[s]uch distribution of the New Equity Interests and the Warrants shall be effected in a manner that ensures compliance with the Communications Laws, including by issuing Warrants in lieu of New Equity Interests to certain HPS Parties.” See Applications, Exhibit 13, FCC Description of Transaction at 2.

<sup>9</sup> *Id.* Each Warrant entitles the holder to the right to purchase one share of Class B common stock in LBI at the price of \$.01 per share. See Warrant Agreement, Section 4.1. The Warrants do, however, include “make whole” mechanisms for the purpose of conferring upon the Warrant Holder the economic equivalent of non-voting common stock. See, e.g., Warrant Agreement, Sections 5.3, 5.5. For example, Section 5.5 provides the Warrant Holder with the right to distributions in the event of an Organic Change (including the recapitalization, merger, sale of all or substantially all of the company's assets, and liquidation) of the company. As noted below, in granting the waiver requested by the applicants, we need not and do not make any determination as to whether the terms of the Warrants are such as to constitute “capital stock” for purposes of 47 U.S.C. § 310(b).

HPS Parties will individually hold an attributable interest in the reorganized LBI.<sup>10</sup> The SLF Parties will be managed and controlled by two independent, non-member managers, each of whom will have a 50% voting interest.<sup>11</sup> Finally, the Plan provides the HPS Parties with the right to appoint the board of directors of the reorganized LBI, which, pursuant to the Bankruptcy Code, must be in place upon emergence.<sup>12</sup> At that point, the SLF Parties alone will have the power to retain or replace these initial directors, and the SLF Parties state that they anticipate replacing such directors with new directors that are independent of the HPS Parties.<sup>13</sup>

3. *Waiver Request.* The SLF Parties state that they believe this ownership structure, including the distribution of New Equity Interests and Warrants, fully complies with the Commission's rules and the Act's limitations on foreign ownership.<sup>14</sup> Conceding, however, that, if the Warrants were treated as "capital stock" for purposes of 47 U.S.C. § 310(b), LBI would, upon emergence from bankruptcy, have aggregate foreign ownership in excess of the 25% benchmark set forth in section 310(b)(4) of the Act,<sup>15</sup> the SLF Parties request a temporary and limited waiver of section 1.5000(a)(1) of the Commission's rules.<sup>16</sup> Specifically, they request that they be allowed to file a petition for declaratory ruling no later than 30 days after closing on the LBI reorganization following grant of the Applications by the Commission, to obtain Commission approval to exceed the foreign ownership benchmark. The SLF Parties contend that grant of the waiver would serve the public interest by facilitating the emergence of the LBI Debtors from the bankruptcy process in a manner consistent with the Commission's practice of accommodating federal bankruptcy law when doing so will not unduly interfere with the Commission's public interest obligations under the Act.<sup>17</sup> The SLF Parties further state that they will accept as a

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<sup>10</sup> See Applications, Exhibit 13, FCC Description of Transaction at 2. The organizational documents of each of the SLF Parties contain provisions to ensure that its members, which are U.S.-owned and controlled investment funds that focus on newly issued, secured debt in refinancings, acquisitions, and restructurings, will not be materially involved, directly or indirectly, in the management or operation of the media-related activities of the LLC, consistent with the Commission's broadcast ownership attribution rules. See 47 CFR § 73.3555, Note 2(f).

<sup>11</sup> See Applications, Exhibit 13, FCC Description of Transaction at 2. Neither manager has any employment, financial, close personal, or family relationship with HPS, any of its employees, or any of the insulated, limited partner funds of the SLF Parties. *Id.*

<sup>12</sup> 11 U.S.C. § 1129(a)(5).

<sup>13</sup> See Applications, Exhibit 13, FCC Description of Transaction at 3.

<sup>14</sup> See Applications, Attachment 1, Petition for Temporary and Limited Waiver at 3 (Waiver Request).

<sup>15</sup> 47 U.S.C. § 310(b)(4) (providing that no broadcast 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").

