

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

In the Matter of)	
)	
Zoo Communications, LLC and	)	WZFL(FM), Islamorada, FL
Anco Media Group, LLC	)	Facility ID No. 189556
	)	File No. BTCH-20171128AAW
Applications for Consent to Transfer of Control of)	
Licenses	)	WBGF(FM), Belle Glade, FL
	)	Facility ID No. 59661
and	)	File No. BTCH-20171128AAX
)	
Petition for Declaratory Ruling Under Section	)	W228BY, Miami, FL
310(b)(4) of the Communications Act of 1934, as	)	Facility ID No. 140483
Amended	)	File No. BTCFT-20171128AAZ
)	
	)	MB Docket 17-359
)	

DECLARATORY RULING AND MEMORANDUM OPINION AND ORDER

Adopted: February 22, 2019

Released: February 22, 2019

By the Chief, Audio Division, Media Bureau:

I. INTRODUCTION

1. In this *Declaratory Ruling and Memorandum Opinion and Order*,¹ the Media Bureau (Bureau) addresses a petition for declaratory ruling (DR Petition) filed by Zoo Communications, LLC (Zoo) and Anco Media Group, LLC (Anco) (collectively, the Petitioners) on November 28, 2017. The Petition was filed in connection with the above-captioned applications (Applications), seeking Commission consent to the transfer of control of Zoo, the licensee of three Florida stations,² from the current members to Anco, a Florida limited liability company owned by four Italian citizens. The Petition asks the Commission to exercise its discretion to permit Anco, the proposed new parent company of Zoo, to exceed the 25 percent foreign ownership benchmark set out in Section 310(b)(4) of the Communications Act of 1934, as amended, (the Act),³ pursuant to Section 310(b)(4), Sections 1.5000 *et*

¹ Hereinafter referred to as *Declaratory Ruling*.

² Zoo is the licensee of stations WZFL(FM), Islamorada, Florida, WBGF(FM), Belle Glade, Florida, and W228BY, Miami, Florida (collectively, the Stations). Zoo was the licensee of FM translator W228BV, Fort Lauderdale, Florida. On September 27, 2018, the Audio Division cancelled the W228BV license at Zoo’s request.

³ 47 U.S.C. § 310(b)(4) (Section 310(b)(4)).

seq. of the Commission's rules,⁴ and the Commission's recent *Foreign Ownership Order*.⁵ JVC Media of South Florida, LLC (JVC)⁶ filed Comments on the DR Petition on January 18, 2018.⁷

2. In addition to the Petition, we address the Applications seeking Commission consent to the transfer of control of the licenses of WZFL(FM), WBGF(FM), and W228BY from the current members to Anco. We also consider JVC's Petition to Deny the Applications (JVC Petition) filed January 2, 2018.⁸ For the reasons set forth below, we find that it will serve the public interest to grant Zoo and Anco's DR Petition, subject to the conditions specified below. We also deny the JVC Petition and grant the Applications.

II. BACKGROUND

3. *Foreign Ownership of Anco.* The DR Petition seeks authority for Anco, a Florida limited liability company, to hold a 100 percent voting and equity interest in Zoo. Zoo would be 100 percent owned by new U.S. parent company Anco, which, in turn, is owned by four members, who are citizens of Italy: Claudio Castiglioni Dompe (40 percent voting and equity interest); Marco Mazzoli (40 percent voting and equity interest); Claudia Castiglioni Dompe (10 percent voting and equity interest); and Stefania Pittaluga (10 percent voting and equity interest).⁹

4. Zoo and Anco assert that grant of the DR Petition is in the public interest because it would facilitate foreign investment from a new source of capital "to a recent entrant in an important U.S. broadcast radio market, which listenership is composed of a substantial number of minority individuals."¹⁰ In support of the DR Petition, Zoo and Anco note that Marco Mazzoli currently serves as General Manager and Marketing Director for Zoo's stations and programs a popular radio show he created in Italy (The 105 Zoo) on the stations.¹¹ The Petitioners maintain that Italian ownership poses no national security or other threat to the United States, given the "friendly, non-threatening relationship between the United States and Italy over the past 60 years."¹² Further, the Petitioners contend that grant of the DR Petition would further the Commission's goals of encouraging foreign investment and

⁴ 47 CFR §§ 1.5000 *et seq.*

⁵ *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 (2016) (2016 *Foreign Ownership Order*), *pet. for recon. dismissed*, 32 FCC Rcd 4780 (2017); *see also Commission Policies and Procedures under Section 310(b)(4) of the Communications Act, Foreign Investment in Broadcast Licensees*, Declaratory Ruling, 28 FCC Rcd 16244 (2013) (2013 *Broadcast Clarification Ruling*).

