

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

In the Matter of)	
)	
Hemisphere Media Group, Inc.)	MB Docket No. 19-194
)	
Petition for Declaratory Ruling)	
)	

DECLARATORY RULING AND MEMORANDUM OPINION AND ORDER

Adopted: November 18, 2019

Released: November 19, 2019

By the Chief, Video Division, Media Bureau:

1. In this Declaratory Ruling and Memorandum Opinion and Order (Declaratory Ruling), the Media Bureau (Bureau) grants a Petition for Declaratory Ruling (Petition)¹ filed by Hemisphere Media Group, Inc. (HMTV). HMTV requests that the Commission, pursuant to its authority under section 310(b)(4) of the Communications Act of 1934, as amended (the Act),² find that it would be in the public interest to permit foreign investors to own up to 100 percent in the aggregate of both HMTV's equity and voting interests.³ This ruling would supersede HMTV's existing declaratory ruling, discussed below, which (1) permits foreign investors to own up to 49.99 percent in the aggregate of both HMTV's equity and voting interests and (2) provides for specific approval of various foreign entities and individuals to hold up to a 49.99 percent voting interest and up to 49.99 of the company's equity.⁴ In the Petition, HMTV also seeks specific approval of all previously approved foreign investors; HMTV does not seek approval of a change in control and does not seek specific approval of any new foreign investors.⁵ The petition is unopposed. Upon consideration of the record, we find that it will serve the public interest to grant the Petition.

¹ 47 CFR § 1.5000 *et seq.*

² 47 U.S.C. § 310(b)(4).

³ Petition for Declaratory Ruling of Hemisphere Media Group, Inc., MB Docket No. 19-194, at 1 (filed June 3, 2019) (Petition). The Petition was supplemented on July 2, 2019. Supplement to Petition for Declaratory Ruling of Hemisphere Media Group, Inc., MB Docket No. 19-194 (filed July 2, 2019) (Supplement). The Supplement made clear that HMTV was seeking a new ruling under section 1.5000 *et seq.* of the Commission's rules and provided additional information required by those rules. *See generally* Supplement; *see also* 47 CFR §§ 1.5000 *et seq.*

⁴ *Hemisphere Media Group, Inc.*, Declaratory Ruling, 32 FCC Rcd 718 (MB 2017) (2017 Declaratory Ruling); *see also Hemisphere Media Group, Inc.*, Declaratory Ruling, 33 FCC Rcd 8779 (MB 2018) (revising the 2017 Declaratory Ruling to permit Banco Santander (México, S.A.), a Mexican corporation, and affiliated entities, to hold up to 49.99 percent of the voting interests and up to 49.99 percent of the equity of HMTV) (2018 Declaratory Ruling). The 2017 Declaratory Ruling was adopted after the release of the order revising the Commission foreign ownership rules, but before the new rules had gone into effect. *See generally 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). Accordingly, the initial ruling—which incorporates the limited modifications adopted in the 2018 Declaratory Ruling—was issued under the broadcast foreign ownership policy as set forth by the Commission in 2013. *See generally 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). As noted above, the Petition seeks a new ruling under the rules as revised in 2016.

⁵ *See* Petition at 1; Supplement at 2-5.

I. BACKGROUND

2. *Previous Declaratory Ruling.* In the *2017 Declaratory Ruling*, the Bureau, acting on delegated authority, found that the public interest would not be served by refusing to grant HMTV's Petition for Declaratory Ruling⁶ to permit foreign ownership above the 25 percent benchmark in section 310(b)(4) and, specifically, to permit aggregate foreign equity and voting interests in HMTV to increase up to and including 49.99 percent of its voting interests and up to 49.99 of the company's equity.⁷ The *2017 Declaratory Ruling* also specifically approved permitting Cinéma Aerpuerto, its parent entities, and certain descendants of José Joaquín Vargas Gómez, who are members of a trust committee (Trust Committee) that exercises ultimate control over Cinéma Aerpuerto, to hold up to 49.99 percent voting interests and up to 49.99 of the company's equity.⁸

3. At the time of the *2017 Declaratory Ruling*, the Trust Committee exercised its control over Cinéma Aerpuerto through HSBC 61549, a trust organized under the laws of Mexico for the descendants of José Joaquín Vargas Gómez.⁹ The sole trustee of HSBC 61549 was HSBC México, S.A. (HSBC México), a Mexican corporation and indirect, wholly-owned subsidiary of HSBC Holdings, plc, which is organized in the United Kingdom.¹⁰ HSBC México voted the shares of Grupo MVS, S.A. de C.V. (the ultimate corporate parent of Cinéma Aerpuerto) at the direction of the Trust Committee.¹¹

