

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

In the Matter of
Terrier Media Buyer, Inc.
Petition for Declaratory Ruling
MB Docket No. 19-196

DECLARATORY RULING

Adopted: November 22, 2019

Released: November 22, 2019

By the Chief, Media Bureau:

1. In this Declaratory Ruling (Declaratory Ruling), the Media Bureau (Bureau) addresses a Petition for Declaratory Ruling (Petition) filed by Terrier Media Buyer, Inc. (Terrier Media). Terrier Media requests that the Commission, pursuant to its authority under section 310(b)(4) of the Communications Act of 1934, as amended (the Act), find that it would be in the public interest to permit foreign investors to own up to 100% in the aggregate of both Terrier Media's equity and voting interests. In the Petition, Terrier Media also requests that the Commission permit up to 100% foreign investment in Apollo Global Management (AGM) and specific approval of certain parties. The petition is unopposed.

1 See 47 CFR § 1.5000 et seq.

2 Petition for Declaratory Ruling of Terrier Media Buyer, Inc., MB Docket 19-196 (filed June 17, 2019) (Petition). The Petition was supplemented on June 28, 2019 to report that Terrier Media had entered into an agreement to, among other things, purchase Cox Radio, Inc. (Cox Radio), and to add Cox Radio and its licenses for broadcast radio stations to the Petition. First Supplement to Petition for Declaratory Ruling of Terrier Media Buyer, Inc., MB Docket No. 19-196 (filed June 28, 2019) (First Supplement). Terrier Media filed another supplement on July 26, 2019, in response to inquiries from Commission staff. Second Supplement to Petition for Declaratory Ruling of Terrier Media Buyer, Inc., MB Docket No. 19-196 (filed July 26, 2019) (Second Supplement). In response to further inquiries from staff, Terrier Media filed a third supplement on August 29, 2019. Third Supplement to Petition for Declaratory Ruling of Terrier Media Buyer, Inc., MB Docket No. 19-196 (filed August 29, 2019) (Third Supplement). Terrier Media filed a fourth supplement on September 25, 2019. Fourth Supplement to Petition for Declaratory Ruling of Terrier Media Buyer, Inc., MB Docket No. 19-196 (filed September 25, 2019) (Fourth Supplement).

3 Section 310(b)(4) of the Communications Act states:

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

47 USC § 310(b)(4).

4 Petition at 1.

5 At the time of the filing of the Petition, AGM was a limited liability company. AGM converted to a for-profit Delaware corporation effective September 5, 2019. Fourth Supplement at 3.

6 Petition at 27; Third Supplement at 5. Under section 1.5001(i)(1) of the Commission's Rules petitioners for a declaratory ruling are required to identify and seek specific approval for any foreign individual, entity, or group that (continued....)

Upon consideration of the record, we find that it will serve the public interest to grant the Petition. Specifically, we find that a grant will provide the companies greater access to foreign capital thereby strengthening the broadcast industry

## I. BACKGROUND

2. *Pending Transactions.* Terrier Media currently has applications pending seeking consent to the transfer of control and assignment of Commission licenses held by NBI Holdings, LLC (NBI), and Cox Enterprises, Inc. (Cox), through three separate transactions.<sup>8</sup> Based on the record, at the end of these transactions, the structure of the combined company and its relationship with AGM will be as described below.

3. *Corporate Structure.* The Petition lays out the proposed post-merger structure of Terrier Media, its parent and subsidiary entities, and its relationship to AGM.<sup>9</sup> AP IX Titan Holdings, L.P. (Titan), a Delaware limited partnership, expects to hold an approximately 70.9% controlling interest in Terrier Media Holdings, Inc. (Terrier Holdings), which would hold 100% of Terrier Media Holdings II, Inc., which would in turn hold 100% of Terrier Media.<sup>10</sup> Terrier Media would in turn hold 100% voting and equity of post-merger NBI Holdings LLC, which will be the ultimate, 100% parent of both the Northwest and Cox licensee subsidiaries. The sole general partner and 100% voting interest holder of Titan would be AP IX Titan Holdings GP, LLC (Titan Holdings), and the sole member and 100% voting interest holder of Titan Holdings would be AP IX (PMC) VoteCo, LLC (VoteCo).<sup>11</sup> The sole limited

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holds or would hold, directly and/or indirectly, more than 5% of equity and/or voting interests, or a controlling interest, in the petitioner's controlling U.S. parent, subject to certain exemptions including an exemption that increases the specific approval threshold to 10% for certain institutional investors. 47 CFR § 1.5001(i)(1)(3).