⁶ JVC is the licensee of WSWN(AM), Belle Glade, Florida; JVC also assigned the WBGF(FM) license to Zoo in 2017. *See* FCC File No. BALH-20170526AAY. That transaction was granted on July 27, 2017, and consummated on August 1, 2017.

⁷ On December 19, 2017, the Bureau released a Public Notice, seeking comment on the DR Petition. *See Zoo Communications, LLC and Anco Media Group, LLC Seek Foreign Ownership Ruling*, Public Notice, 32 FCC Rcd 10387 (MB 2017). JVC filed responsive Comments on January 18, 2018. Zoo filed Reply Comments on February 2, 2018.

⁸ On December 1, 2017, the Bureau released a Public Notice, announcing that the Zoo Applications were accepted for filing. *See Broadcast Applications*, Public Notice, Report No. 29123 (2017). Zoo filed an Opposition to the JVC Petition to Deny on January 29, 2018. JVC filed a Reply to the Opposition to Petition to Deny on February 5, 2018.

⁹ Claudia Castiglioni Dompe is the daughter of Claudio Castiglioni Dompe; Stefania Pittaluga is the wife of Marco Mazzoli. *See* DR Petition at 10.

¹⁰ DR Petition at 19.

¹¹ *Id.* at 8.

¹² *Id.* at 18.

ownership diversity in U.S. broadcast stations while also potentially encouraging reciprocal investment opportunities for U.S. companies in foreign markets.¹³ Finally, the Petitioners assert that it would not implicate any homeland security issues or concerns to allow the indirect ownership of stations by only four Italian citizens, “including one who stands ready and able to operate the stations based on his knowledge and expertise in broadcasting achieved over a lifetime, ... [and] immediate experience successfully operating these very stations.”¹⁴

5. On January 18, 2018, the Commission received a submission from the U.S. Department of Justice (DOJ), with the concurrence of the U.S. Department of Defense (DOD) and U.S. Department of Homeland Security (DHS) (collectively, the Agencies).¹⁵ In that filing, the Agencies requested that the Commission defer action on the Applications and DR Petition until they had completed their review of any national security, law enforcement, or public safety implications. Subsequently, on January 29, 2019, the DOJ submitted a Petition to Adopt Conditions.¹⁶ The filing states that the DOJ has no objection to grant of the Applications and DR Petition provided that the Commission conditions its approval on the compliance by Anco and Zoo with the commitments and undertakings set forth in the January 29, 2019, Letter of Agreement (LOA) between Anco, Zoo and the DOJ.¹⁷

6. *Transfer of Control Application and JVC Petition.* Three members currently hold interests in the licensee, Zoo: Marcella Manca (40 percent voting and equity interest), Kimberly Bianchini Scudellari (40 percent voting and equity interest), and Claudio Castiglioni Dompe (20 percent voting and equity interest).¹⁸ In the Applications, Zoo seeks Commission consent to transfer control of its station licenses from the current three members to Anco, a U.S. company owned by four Italian citizens, including Marco Mazzoli.¹⁹ Although Mazzoli currently serves as Manager of Zoo and General Manager and Marketing Director for Zoo’s stations, he does not currently hold any equity or voting interest in the licensee.²⁰

7. The Purchase Agreement, attached as an exhibit to the Applications, provides that “in

¹³ *Id.* at 20.