4. HMTV filed a Remedial Petition for Declaratory Ruling in 2018, which was prompted by Cinema Aerpuerto's March 23, 2018, amendment to the Schedule 13D on file with the Securities and Exchange Commission with respect to its investment in HMTV.¹² Cinema Aerpuerto reported that HSBC 61549 had been replaced with Santander Trust Agreement Number 2003914 (the Trust), with Banco Santander (Mexico) as the Trustee.¹³ The new trustee continued to vote the shares of Grupo MVS—the ultimate corporate parent of Cinema Aerpuerto—at the direction of a trust committee, the members of which remained unchanged.¹⁴ In the *2018 Declaratory Ruling*, the Commission granted HMTV's request for specific approval for the following foreign entities to hold up to a 49.9 percent voting and equity interest in HMTV indirectly through Cinema Aerpuerto: Santander Trust Agreement Number 2003914; Banco Santander (México), S.A.; Grupo Financiero Santander México, S.A. de C.V.; and Banco Santander, S.A.¹⁵

5. *New Petition for Declaratory Ruling.* HMTV now seeks a new ruling under the Commission's revised foreign ownership rules to permit foreign investors to own up to 100 percent in the aggregate of both HMTV's equity and voting interests and to provide for specific approval of various

⁶ Petition for Declaratory Ruling of Hemisphere Media Group, Inc., MB Docket No. 16-238 (filed July 8, 2016).

⁷ *2017 Declaratory Ruling*, 32 FCC Rcd at 725, para. 19; see also 47 U.S.C. § 310(b)(4).

⁸ *Id.* at 725, para. 20.

⁹ *Id.* at 719, para. 5.

¹⁰ *Id.*

¹¹ *Id.* The *2017 Declaratory Ruling* identified the immediate parent of Cinéma Aerpuerto as Grupo Frecuencia Modulada Televisión, S.A. de C.V., but the name of the company was changed to Utrera S.A. de C.V. Petition for Remedial Declaratory Ruling of Hemisphere Media Group, Inc., MB Docket No. 18-134, at 7 (filed Apr. 23, 2018) (2018 Petition). Also, HMTV clarified in the 2018 Petition that the trust holds a 98.06 percent interest in Grupo MVS, not the 99.56 percent previously reported. *Id.*

¹² 2018 Petition at 2.

¹³ *Id.* HMTV confirmed with Cinema Aerpuerto and its counsel that there were no other changes to the trust structure other than the replacement of HSBC Mexico by Banco Santander (Mexico). *Id.*

¹⁴ *Id.*

¹⁵ *2018 Declaratory Ruling*, 33 FCC Rcd at 8779, para. 1.

foreign entities and individuals to hold up to a 49.99 percent voting interest and up to 49.99 of the company's equity. The Petition was put out for public comment on July 9, 2019, with comments due August 9, 2019, and replies due on August 26, 2019.¹⁶ No parties have opposed the Petition or asked for conditions to be placed on the requested ruling.¹⁷

II. DISCUSSION

6. *Standard of Review.* We review the Petition 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 the public interest will be served by the refusal or revocation of such license.”¹⁸

7. 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.¹⁹ 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.²⁰ Further, in evaluating petitions relating to foreign ownership, the Commission accords deference to the expertise of the relevant Executive Branch agencies on issues related to national security, law enforcement, foreign policy, and trade policy.²¹

8. 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.”²² Moreover, the *2016 Foreign Ownership Order* expressly provides for processing of petitions involving 100 percent foreign ownership of a broadcast licensee's parent, such as here.²³ To exercise in a meaningful way the

¹⁶ *Media Bureau Announces Filing of Petition for Declaratory Ruling by Hemisphere Media Group, Inc., and Permit-but-Disclose Status for the Proceeding*, Public Notice, DA 19-636 (MB July 10, 2019).

¹⁷ During the comment period, the U.S. Department of Justice requested that the Commission defer action on the Petition while the matter was under review by the Executive Branch. Letter from Lee Licata, Attorney Advisor, National Security Division, U.S. Department of Justice, to Marlene Dortch, Secretary, Federal Communications Commission, MB Docket No. 19-194 (July 12, 2019). On November 15, 2019, the Commission received a letter stating that the reviewing Executive Branch agencies have no objection to the Petition. *See* Letter from Lee Licata, Attorney Advisor, National Security Division, U.S. Department of Justice, to Marlene Dortch, Secretary, Federal Communications Commission, MB Docket No. 19-194 (November 15, 2019).

¹⁸ 47 U.S.C. § 310(b)(4).

¹⁹ *See generally* *2013 Broadcast Clarification Ruling*, 28 FCC Rcd 16244.

²⁰ *See generally* *2016 Foreign Ownership Order*, 31 FCC Rcd 11272.

²¹ *Id.* at 11277, para 6; *see also Rules and Policies on Foreign Participation in the U.S. Telecommunications Market; Market Entry and Regulation of Foreign-Affiliated Entities*, Report and Order and Order on Reconsideration, 12 FCC Rcd 23891, 23919-21, paras. 61-63, 66 (1997), *recon. denied*, 15 FCC Rcd 18158 (2000).

²² *Application of Fox Television Stations, Inc.*, Memorandum Opinion and Order, 10 FCC Rcd 8452, 8472, para. 44 (1995).