<sup>16</sup> Waiver Request at 3-4. See 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% of the  
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condition to grant of the Applications the obligation to file a petition for declaratory ruling within the requested timeframe.<sup>18</sup>

4. *Pleadings.* LXEM, which states that it “advocates on the behalf of Latinos for equity and parity in securing access in the radio and television broadcast industry as talent, executives, and owners of media outlets,” asks that the Commission hold the Applications in abeyance until it has completed an investigation of whether LBI and the HPS Parties are qualified to serve as Commission licensees, based on allegations of fraud and insider trading raised by unnamed junior noteholders in the bankruptcy proceeding.<sup>19</sup> While these unspecified allegations were ultimately withdrawn, LXEM asserts that the Commission should investigate them independently.<sup>20</sup> LXEM further contends that the SLF Parties have failed to demonstrate good cause for grant of the requested waiver and that such grant would permit the SLF Parties to “sidestep” their foreign ownership disclosure obligations.<sup>21</sup> According to LXEM, concurrent evaluation of the foreign ownership “would shed greater light on ... post-bankruptcy programming decisions,” specifically whether the “focus on Spanish programming will remain unchanged.”<sup>22</sup>

5. In opposition, the SLF Parties first contend that LXEM failed to establish standing as a party in interest, as it “nowhere explains how grant of the Applications will cause its members ... injury.”<sup>23</sup> The SLF Parties further assert that LXEM’s character allegations are undercut by affirmative findings in the bankruptcy proceeding.<sup>24</sup> Finally, the SLF Parties reiterate that there is good cause for the Commission to grant the waiver request and note that LXEM has failed to justify its opposition to the waiver.<sup>25</sup>

6. In reply, LXEM continues to assert standing based on its concern that alleged character issues could limit the availability of Spanish language programming for its members and asks that, prior

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U.S. parent's equity interests and/or 25% 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.”).

<sup>17</sup> Waiver Request at 7.

<sup>18</sup> *Id.*

<sup>19</sup> Petition at 2-3 (*citing* Motion of the Plaintiff Group of Noteholders for Entry of an Order Granting Leave, Standing and Authority to Commence and Prosecute Certain Claims on Behalf of the LBI Media Estate and Exclusive Settlement Authority in Respect of Such Claims, *In re LBI Media, Inc., et al.*, Case No. 1:18-bk-12665 (Chapter 11) (Bankr. D. Del. Jan. 15, 2019) (Jointly Administered)).

<sup>20</sup> *Id.* at 7-8.

<sup>21</sup> *Id.* at 9-14.

<sup>22</sup> *Id.* at 14.

<sup>23</sup> The SLF Parties state that “LXEM cites certain unsubstantiated fraud and insider trading allegations that were asserted by creditors of the LBI Debtors ... in litigation, but that were resolved as part of the bankruptcy action and without any finding of any kind against HPS.” According to the SLF Parties, adjudicated allegations do not demonstrate a lack of character and fitness; and, even if they did, “LXEM fails to explain *why* this (alleged) character deficiency would prevent its members from enjoying Spanish language programming.” Petition at 2-6 (emphasis in original).

<sup>24</sup> *Id.* at 7 (“The Bankruptcy Court found that the Plan, including releases for HPS from the claims asserted by the creditors of LBI, was in good faith, fair, equitable, and reasonable.”).

to granting the Applications, the Commission confirm that “LBI will continue to provide Spanish programming to its viewers and listeners.”<sup>26</sup> LXEM also restates its request that the Commission independently investigate the fraud and insider trading allegations raised, and subsequently withdrawn, in the bankruptcy proceeding.<sup>27</sup> Finally, LXEM reiterates that the SLF Parties fail to provide any justification as to why the petition for declaratory ruling cannot be filed concurrently with the Applications.<sup>28</sup>