¹⁴ As noted above, Marco Mazzoli created the radio show “Lo Zoo di 105” (The 105 Zoo), which became “the most popular radio show in Italy, achieving the highest ratings in Italian radio history” and has extensive experience in producing radio and television shows. DR Petition at 12. Mr. Mazzoli holds permanent residence status in the United States, along with his wife Stefania Pittaluga, since moving back to the United States in 2011 to create his own studio to broadcast The 105 Zoo for his Italian audience. *Id.* at 11-12. Claudio Castiglioni Dompe has been a “successful businessman,” founding both an insurance brokerage firm, which “developed rapidly and became an industry leader,” and a real estate investment and consulting company. *Id.* at 14. Claudia Castiglioni Dompe has “considerable business experience” in real estate investment and sales and currently attends the Miami Ad School as a full-time student “in order to improve her marketing skills.” *Id.* at 15. We note that in its Comments to the DR Petition, JVC does not address the merits of Zoo’s DR Petition for foreign ownership. Rather, in the Comments, which are identical to its Petition to Deny the Applications, JVC raise issues regarding the current *de facto* ownership of Zoo and the proposed transaction. *See infra* para. 8.

¹⁵ Letter from Bermel R. Paz, National Security Division, U.S. Department of Justice, to Marlene H. Dortch, Secretary, FCC, MB Docket No. 17-359 (January 18, 2018).

¹⁶ Petition to Adopt Conditions to Authorizations and Licenses of the U.S. Department of Justice, MB Docket No. 17-359 (filed January 29, 2019) (Petition to Adopt Conditions).

¹⁷ Letter from Aaron P. Shainis, Counsel for Anco Media Group, LLC and Zoo Communications, LLC, to Assistant Attorney General for National Security, DOJ (January 29, 2019) (LOA).

¹⁸ Marcella Manca and Kimberly Bianchini Scudellari are each U.S. citizens. Claudio Castiglioni Dompe is a citizen of Italy.

¹⁹ Claudio Castiglioni Dompe, a current 20 percent owner of Zoo, founded Anco with Marco Mazzoli in 2015.

²⁰ DR Petition at 8, 13.

consideration for the sale of the principal's of Seller's entire ownership in Zoo, Buyer [Anco] hereby releases and discharges Seller [Zoo] ... from any and all claims, demands or causes of action, known or unknown, which Seller and its principals may now have or may hereafter have arising from those agreements listed in Schedule A to this Agreement."²¹ In addition, the Purchase Agreement specifies that Anco shall pay to Zoo the amount of one million dollars pursuant to a promissory note.²²

8. In its Petition JVC questions whether Zoo's putative ownership "ever reflected reality or was always a convenient sham designed to evade legal limits of foreign ownership."²³ Specifically, JVC alleges that Marco Mazzoli "has been running Zoo's business, though without any theoretical ownership interest."²⁴ To support its allegations, JVC emphasizes that the Purchase Agreement indicates that all of the monetary consideration for the transaction is to be paid to Zoo, and that two current members of Zoo, who hold an 80 percent voting and equity interest, "will have their membership interests taken away and sold to Anco, but will receive nothing in return."²⁵ JVC also notes that "Schedule A," a "key schedule to the Purchase Agreement," describing the portion of the consideration related to releases from existing contracts, is missing.²⁶ Finally, JVC also bases its conclusions on the fact that Mazzoli is an experienced broadcaster while "the two U.S. citizen members, who together have *de jure* control of Zoo appear not to be in the broadcasting business."²⁷

9. In its January 28, 2018, Opposition, Zoo does not address the merits of JVC's allegations, but rather, argues that JVC's pleadings constitute an improper abuse of the Commission's processes to "advance its own private agenda in non-FCC related state civil litigation."²⁸ On September 21, 2018, however, Zoo submitted documents to supplement the record and clarify its current ownership and operation and the proposed transaction.²⁹

10. *Legal Standards: Section 310(b)(4) Foreign Ownership Review.* We review the foreign ownership of Anco, the proposed new parent company of Zoo, under Section 310(b)(4) of the Act, which states that "[n]o 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

²¹ See Purchase Agreement at Section 1.2, Sale and Purchase.

²² *Id.*

²³ JVC Petition at 2.

²⁴ *Id.* at 5.

²⁵ *Id.* at 4.

²⁶ *Id.* at 2.

²⁷ *Id.* at 5. JVC asserts that the current members "extraordinary willingness to step aside calls into question whether Ms. Manca and Ms. Scudellari were ever anything more than window dressing that would allow Mr. Mazzoli, the experienced broadcaster, actually to run the show behind the scenes." *Id.* at 7.