²³ *2016 Foreign Ownership Order*, 31 FCC Rcd at 11274, para. 4.

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.²⁴

9. *Public Interest Analysis.* We find that HMTV's request is in the public interest. We previously found that grant of the *2017 Declaratory Ruling*, as modified in the *2018 Declaratory Ruling*, was in the public interest because it was consistent with the Commission's goals, as expressed in both the *2013 Broadcast Clarification Order* and the *2016 Foreign Ownership Order*, to encourage new sources of investment in the broadcast industry, including foreign investment.²⁵ In the Petition, Hemisphere reasserts these public interest benefits²⁶ and emphasizes that the instant request may encourage reciprocity by other countries and lower barriers to U.S. investment abroad, which Hemisphere's existing experience has borne out.²⁷ In the previous review proceedings, as in this proceeding, the relevant Executive Branch agencies with expertise on issues related to national security, law enforcement, foreign policy, and trade policy did not file any objection to issuance of a declaratory ruling or request that we impose conditions on the grant after having had the opportunity to review Hemisphere's petitions.²⁸ As noted above, no parties have opposed the Petition or asked for conditions to be placed on it.

III. DECLARATORY RULING

10. Under these circumstances, pursuant to section 310(b) of the Act and sections 1.5001 through 1.5004 of the Commission's rules, we find that the public interest would not be served by prohibiting foreign ownership of HMTV in excess of the 25 percent benchmark in section 310(b)(4) of the Act because this increased level of foreign investment in HMTV will facilitate investment from new sources of capital in HMTV that would not otherwise be available and encourage reciprocity by foreign governments. Specifically, this ruling, which supersedes all previous rulings, permits aggregate foreign equity and voting interest in HMTV to exceed 25 percent and to increase up to and including 100 percent.

11. *Specific Approval.* We also find no grounds to object to the requests for specific approvals, and we conclude that they will facilitate the foreign investment sought by the petitioner. Therefore, this Declaratory Ruling grants specific approval for the following individuals and entities to hold up to 49.99 percent of the voting interests and 49.99 percent of the equity of HMTV:

- Cinéma Aeropuerto;
- Utrera S.A. de C.V.;
- Grupo MVS, S.A. de C.V.;
- Joaquín Vargas Guajardo;
- Elsa Gabriela Vargas Guajardo;
- Ernesto Vargas Guajardo;
- Andrea Matilde Vargas Guajardo;
- Francisco Vargas Guajardo;

²⁴ See, e.g., *2016 Foreign Ownership Order*, 31 FCC Rcd at 11282, 11283-84, paras. 15, 20 (noting that the requirements adopted in the streamlined foreign ownership rules ensure that the Commission has the information necessary to evaluate and understand a licensee's ownership structure and to fulfill its obligations under section 310(b) of the Act).

²⁵ *2018 Declaratory Ruling*, 33 FCC Rcd at 8781, para. 8; *2017 Declaratory Ruling*, 32 FCC Rcd at 724, para. 18.

²⁶ See Supplement at 5-9.

²⁷ See Petition at 2; Supplement at 5-6.

²⁸ *2018 Declaratory Ruling*, 33 FCC Rcd at 8781, para. 8; *2017 Declaratory Ruling*, 32 FCC Rcd at 724, para. 18.

- Alejandro Vargas Guajardo;
- Santander Trust Agreement Number 2003914;
- Banco Santander (México), S.A.;
- Grupo Financiero Santander México, S.A. de C.V.; and
- Banco Santander, S.A.

12. This ruling is 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 HMTV exceeds the terms and conditions of this ruling.²⁹ If, at any time, HMTV knows, or has reason to know, that it is no longer in compliance with this Declaratory Ruling, section 310(b) of the Act, or the Commission's foreign ownership rules, it shall file a statement with the Commission explaining the circumstances within 30 days of the date that it knew, or had reason to know, that it was no longer in compliance.³⁰ HMTV will be subject to enforcement action by the Commission for such non-compliance, including an order requiring divestiture of the foreign investment.³¹

IV. ORDERING CLAUSES

13. 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 sections 1.5001 through 1.5004 of the Commission's rules, 47 CFR §§ 1.5001-04, 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 Hemisphere Media Group, Inc. **IS GRANTED** to the extent specified in this Declaratory Ruling and subject to the conditions specified herein.

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

FEDERAL COMMUNICATIONS COMMISSION

Barbara A. Kreisman, Chief
Video Division
Media Bureau

²⁹ See generally 47 CFR § 1.5004.

³⁰ See *id.* § 1.5004(f)(1). Subsequent actions taken by or on behalf of HMTV to remedy non-compliance shall not relieve it of the obligation to notify the Commission of the circumstances (including duration) of non-compliance.

³¹ *Id.*; but see *id.* § 1.5004(f)(3) (detailing certain circumstances in which "the Commission does not expect to take enforcement action related to . . . non-compliance").