### III. DISCUSSION

7. *Standing.* For the reasons discussed below, we treat LXEM as an informal objector in all markets other than Los Angeles. Section 309(d)(1) of the Act provides that only a “party in interest” has standing to file a petition to deny, which must contain specific allegations of fact sufficient to show that the petitioner is, in fact, a party in interest and that a grant of the application would be *prima facie* inconsistent with the public interest.<sup>29</sup> Such allegations of fact, except for those of which official notice may be taken, must be supported by an affidavit of someone with personal knowledge thereof.<sup>30</sup> Generally, in the context of broadcast applications, the Commission has accorded party-in-interest status to petitioners that demonstrate they are (1) competitors in the market suffering signal interference; (2) competitors in the market suffering economic harm; or (3) residents of the station’s service area or regular listeners or viewers of the station.<sup>31</sup> An organization can establish standing on behalf of its members if it provides an affidavit or declaration “of one or more individuals entitled to standing indicating that the group represents local residents and that the petition is filed on their behalf.”<sup>32</sup> Standing to challenge the Commission’s regulation of a broadcast station “is accorded to persons not for the protection of their private interest but only to vindicate the public interest.”<sup>33</sup>

8. LXEM asserts that many of its members “are avid viewers and listeners of the Spanish language programming provided by LBI’s radio and television broadcast stations located in the Los Angeles metropolitan area” and that, “as a representative of its members” it has standing to file the

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<sup>25</sup> *Id.* at 7-8 (noting that grant of the waiver would allow “LBI and its subsidiaries to emerge from bankruptcy more quickly” and that “LXEM fails to explain how an additional six months or more of Bankruptcy Court supervision will aid the Spanish-language listeners it claims to represent.”).

<sup>26</sup> Reply at 3-4.

<sup>27</sup> *Id.* at 5.

<sup>28</sup> *Id.* at 7-8 (“HPS cannot be permitted to enjoy preferential treatment and insider patronage by avoiding disclosure of its foreign ownership interests – thereby being excused from a full vetting by the Commission.”).

<sup>29</sup> 47 U.S.C. § 309(d)(1); *see also* 47 CFR § 73.3584.

<sup>30</sup> 47 U.S.C. § 309(d)(1); 47 CFR § 1.16 (allowing unsworn declaration under penalty of perjury in lieu of a sworn affidavit in certain circumstances).

<sup>31</sup> *See, e.g., Entercom License, LLC, Hearing Designation Order*, 31 FCC Rcd 12196, 12205 (2016) (*Entercom*); *Sagittarius Broadcasting Corp.*, Memorandum Opinion and Order, 18 FCC Rcd 22551 (2003); *CHET-5 Broadcasting, L.P.*, Memorandum Opinion and Order, 14 FCC Rcd 13041 (1999); *Office of Communications of the United Church of Christ v. FCC*, 359 F.2d 994 (D.C. Cir. 1966) (*United Church of Christ*).

<sup>32</sup> *Entercom*, 31 FCC Rcd at 12206.

<sup>33</sup> *United Church of Christ*, 359 F.2d at 1003 (citing *FCC v. Sanders Radio Station*, 309 U.S. 470 (1940)); *see also Rainbow/Push v. FCC*, 330 F.3d 539, 543 (D.C. Cir. 2003).

Petition.<sup>34</sup> These assertions are supported by the member declaration of Carlos E. Vasquez, who attests, under penalty of perjury, that he is the founder of LXEM and that he personally resides within the Los Angeles metropolitan area and listens to the LBI broadcast stations located there. LXEM, therefore, has organizational standing as a party in interest with respect to the stations in the Los Angeles market. The transaction set forth in the Applications, however, involves the assignment of stations in several markets. The lone declaration of Mr. Vasquez fails to establish standing, either individual or organizational, outside of Los Angeles; in those markets we will treat LXEM as an informal objector.<sup>35</sup>