²⁸ Zoo Opposition at 4. JVC filed suit against Zoo in the Circuit Court of the 15th Judicial Circuit for Palm Beach County, Florida, regarding Zoo's default in making payments under contracts assumed from JVC in connection with the assignment of the license for Station WBGF(FM). See *JVC Media of South Florida v. Zoo Communications, LLC*, Case No. 502017CA01275XXXXMB. On April 30, 2018, JVC and Zoo reached a Settlement Agreement, pursuant to which Zoo agreed to pay \$54,000 to JVC in order to resolve all disputes and issues in connection with the court litigation. On May 24, 2018, JVC filed a notice with the Circuit Court to voluntarily dismiss the suit with prejudice.

²⁹ See Letter from Aaron P. Shainis, Esq., Counsel for Zoo, to Albert Shuldiner, Chief, Audio Division, Media Bureau, dated September 21, 2018 (Zoo September 2018 Supplement).

the public interest will be served by the refusal or revocation of such license.”³⁰

11. In the *2013 Broadcast Clarification Ruling*, the Commission clarified the policies and procedures for evaluating potential foreign investment in broadcast licensees under Section 310(b)(4) of the Act.³¹ Subsequently, in the *2016 Foreign Ownership Order*, the Commission modified the broadcast licensee foreign ownership review process by extending the streamlined rules and procedures developed for review of foreign ownership of common carrier and certain aeronautical licensees under Section 310(b)(4) to the broadcast context, with certain limited exceptions.³² Further, in evaluating petitions relating to foreign ownership, the Commission affords appropriate deference to the expertise of the Executive Branch agencies on issues related to national security, law enforcement, foreign policy, and trade policy.³³

12. The Commission has explained that in the context of the Section 310(b)(4) review for broadcast licensees, the 25 percent benchmark “is only a trigger for the exercise of our discretion, which we then exercise based upon a more searching analysis of the circumstances of each case.”³⁴ Moreover, the *2016 Foreign Ownership Order* expressly provides for processing of petitions involving 100 percent foreign ownership of a broadcast licensee’s parent,³⁵ such as here. To exercise in a meaningful way the discretion conferred by statute, the Commission must receive detailed information from the applicant sufficient for the Commission to make the public interest finding the statute requires.³⁶

13. Section 310(d) Public Interest Review. Section 310(d) of the Act³⁷ provides that no station license shall be transferred or assigned until the Commission determines that the public interest, convenience, and necessity will be served.³⁸ In making this assessment, the Commission must first determine whether the proposed transaction would comply with the Act, other applicable statutes, and the rules.³⁹ 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, Section 309(e) of the Act requires that the

³⁰ 47 U.S.C. § 310(b)(4).

³¹ See *2013 Broadcast Clarification Ruling*, *supra* note 5.

³² *2016 Foreign Ownership Order*, *supra* note 5.

³³ See *2013 Broadcast Clarification Order*, 28 FCC Rcd at 16251, para. 14; *2016 Foreign Ownership Order*, 31 FCC Rcd at 11277, para. 6.

³⁴ *2013 Broadcast Clarification Order*, 28 FCC Rcd at 16249-50, para. 11. The Commission recognized that “changes have occurred in the media landscape and marketplace since the foreign ownership restriction was enacted and that limited access to capital is a concern in the broadcast industry, especially for small business entities and new entrants, including minorities and women.” *Id.* at 10.

³⁵ *2016 Foreign Ownership Order*, 31 FCC Rcd at 11282, para. 15.

³⁶ *2013 Broadcast Clarification Order*, 28 FCC Rcd at 16250, para. 11. Following the issuance of the *2013 Broadcast Clarification Ruling*, the Commission granted a petition for declaratory ruling filed by Pandora Radio LLC, a publicly traded company, to exceed the 25 percent foreign ownership benchmark set out in Section 310(b)(4). *Pandora Radio LLC Petition for Declaratory Ruling Under Section 310(b)(4) of the Communications Act of 1934, as Amended*, Declaratory Ruling, 30 FCC Rcd 5094, 5095-96, para. 4 (2015) (*Pandora Declaratory Ruling*), *recon denied*, 30 FCC Rcd 10570 (2015). Subsequently, the Bureau granted two petitions for declaratory ruling allowing aggregate foreign investment of 49 percent in the controlling U.S. parent companies of two broadcast licensees, and a petition for declaratory ruling permitting 100 percent foreign ownership of the controlling U.S. parent company of a broadcast licensee. See *Univision Holdings, Inc.*, Declaratory Ruling, 32 FCC Rcd 6 (2017) (permitting aggregate foreign ownership of 49 percent voting and equity interests); *Hemisphere Media Group, Inc.*, Declaratory Ruling, 32 FCC Rcd 718 (2017) (permitting up to 49.99 percent aggregate foreign ownership); *Frontier Media*, Memorandum Opinion and Order and Declaratory Ruling, 32 FCC Rcd 1427 (2017) (permitting 100 percent foreign ownership of the licensee’s parent company). See also *Corvex Master Fund LP*,