<sup>7</sup> The Petition was placed on public comment on July 11, 2019, with comments due August 12, 2019, and replies due on August 27, 2019. *Media Bureau Announces Filing of Petition for Declaratory Ruling by Terrier Media Buyer, Inc., and Permit-But-Disclose Ex Parte Status for the Proceeding*, MD Docket No. 19-196, Public Notice, 34 FCC Rcd 5314 (MB 2019). No parties have opposed the Petition or asked for conditions to be placed on the requested ruling. On August 26, 2019, the Commission received a letter stating that the reviewing Executive Branch agencies have no objection to the Petition. *See* Letter from Lee Licata, Foreign Investment Review Staff, National Security Division, U.S. Department of Justice, to Marlene Dortch, Secretary, Federal Communications Commission, MB Docket 19-196 (August 26, 2019).

<sup>8</sup> Petition at 1. Those transactions are being granted concurrently with this declaratory ruling in *Terrier Media Buyer, Inc.* Memorandum Opinion and Order, MB Dockets 19-98,19-197, DA 19-1206 (MB rel. Nov. 22, 2019); *see also Media Bureau Establishes Pleading Cycle for Applications to Transfer Control of NBI Holdings, LLC, and Cox Enterprises, Inc., to Terrier Media Buyer, Inc., and Permit-But-Disclose Ex Parte Status for the Proceeding*, MB Docket No. 19-98, Public Notice, 34 FCC Rcd 569 (MB 2019); *Media Bureau Establishes Pleading Cycle for Applications to Transfer Control of Cox Radio, Inc. to Terrier Media Buyer, Inc., and Permit-But-Disclose Ex Parte Status for the Proceeding*, MB Docket 19-197, Public Notice, 34 FCC Rcd 5318 (MB 2019).

<sup>9</sup> Petition at 6-12, Exhibit B.

<sup>10</sup> *Id.* at 7. Application for Transfer of Control of Cox Radio, Inc., File No. BTCH-20190702ABH, *et al.*, October 2019 Amendment at 1. A majority of the remaining interests in Terrier Holdings will be held by the existing shareholders of Cox, with the remainder held by Brian R. Brady, Jason R. Wolff, and Bristlecone, LLC, a Michigan limited liability company. Petition at 7, n. 20. Brady will have the right to appoint one individual to serve as a member of the board of directors of Terrier Holdings. *Id.* The director appointed by Brady will constitute a minority of Terrier Holdings' board. *Id.*; Comprehensive Exhibit at 25.

<sup>11</sup> Petition at 7, Exhibit B. As noted below, funds affiliated with AGM intend to invest in Titan, through the purchase of warrants to acquire limited partnership interests. Based on the record, there are no other greater than 5% interest holders that need to be identified for consideration under 47 USC § 310(b)(4) and the associated rules, even if we were to consider these warrants as equity. Petition at 25.

partner and 100% non-voting equity interest holder of Titan would be AIF IX (PMC Equity AIV), L.P. (PMC Equity), whose sole general partner and 100% voting interest holder would also be VoteCo.<sup>12</sup>

4. Terrier Media represents that VoteCo will be wholly controlled equally by its three members: Scott Kleinman, John Suydam, and David Sambur.<sup>13</sup> John Suydam and Scott Kleinman are officers of AGM, a publicly traded investment management company. David Sambur is the co-head of its private-equity business. The managing members and officers of VoteCo, as well as the officers of Terrier Media, are employed by AGM or its affiliates.<sup>14</sup> Terrier Media contends that VoteCo's officers are appointed by its members and will hold office until "(i) their successors have been duly appointed and qualified or (ii) their earlier death, resignation or removal from office by vote of a majority of the members."<sup>15</sup> In response to a request for information from Commission staff, however, Terrier Media stated that "it would be customary, as a practical matter for a private equity professional to resign from his or her position as an officer in a portfolio company in the event he or she terminates his or her relationship with the private equity fund."<sup>16</sup> Terrier Media contends that AGM will hold no direct or indirect attributable interest in it,<sup>17</sup> and that neither AGM nor any AGM affiliate will have any voting rights or attributable interest in VoteCo, Titan, PMC Equity, Terrier Holdings or any subsidiary of Terrier Holdings.<sup>18</sup> At the same time, Terrier Media explains that funds affiliated with AGM will direct their limited partners to contribute capital to PMC Equity in exchange for limited partnership interests in that entity, the proceeds of which will be used to fund the acquisition of the NBI and Cox stations.<sup>19</sup> The Petition also describes how AGM subsidiaries will act as consultants to Terrier Media, principally through two consulting agreements, and declares that Terrier Media will benefit from the financial, strategic, and management expertise provided by advisory affiliates of AGM.<sup>20</sup>