9. *Standard of Review.* For the reasons discussed below, we find that grant of the Applications is in the public interest. Section 310(d) of the Act provides that no station license shall be transferred or assigned until the Commission, upon application, determines that the public interest, convenience, and necessity will be served thereby.<sup>36</sup> In making this assessment, the Commission must first determine whether the proposed transaction would comply with the specific provisions of the Act, other applicable statutes, and the Commission's rules.<sup>37</sup> If the transaction would not violate a statute or rule, the Commission considers whether it could result in public interest harms by substantially frustrating or impairing the objectives or implementation of the Act or related statutes.<sup>38</sup> If the Commission is unable to find that the proposed transaction serves the public interest, or if the record presents a substantial and material question of fact as to whether the transaction serves the public interest, Section 309(e) of the Act requires that the applications be designated for hearing.<sup>39</sup>

10. The Commission applies a two-step analysis to a petition to deny (or informal objection) under the public interest standard. First, it must determine whether the pleading contains specific allegations of fact sufficient to show that granting the application would be *prima facie* inconsistent with the public interest.<sup>40</sup> This first step "is much like that performed by a trial judge considering a motion for

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<sup>34</sup> Petition, at 2.

<sup>35</sup> In broadcast transactions that involve multiple markets, an organization must submit a member declaration/affidavit for each market in which the organization claims standing; failure to do so will result in the pleading being treated as an informal objection in markets for which there is no member declaration/affidavit. *Applications of Tribune Media Company (Transferor) and Nexstar Media Group, Inc. (Transferee) et al.*, Memorandum Opinion and Order, FCC 19-89, para. 25 (Sept. 16, 2019); *see also Applications to Transfer Control of License Subsidiaries of Media General, Inc., to Nexstar Broadcasting, Inc.*, Memorandum Opinion and Order, 32 FCC Rcd 183, 190 (MB/WTB 2017) (organizational standing is "geographically limited to the market with respect to which viewer membership is identified in its declaration").

<sup>36</sup> 47 U.S.C. § 310(d).

<sup>37</sup> *See, e.g., SBC-AT&T Order*, 20 FCC Rcd at 18300, para. 16.

<sup>38</sup> *Id.*

<sup>39</sup> 47 U.S.C. § 309(e); *see also General Motors Corporation and Hughes Electronics Corporation, Transferors, and the News Corporation Limited, Transferee*, 19 FCC Rcd 473, 483, para. 15 n.49 (2004); *Application of EchoStar Communications Corporation, General Motors Corporation, and Hughes Electronics Corporation and EchoStar Communications Corporation*, Hearing Designation Order, 17 FCC Rcd 20559, 20574, para. 211 (2002).

<sup>40</sup> 47 U.S.C. § 309(d)(1); *Astroline Communications Co., Ltd. Partnership v. FCC*, 857 F.2d 1556 (D.C. Cir. 1988) (*Astroline*). *See, e.g., WWOR-TV, Inc.*, Memorandum Opinion and Order, 6 FCC Rcd 193, 197 note 10 (1990), *aff'd sub nom. Garden State Broadcasting L.P. v. FCC*, 996 F.2d 386 (D.C. Cir. 1993), *rehearing denied* (Sep. 10, 1993); *Area Christian Television, Inc.*, Memorandum Opinion and Order, 60 RR 2d 862, 864 (1986) (informal objection must contain adequate and specific factual allegations sufficient to warrant the relief requested).

directed verdict: if all the supporting facts alleged in the [petition] were true, could a reasonable factfinder conclude that the ultimate fact in dispute had been established.”<sup>41</sup> If the pleading meets this first step, the Commission then must determine whether “on the basis of the application, the pleadings filed, or other matters which [the Commission] may officially notice,” the petitioner has raised a substantial and material question of fact as to whether the application would serve the public interest.<sup>42</sup> A substantial and material question is raised when “the totality of the evidence arouses a sufficient doubt . . . that further inquiry is called for.”<sup>43</sup>