(continued....)

Applications be designated for hearing.⁴⁰

III. DISCUSSION

14. *Foreign Ownership Declaratory Ruling.* We find that grant of this DR Petition is in the public interest.⁴¹ Specifically, we find that grant of the DR Petition is likely to: (1) increase the likelihood of continued service to the Stations' communities by authorizing the transfer of control of the stations' licenses to a company owned by individuals who are ready, willing, and able to operate the Stations based on their current involvement and extensive broadcasting experience; (2) facilitate foreign investment in the U.S. broadcast radio market; and (3) potentially encourage reciprocal investment opportunities for U.S. companies in foreign markets. Accordingly, we grant the DR Petition subject to the conditions set out below.

15. As stated above, the Petitioners propose 100 percent foreign ownership of Anco, which would be the new U.S. parent company of Zoo, the licensee of FM stations WZFL(FM) and WBGF(FM) and FM translator W228BY. Upon review of the facts and circumstances set out in the DR Petition, and pursuant to the procedures adopted in the *2016 Foreign Ownership Order*, we find that the public interest would not be served by prohibiting foreign ownership of Anco, the proposed new U.S. parent company of Zoo, the current licensee of three Florida broadcast stations, in excess of the 25 percent benchmark in Section 310(b)(4) of the Act. Specifically, this *Declaratory Ruling* grants, pursuant to Section 1.5000(a) of the rules, the Petitioner's request for specific approval for 100 percent of the equity and voting interests in Anco to be held by four Italian citizens: Claudio Castiglioni Dompe (40 percent), Marco Mazzoli (40 percent), Claudia Castiglioni Dompe (10 percent), and Stefania Pittaluga (10 percent).⁴² This *Declaratory Ruling* also grants advance approval for investors Claudio Castiglioni Dompe, Marco Mazzoli, Claudia Castiglioni Dompe, and Stefania Pittaluga to increase their voting and equity interest up to any non-controlling interest not to exceed 49.9 percent.⁴³

16. Following the procedures outlined in the *2013 Broadcast Clarification Ruling* and *2016 Foreign Ownership Order*, we have consulted with the relevant Executive Branch Agencies with expertise on issues related to national security, law enforcement, foreign policy, and trade policy.⁴⁴ The DOJ has filed a letter with the Commission stating that it has no objection to grant of the request, provided that the Commission conditions its approval on the compliance by Anco and Zoo with the commitments and undertakings set forth in the January 29, 2019, LOA between Anco, Zoo, and the

(Continued from previous page)

Declaratory Ruling, 32 FCC Rcd 1352 (2017) (permitting Corvex to increase its non-controlling voting and equity interest in Pandora up to 14.99 percent); *Grupo Multimedia LLC*, Declaratory Ruling and Memorandum Opinion and Order, 2018 WL 2040290 (2018) (permitting 100 percent foreign ownership in the licensee's parent company); *Border Media Licenses*, Declaratory Ruling and Memorandum Opinion and Order, 2018 WL 4103649 (2018) (permitting 100 percent foreign ownership in the proposed new licensee's parent company).

³⁷ 47 U.S.C. § 310(d).

³⁸ Section 310(d) requires that the Commission consider any such applications as if the proposed transferee were applying for the license directly. See 47 U.S.C. § 310(d); *SBC Communications, Inc.*, Memorandum Opinion and Order, 20 FCC Rcd 18290, 18300, para. 16 (2005) (*SBC Order*).

³⁹ See, e.g., *SBC Order*, 20 FCC Rcd at 18300, para. 16.

⁴⁰ 47 U.S.C. § 309(e).