5. In response to a request for clarification regarding its financing structure, Terrier Media explained that certain investors had committed to provide capital through one of two approaches. According to Terrier Media, under the first approach, Apollo Investment Fund IX, L.P., which is affiliated with AGM, will make capital calls to its predominately U.S. owned investors that are organized under U.S. law.<sup>21</sup> That capital will be used to purchase limited partnership interests in PMC Equity.<sup>22</sup> Under the second approach, the commitments of the remaining investors, including those with significant foreign ownership or control, will be discharged through the purchase of warrants to acquire limited partnership interests in Titan.<sup>23</sup>

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<sup>12</sup> *Id.* As noted below, other funds affiliated with AGM intend to acquire limited partnership interests in PMC Equity.

<sup>13</sup> *Id.* at 4, 7, 22-23. Scott Kleinman is AGM's co-president, and John Suydam is its chief legal officer. Petition, Exhibit C at 5.

<sup>14</sup> *Id.* at 10.

<sup>15</sup> *Id.* at 7.

<sup>16</sup> Response to Request for Information (Redacted) to Barbara Kreisman, Chief, Video Division, FCC Media Bureau, Response to Question 6 (April 4, 2019) (RFI Response).

<sup>17</sup> Petition at 8.

<sup>18</sup> *Id.* at 11.

<sup>19</sup> *Id.* at 9.

<sup>20</sup> *Id.* at 8-9.

<sup>21</sup> RFI Response at 8.

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

<sup>23</sup> *Id.*

6. Terrier Media further explains that the warrants will be exchangeable for limited partnership interests, but will contain provisions to prevent exercise if Titan determines that issuing the interest to the warrant holder would “cause any non-conformity with the Commission’s ownership rules or with the restrictions on foreign ownership in the Communications Act and Commission rules and policies.”<sup>24</sup> Terrier Media states that it has determined that, in the event the warrants were exercised and the parties investing through them became insulated limited partners, none of them would have an equity ownership interest in Titan of 5% or greater, thereby remaining below the specific approval threshold.<sup>25</sup>

7. *AGM Structure.* AGM is a publicly-traded, for-profit Delaware corporation.<sup>26</sup> It is controlled by three U.S. individuals, Leon Black, Joshua Harris, and Marc Rowan, each of whom hold one-third of the voting and equity interests of the entity.<sup>27</sup> They primarily hold their interests in AGM through BRH Holdings, GP, Ltd., a Cayman Islands entity that holds 52.3% of the voting interests in AGM through a single Class C voting share.<sup>28</sup> The Petition states that this causes AGM to be treated as a foreign-controlled company under the Commission’s foreign ownership analysis.<sup>29</sup> The remaining voting interests in AGM are divided between the Class A shareholders.<sup>30</sup> Terrier Media has identified three Class A shareholders who hold 5% or more of the equity of AGM: Capital World Investors (2.8% voting, 5.3% equity); California Public Employees Retirement System (0% voting, 8.8% equity) (CALPERS); and Tiger Global Management, LLC (18.7% equity, 9.7% voting) (Tiger). Capital World Investors and CALPERS are U.S. entities.<sup>31</sup>

8. Tiger’s interests are held through five different funds, of which one is a U.S. fund and four are Cayman Island funds.<sup>32</sup> The July Supplement provides additional information concerning interests held in AGM by certain affiliates of Tiger that are organized in the Cayman Islands: Tiger Global Investments, L.P. (TGI); Tiger Global Private Investment Partners X, L.P. (TGPIP X); Tiger Global PIP Partnership X, L.P. (TGPP X); and Tiger Global PIP Management X, Ltd. (TGPM X and collectively with TGI, TGPIP X, and TGPP X, the Tiger Foreign Entities).<sup>33</sup> According to Tiger’s Schedule 13G filing with the SEC, as of June 30, 2019, and as reported in the July Supplement, TGI holds a 7.2% equity interest in AGM and TGPIP X holds a 7.3% equity interest in AGM.<sup>34</sup> All of the Tiger Foreign Entities are controlled indirectly by U.S. companies, Tiger Global Performance, LLC, and Tiger,

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<sup>24</sup> Petition at 24-25; Comprehensive Exhibit at 3.