11. *Section 310(d) Analysis.* LXEM fails to include in its Objection specific allegations of fact sufficient to show that grant of the Applications would be *prima facie* inconsistent with the public interest. In raising its “concern” about the character qualifications of LBI and HPS, LXEM does not make allegations of which it has personal knowledge, nor does it claim these allegations are based on facts of which official notice can be taken; rather, it seeks to appropriate the unspecified allegations of unnamed “junior noteholders” in the LBI bankruptcy proceeding, allegations that were withdrawn (and thus were never adjudicated) when those same parties agreed to the Plan that was ultimately approved by the Bankruptcy Court.<sup>44</sup> Indeed, LXEM merely claims that the “allegations, if true,” demonstrate that LBI and HPS lack the requisite character qualifications to be Commission licensees.<sup>45</sup> It cannot bootstrap the Section 309(d) evidentiary burden in this manner. Moreover, as even LXEM appears to acknowledge by citing the relevant decision on the matter, the allegations of fraud and insider trading involve unadjudicated FCC misconduct and as such do not raise character qualifications issues.<sup>46</sup> Accordingly, such allegations do not form a basis for setting the Applications for hearing.

12. Finally, LXEM’s request that the Commission withhold action on the Applications unless the Spanish language programming offered on the LBI stations remains unchanged is beyond our

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<sup>41</sup> *Gencom, Inc. v. FCC*, 832 F.2d 171, 181 (D.C. Cir. 1987).

<sup>42</sup> *Astroline*, 857 F.2d at 1561; 47 U.S.C. § 309(e).

<sup>43</sup> *Citizens for Jazz on WRVR, Inc. v. FCC*, 775 F.2d 392, 395 (D.C. Cir. 1985) (*Citizens for Jazz*). The DC Circuit has made clear that the two steps of the statutory inquiry “are typically made concurrently. *Mobile Commc’ns Corp. of Am. v FCC*, 77 F.3d 1399, 1410 (D.C. Cir. 1996) (quoting *Citizens for Jazz*, 775 F.2d at 394). That is, the Commission ordinarily does not consider separately whether a pleading makes out a *prima facie* case for denial of the application because “a negative resolution of the second question alone [whether the record presents a substantial and material question of fact that warrants further inquiry in a hearing] makes the first question moot.” *Id.*

<sup>44</sup> See, e.g., Order Confirming Third Amended Joint Chapter 11 Plan of Reorganization of LBI Media, Inc. and its Affiliated Debtors at 4, ¶ 7, *In re LBI Media, Inc. et al.*, Case No. 1-18-bk-12655 (Chapter 11) (Bankr. D. Del. Apr. 17, 2019) (Jointly Administered) (“Each of the members of the Junior Noteholder Group, who collectively hold over 90% of Class 4 Claims . . . have agreed to vote to accept the Plan and grant the releases provided in Article X of the Plan”) (*Reorganization Order*).

<sup>45</sup> Petition at 8. Likewise, on August 16, 2019, LXEM supplemented its Objection with an undated letter (Supplement), in which it “seeks to advise the Commission of several actions that have come to light,” stating that it is “LXEM’s understanding that HPS has recently taken actions which amount to its exertion of control over LBI,” actions that, “[i]f true,” violate Section 310 of the Act. Among the actions relayed by LXEM is the hiring of Peter Markham as the Chief Operating Officer of LBI, characterized, without support, as a “demand” of HPS. The applicants filed a response to the Supplement on August 20, 2019, stating that the decision to hire Mr. Markham was made independently by a special committee of the LBI board of directors with the approval of single majority shareholder Lenard Liberman, and providing a sworn declaration from Mr. Markham, who affirms that he is unaware that HPS, or anyone associated with HPS, demanded his hiring; that he is not and never has been an employee of HPS; that he has no commercial relationship with HPS; and that neither HPS, nor anyone associated