⁴¹ In its Comments to the DR Petition, JVC raised concerns that Mazzoli had *de facto* control of the licensee. That issue is relevant to the Applications rather than the DR Petition, and is discussed in detail below.

⁴² See 47 CFR § 1.5000(a).

⁴³ See DR Petition at 17.

⁴⁴ See, e.g., *Pandora Declaratory Ruling*, 30 FCC Rcd at 5096, para. 5.

DOJ.⁴⁵

17. We grant the Petition to Adopt Conditions filed in this proceeding on January 29, 2019, by the DOJ. We also condition grant of this DR Petition on compliance by Zoo and Anco with the commitments and undertakings set forth in the LOA.⁴⁶ A failure to comply and/or remain in compliance with any of these commitments and undertakings shall constitute a failure to meet a condition of this ruling and the underlying licenses and thus grounds for declaring them terminated without further action on the part of the Commission. Failure to meet a condition of this ruling may also result in monetary sanctions or other enforcement action by the Commission.⁴⁷

18. In addition to compliance with the terms of the LOA, this ruling is also subject to the terms and conditions set forth in Section 1.5004 of the Commission's rules, including the requirement to obtain Commission approval before foreign ownership of Zoo and Anco exceeds the terms and conditions of this ruling. If, at any time, Zoo and Anco know, or have reason to know, that they are no longer in compliance with this *Declaratory Ruling*, Section 310(b) of the Act, or the Commission's foreign ownership rules, they shall file a statement with the Commission explaining the circumstances within 30 days of the date that they knew, or had reason to know, that they were no longer in compliance.⁴⁸ Zoo and its controlling U.S. parent, Anco, will be subject to enforcement action by the Commission for such non-compliance, including an order requiring divestiture of the foreign investment.

19. *Transfer of Control Application and JVC Petition to Deny.* Petitions to deny must provide properly supported allegations of fact that, if true, would establish a substantial and material question of fact that grant of an application would be *prima facie* inconsistent with the public interest, convenience, and necessity.⁴⁹ We find that JVC has failed to meet this burden and that grant of the Applications is consistent with the public interest.

20. JVC alleges that although Marco Mazzoli does not hold any ostensible ownership interest in Zoo, Mr. Mazzoli “runs the show behind the scenes”⁵⁰ and his control of the Stations is a “*de facto* reality.”⁵¹ In ascertaining the *de facto* control of a licensee, or whether there has been an unauthorized transfer of control, the Commission employs a tripartite, fact-based test for control within the meaning of Section 310(d) of the Act.⁵² Specifically, we look beyond legal title to examine the policies governing station programming, personnel, and finances.⁵³ Although a licensee or permittee may delegate certain functions on a day-to-day basis, the ultimate responsibility for these three essential station operations is non-delegable.⁵⁴

⁴⁵ See LOA, *supra* note 17.

⁴⁶ *Id.*

⁴⁷ A copy of the Petition to Adopt Conditions and the LOA are publicly available in MB Docket No. 17-359.

⁴⁸ See, e.g., *Pandora Declaratory Ruling*, 30 FCC Rcd at 5103, para. 23. Subsequent actions taken by or on behalf of Zoo and Anco to remedy non-compliance shall not relieve them of the obligation to notify the Commission of the circumstances (including duration) of non-compliance.

⁴⁹ 47 U.S.C. § 309(d).

⁵⁰ JVC Petition at 7.

⁵¹ *Id.* at 3.

⁵² 47 U.S.C. § 309(d) (prohibiting the transfer, assignment or disposal of any construction permit or station license “in any manner, voluntary or involuntary, directly or indirectly ... to any person except upon application to the Commission and upon finding that the public interest convenience, and necessity will be served thereby”).

⁵³ See *WHDH, Inc.*, Memorandum Opinion and Order, 17 FCC 2d 856, 863 (1969), *aff'd sub nom.*, *Greater Boston Television Corp. v. FCC*, 444 F.2d 841 (D.C. Cir. 1970), *cert denied*, 403 U.S. 923 (1971).

⁵⁴ See, e.g., *Secret Communications II*, Memorandum Opinion and Order, 18 FCC Rcd 9139, 9145, para. 16 (2003).