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authority. The Commission is prohibited by the First Amendment to the United States Constitution and section 326 of the Act from censoring programs or from interfering with freedom of expression in broadcasting.<sup>47</sup> Further, it is well-settled policy that the Commission does not scrutinize or regulate programming formats, nor does it take potential changes in programming formats into consideration in reviewing assignment applications. In 1976, the Commission issued a Policy Statement in which it concluded that review of program formats was not required by the Act, would not benefit the public, and would deter innovation, as well as impose substantial administrative burdens on the Commission.<sup>48</sup> The Supreme Court of the United States has upheld this policy and the Commission's determination that "the public interest is best served by promoting diversity in entertainment formats through market forces and competition among broadcasters" and that a change in programming is not a material factor that should be considered by the Commission in ruling on applications for approval of license assignments or transfers.<sup>49</sup> Accordingly, we deny the Objection on these issues.

13. *Waiver.* For the reasons discussed below, we grant the waiver requested by the SLF Parties. The Commission's rules may be waived for good cause shown.<sup>50</sup> Waiver of the Commission's rules is appropriate only if special circumstances warrant a deviation from the rule and such deviation will serve the public interest.<sup>51</sup> The Commission may exercise its discretion to waive a rule where the particular facts make strict compliance inconsistent with the public interest.<sup>52</sup> It may also take into account considerations of hardship, equity, or more effective implementation of overall policy on an individual basis.<sup>53</sup>

14. As noted above, the SLF Parties have requested a temporary and limited waiver of section 1.5000(a)(1) of the Commission's rules, which provides that an applicant for a broadcast station license shall file a petition for declaratory ruling to exceed the aggregate foreign ownership benchmark

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with HPS has instructed or induced him to make any decisions with respect to the personnel, programming, or finances of the LBI stations. In a second supplement, filed on September 13, 2019, LXEM provided a copy of an undated article from Brooklyn & Boyle, a print and online magazine that features "stories from the Greater Eastside LA arts scene," <http://www.brooklynboyle.com/p/about> (last visited Sept. 30, 2019), which refers to a letter, dated August 27, 2019, and allegedly filed with the Commission by an anonymous group of "concerned employees" of LBI. That letter, provided in a third supplement filed by LXEM on September 24, 2019, incorrectly refers to Mr. Markham as a board member of HPS and alleges that HPS has "changed the programming line-up of LBI's television network, Estrella TV, and executed talent and management changes" in accord with internal weekly action plans, copies of which were attached to the letter. The applicants responded on September 30, 2019, noting that LXEM had failed to serve counsel with the latest supplement and that the attached corporate documents predate the LBI board's "appointment of Peter Markham to manage the business pending FCC approval of the applications—the event that LXEM has erroneously suggested resulted in a transfer of control." The allegations in these supplements are vague and unsubstantiated, and we reject them.

<sup>46</sup> *Id.* at 7 (citing *Applications of Viacom International, Inc.*, Memorandum Opinion and Order, 12 FCC Rcd 8474, 8481 (1997)). *Policy Regarding Character Qualifications in Broadcast Licensees*, Report, Order, and Policy Statement, 102 FCC 2d 1179 (1986).

<sup>47</sup> U.S. Const., amend. I; 47 U.S.C. § 326.

<sup>48</sup> *See Changes in the Entertainment Formats of Broadcast Stations*, Memorandum Opinion and Order, 60 FCC 2d 858, 865-66 (1976), *recon. denied*, 66 FCC 2d 78 (1977), *rev'd sub nom. WNCN Listeners Guild v. FCC*, 610 F. 2d 838 (D.C. Cir. 1979), *rev'd*, 450 U.S. 582 (1981).

<sup>49</sup> *FCC v. WNCN Listener's Guild*, 450 U.S. at 585.



set forth in section 310(b)(4) of the Act “at the same time that it files its application.”<sup>54</sup> We find that the request is well supported, LXEM’s opposition notwithstanding. It is the Commission’s longstanding practice to accommodate federal bankruptcy law when doing so will not unduly interfere with its public interest obligations under the Act.<sup>55</sup> Likewise, it is the Commission’s policy to “support the bankruptcy laws, and where possible to accommodate them in a manner that is consistent with the Act.”<sup>56</sup> The Bankruptcy Court found that the “Plan has been proposed in good faith and not by any means forbidden by law” and that it “is the result of extensive, good faith, arm’s length negotiations among the Debtors and their principal constituencies.”<sup>57</sup> Prompt emergence from bankruptcy is critical to the continued operation of the LBI stations in the public interest, and facilitating prompt emergence “advances the public interest by providing economic and social benefits, especially including the compensation of innocent creditors.”<sup>58</sup> Moreover, grant of the waiver effectively provides interim section 310(b)(4) authority only, in order to enable the prompt emergence of the LBI Debtors from bankruptcy, while preserving the Commission’s ability to review and rule on LBI’s foreign ownership following such emergence.<sup>59</sup> In this case, deferring emergence from bankruptcy pending that review would likely require substantial delay that would otherwise frustrate the Commission’s foregoing policy of accommodating the policies of the federal bankruptcy laws.

15. We also find LXEM’s objections to the waiver request to be unavailing. Contrary to its assertion, grant of the waiver request would not permit the applicants to “sidestep” foreign ownership disclosure obligations. Rather, as we have already stated, it would merely enable the LBI Debtors to emerge from bankruptcy before filing a petition for declaratory ruling, and, by filing such a petition as required by the terms of the waiver, the LBI Debtors will remain in compliance with the Commission’s rules,<sup>60</sup> as required by the Bankruptcy Court.<sup>61</sup> Moreover, the lack of “some sort of timeframe expressly

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<sup>50</sup> 47 CFR § 1.3.

<sup>51</sup> *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969) (*WAIT Radio*); *Network IP, LLC v. FCC*, 548 F.3d 116, 125-128 (D.C. Cir. 2008).

<sup>52</sup> *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990).

<sup>53</sup> *WAIT Radio*, 418 F.2d at 1157.

<sup>54</sup> 47 CFR § 1.5000(a)(1).

<sup>55</sup> *Maritime Communications/Land Mobile, LLC*, 31 FCC Rcd 13729, 13737-38 (2016); *LaRose v. FCC*, 494 F.2d 1145, 1146-48 & n.2 (D.C. Cir. 1974).

<sup>56</sup> *Stanford Springel As Chapter 11 Trustee for the Bankruptcy Estate of Innovative Communication Corporation, Transferor and Assignor, and National Rural Utilities Cooperative Finance Corporation and Its Subsidiaries, Transferees and Assignees*, 24 FCC Rcd 14360, 14369, para. 19 (WCB/MB/WTB/IB 2009) (*Innovative Order*).

<sup>57</sup> *Reorganization Order* at 3, ¶ 5.

<sup>58</sup> *Worldcom, Inc.*, 18 FCC Rcd 26484, 26503, para. 29 (2003).

*See also LaRose v. FCC*, 494 F.2d 1145, 1146 n2 (D.C. Cir. 1974) (in applying its policies where an application arises from bankruptcy, the Commission should consider “the public interest in the protection of innocent creditors”).

<sup>59</sup> *Mobile Satellite Ventures Subsidiary LLC and SkyTerra Communications Inc., Petition for Declaratory Ruling Under Section 310(b)(4) of the Communications Act, as Amended*, Order and Declaratory Ruling, 23 FCC Rcd 4436, (continued....)

imposed by the Bankruptcy Court<sup>62</sup> for obtaining Commission consent to the Applications does not inform our processing standards or, in any way, limit our authority to waive our rules where good cause to do so has been shown. And, as noted above, prompt grant of the Applications, subject to waiver, will expedite LBI Debtors' emergence from bankruptcy and facilitate operational improvements made possible by new ownership. Accordingly, in consideration of the specific circumstances before us, we grant the waiver request.