21. JVC's allegation that Marco Mazzoli has *de facto* control over the Stations is premised, in part, on the fact that Mr. Mazzoli is an experienced broadcaster whereas, to its knowledge, the U.S. principals of Zoo, Marcella Manca (Manca) and Kimberly Bianchini Scudellari (Scudellari), have no broadcasting experience. It is undisputed that Mr. Mazzoli has been active and involved in the operation and programming of the Stations through his roles as Manager of Zoo, General Manager of the Stations, and programming the radio show he created, the 105 Zoo, on the Stations. There is no evidence, however, that Mazzoli usurped control over the Stations, as JVC alleges, or that the Zoo principals, Manca, Scudellari, and Dompe, did not retain ultimate authority over station operations. Rather, each principal has confirmed, under penalty of perjury, that they regularly communicate with each other to discuss station operations, review and comment on filings before the Commission, and are active in construction and operating decisions.⁵⁵ Further, Mr. Mazzoli has affirmed, under penalty of perjury, that he worked under, and reported to, the direction and supervision of the controlling principals, Manca, Scudellari, and Dompe.⁵⁶ In contrast, JVC does not submit any probative evidence supporting its speculation that Ms. Manca and Ms. Scudellari were essentially just "window dressing," allowing Mazzoli to "run the show behind the scenes."⁵⁷

22. Moreover, we have reviewed the terms of the Zoo Operating Agreement as well as the Programming Agreement between Zoo and Anco and find that, on their face, the agreements comport with Commission policy. Specifically, it is clear from the terms of the agreements that Zoo's principals have ultimate control over all programming decisions and policies. For example, with respect to programming, although Mazzoli programs the Stations, Section 6 of the Programming Agreement provides Zoo the right to reject, refuse, or substitute programming and full authority, operation, and control over the operation of the Stations and all persons working at the Stations.⁵⁸ There is no evidence that, in practice, the parties' conduct is in not in compliance with the terms of these agreements.⁵⁹

23. Finally, JVC's allegation that the current ownership of Zoo is a "convenient sham" is also premised on the Purchase Agreement, which, according to JVC, indicates that Ms. Manca and Ms. Scudellari, who hold an 80 percent voting and equity interest, "will have their membership interests taken away and sold to Anco, but will receive nothing in return."⁶⁰ Zoo, however, has explained that JVC's

⁵⁵ See, e.g., Manca Declaration, submitted as Attachment 8 to Zoo September 2018 Supplement ("After the station went on the air, I spent a considerable amount of time in discussions with the other principals concerning the operations and improving the signals of the stations."); Scudellari Declaration, submitted as Attachment 8.1 to Zoo September 2018 Supplement (confirming active involvement in meetings and discussions regarding the acquisition, construction, and operation of the stations; stating that "together, along with the other investors, we would discuss matters pertaining to the stations").

⁵⁶ See Mazzoli Declaration, submitted as Attachment 8.2 to Zoo September 2018 Supplement (declaring that "anytime I wanted to do something that was more than something nominal, I would have discussions with Marcella Manca, Kimberly Bianchini Scudellari, and Claudio Dompe ... I was very vigilant in that I wanted to make sure that all decisions were vetted through them.").

⁵⁷ JVC Petition at 7.

⁵⁸ See Section 6 of Local Programming and Marketing Agreement, submitted as Attachment 14.0 to Zoo September 2018 Supplement; see also e.g., *Rocking M Radio*, Letter, 25 FCC Rcd 1322, 1326 (MB 2010) (right of licensee to terminate agreement or reject programming is paramount consideration in Commission's analysis of whether an agreement constitutes transfer of control), citing *Manahawkin Communications*, Memorandum Opinion and Order, 17 FCC Rcd 342, 347, para. 9 (2001).

⁵⁹ We also note that JVC has not provided any evidence that the financial or personnel decisions for the Stations have been improperly dictated by Mazzoli.