#### IV. CONCLUSION

16. We have reviewed the Applications. In light of the above discussion, we find that the applicants are fully qualified and conclude that the grant of the Applications, conditioned upon the filing of a petition for declaratory ruling within 30 days of closing on the transaction described therein, would serve the public interest.

#### V. ORDERING CLAUSES

17. Accordingly, **IT IS ORDERED** that the Petition to Deny Or, In the Alternative, Informal Objection filed by Latinx for Equitable Media on July 10, 2019, **IS DENIED**.

18. **IT IS FURTHER ORDERED** that the request for a temporary waiver of section 1.5000(a)(1) of the Commission's rules, 47 CFR § 1.5000(a)(1), **IS GRANTED**.

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4444, para. 18 (2008) (granting the petitioners authority to hold on an interim basis up to a non-controlling 49.99% equity and voting interest in SkyTerra Communications subject to and without prejudice to any action the Commission may take on the associated request for permanent authority). We note that the Commission staff frequently works with applicants and licensees to address and resolve impediments to identifying ownership interests. *See* 2016 Foreign Ownership Order, 31 FCC Rcd 11272, 11312, para. 88, n.224; *cf.* 47 CFR § 1.5004(f) (providing that a licensee that learns of an investment that renders the licensee non-compliant with its foreign ownership ruling or the Commission's rules relating to foreign ownership must file a petition for declaratory ruling or take other remedial action within 30 days of the date it learned of the non-compliant foreign interest(s)). As is the case with petitions for declaratory ruling filed pursuant to section 1.5004(f)(1), the Commission ultimately may require LBI and/or the SLF Parties to divest certain foreign investments. *Id.*

<sup>60</sup> LXEM's claim that the Warrants "will convert to attributable stock interests upon FCC consent and LBI's emergence from bankruptcy" is incorrect. *See* Reply at 7. The SLF Parties have already committed to file a petition for declaratory ruling so that the Commission can review the foreign ownership status of the Warrants under the Act and the Commission's rules. Furthermore, under the terms of the Warrants, holders may not "exercise any Warrant until all Regulatory Approvals required to be made to or obtained from any Governmental Authority with jurisdiction over [LBI] or its Subsidiaries have been made or obtained," and LBI "may prohibit the exercise of Warrants which may cause more than 25% of [its] outstanding equity interests or the equity of any Subsidiary ... to be directly or indirectly owned or voted by or for the account of aliens or their representatives or by a foreign government or representative thereof or by any corporation or other legal entity organized under the laws of a foreign country ... or by any other entity the equity of which is owned, controlled by, or held for the benefit of, Aliens if such ownership would cause LBI or any of its Subsidiaries to be in violation of the Communications Laws." *See* Warrant Agreement at § 4.3(g). As noted above, the Commission retains the authority, upon review of the petition, to determine that ownership of the Warrants (or any equity interests into which they may be converted) would be inconsistent with the public interest under section 310(b)(4).

<sup>61</sup> *Reorganization Order* at para. 12 ("[N]o provision in the Plan or this Order relieves any Debtor or Reorganized Debtor from its obligation to comply with the Communications Act of 1934, as amended, and the rules, regulations and orders promulgated thereunder by the [Commission].").

<sup>62</sup> Petition at 12.

19. **IT IS FURTHER ORDERED** that the above-captioned applications **ARE GRANTED**, conditioned upon the filing, no later than 30 days after closing the transaction authorized by such grant, of a petition for declaratory ruling to exceed the aggregate foreign ownership benchmark set forth in section 310(b)(4) of the Communications Act of 1934, as amended.

20. These actions are taken pursuant to Section 0.61 and 0.283 of the Commission's rules, 47 CFR §§ 0.61, 0.283, and Sections 4(i) and (j), and 310(d) of the Communications Act of 1934, as amended, 47 U.S.C. § 154(i), 154(j), 310(d).

FEDERAL COMMUNICATIONS COMMISSION

Barbara A. Kreisman  
Chief, Video Division  
Media Bureau