⁶⁰ JVC Petition at 4.

suspicion is incorrect.⁶¹ Rather, the money paid to Zoo by Anco pursuant to the promissory note will be divided among the Zoo principals *pro rata* with their equity.⁶² Manca and Scudellari will each receive 40 percent of the sale proceeds. Moreover, Ms. Manca and Ms. Scudellari have each explained, under penalty of perjury, that they were not in positions to put more time and/or money into the Stations, and therefore, voluntarily agreed to the transfer of control.⁶³

24. Accordingly, having reviewed the agreements and the entire record before us, we reject JVC's argument that Mazzoli holds *de facto* control over the Stations and that the putative ownership of Zoo never reflected reality, but was simply a "convenient sham."⁶⁴ Following our routine processing procedures, we have reviewed the subject Applications for compliance with the various statutory and regulatory requirements relating to transfer of control applications. We conclude that grant of the Applications is consistent with the public interest, convenience, and necessity under Section 310(d) of the Act.⁶⁵

IV. ORDERING CLAUSES

25. Accordingly, IT IS ORDERED that, pursuant to Section 310(b)(4) of the Communications Act of 1934, as amended, 47 U.S.C. § 310(b)(4), and pursuant to authority delegated to the Media Bureau in section 0.283 of the Commission's rules, 47 CFR § 0.283, the Petition for Declaratory Ruling filed by Zoo Communications, LLC and Anco Media Group, LLC IS GRANTED to the extent specified in this *Declaratory Ruling* and subject to the conditions specified herein.

26. IT IS FURTHER ORDERED that, pursuant to Sections 4(i)-(j) and 310(b) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i) – (j), 310(b), and Section 1.41 of the Commission's rules, 47 CFR § 1.41, the Petition to Adopt Conditions filed by the U.S. Department of Justice IS GRANTED.

27. IT IS FURTHER ORDERED that, pursuant to Sections 4(i)-(j), 214, 303(r), 309, 310(b), and 310(d) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154 (i)-(j), 214, 303(r), 309, 310(b), and 310(d), grant of the Applications and Petition for Declaratory Ruling is CONDITIONED UPON compliance by Anco Media Group, LLC and Zoo Communications, LLC with the commitments and undertakings set forth in the January 29, 2019, Letter of Agreement between Anco Media Group, LLC, Zoo Communications, LLC, and the U.S. Department of Justice. Any failure to comply and/or remain in compliance with any of these commitments and undertakings shall constitute a failure to meet a condition of the underlying authorizations and licenses and thus grounds for declaring the authorizations and licenses terminated without any further action on the part of the Commission. Failure to meet a condition of the license may also result in monetary sanctions or other enforcement actions by the Commission.

28. IT IS FURTHER ORDERED that, the Petition to Deny, filed January 2, 2018, by JVC

⁶¹ We also note that, at the Bureau's request, Zoo supplied a copy of Schedule A to the Purchase Agreement, which JVC emphasized was missing from the Applications. We have reviewed Schedule A and the entire Purchase Agreement and find nothing untoward.

⁶² See, e.g., Dompe Declaration at Attachment 9.3 to Zoo September 2018 Supplement.

⁶³ See Manca Declaration at Attachment 8 to Zoo September 2018 Supplement ("Quite frankly, the amount of time I was spending on Zoo matters was becoming significant, and I did not feel like I could devote the full amount of time that would be necessary. Furthermore, I saw that I could be financially remunerated as a result of this transaction, and thus, I agreed to it."); Scudellari Declaration at Attachment 8.1 to Zoo September 2018 Supplement ("The stations were not performing well and, absent a significant infusion of money, the stations would be destined for failure. I was in no position to put any more money into this venture, and thus I felt it would be prudent to cut my losses.").

⁶⁴ JVC Petition at 2.

⁶⁵ 47 U.S.C. § 310(d).

Media of South Florida, LLC, IS DENIED.

29. IT IS FURTHER ORDERED that, pursuant to Section 310(d) of the Communications Act of 1934, as amended, 47 U.S.C. § 310(d), and pursuant to authority delegated to the Media Bureau in section 0.283 of the Commission's rules, 47 CFR § 0.283, the applications for the transfer of control of the licenses of WZFL(FM), Islamorada, Florida, WBGF(FM), Belle Glade, Florida, and W228BY, Miami, Florida, from the current members to Anco Media Group, LLC (File Nos. BTCH-20171128AAW, BTCH-20171128AAX, BTCFT-20171128AAZ) ARE GRANTED.

30. IT IS FURTHER ORDERED that this *Declaratory Ruling and Memorandum Opinion and Order* SHALL BE EFFECTIVE upon release.

FEDERAL COMMUNICATIONS COMMISSION

Albert Shuldiner
Chief, Audio Division
Media Bureau