<sup>25</sup> Petition at 25. In light of this representation, we need not address whether the existence and specific characteristics of the warrants requires the filing of a petition for declaratory ruling.

<sup>26</sup> AGM converted to a for-profit Delaware corporation effective September 5, 2019. Fourth Supplement at 3.

<sup>27</sup> Petition at 25, Exhibit C at 6.

<sup>28</sup> *Id.* at 25. Third Supplement at 2. Terrier Media indicates that BRH Holdings does not hold any equity interest in AGM, but that its three principals, in addition to their voting interest in AGM through BRH Holdings and its Class C share, exercise voting and investment control over estate planning vehicles which hold Class A shares, which have both equity and voting interests, and that the principals may be deemed to beneficially own such shares. Petition at Exhibit B at 5-6. Terrier Media has requested specific approval for BRH Holdings to hold up to 100% of AGM and Terrier Media. Fourth Supplement at 3.

<sup>29</sup> *Id.* at 25.

<sup>30</sup> *Id.* at Exhibit C, 5.

<sup>31</sup> *Id.* at 26.

<sup>32</sup> Third Supplement at 3.

<sup>33</sup> *Id.*

<sup>34</sup> *Id.* TGPP X and TGPM X each is treated as holding an indirect 7.3% equity interest in AGM because they have control over TGPIP X. *Id.*

which in turn are under the control of two U.S. citizens, Charles P. Coleman and Scott Schleifer.<sup>35</sup> AGM holds a voting proxy for Tiger's interests.<sup>36</sup> Terrier Media has requested specific approval for each of the Tiger Foreign Entities.<sup>37</sup>

9. Terrier Media asserts that grant of its Petition will be in the public interest for three reasons.<sup>38</sup> First, Terrier Media argues that a grant will create opportunities for it to obtain future foreign investment from sources of capital that would be otherwise unavailable, enhancing its ability to serve its broadcast markets efficiently.<sup>39</sup> Second, Terrier Media contends that grant will foster the Commission's goals of encouraging foreign investment and ownership diversity in broadcast services.<sup>40</sup> Finally, Terrier Media asserts that permitting foreign investment will encourage reciprocity by other countries.<sup>41</sup>

10. Terrier Media has affirmed its continuing obligation under the Commission's rules to obtain Commission approval before a previously unapproved foreign individual, entity, or group of such individuals or entities acquires directly or indirectly a greater than ten-percent (or, if the interest is uninsulated as determined pursuant to the Commission's rules, a greater-than-five percent) equity or voting interest, or a controlling interest, in Terrier Media as a result of any new investment or the conversion of any currently owned investment vehicle.<sup>42</sup> Terrier has further stated that if, at any time, it knows, or has reason to know, that it is no longer in compliance, it shall file a statement with the Commission explaining the circumstances within thirty days of the date that it knew or had reason to know that it was no longer in compliance and how it intends to correct the matter, either by filing a request for additional specific approval or by reducing the foreign interest.<sup>43</sup>

## II. DISCUSSION

11. *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."<sup>44</sup> Based on our review, we find that the public interest would not be served by prohibiting foreign ownership of Terrier Media and AGM in excess of the 25% benchmark in section 310(b)(4) of the Act. We also find that it is in the public interest to permit the aggregate foreign equity and voting interest in Terrier Media and AGM to exceed 25% and to increase the interest up to and including 100% voting and equity. We further find that it is in the public interest to grant specific approval for the percentages set out to the entities specified in Section III below.

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<sup>35</sup> *Id.*

<sup>36</sup> *Id.* at 5.

<sup>37</sup> *Id.*

<sup>38</sup> Petition at ii.

<sup>39</sup> *Id.*

<sup>40</sup> *Id.*

<sup>41</sup> *Id.*

<sup>42</sup> *Id.* at 28.

<sup>43</sup> *Id.*

<sup>44</sup> 47 U.S.C. § 310(b)(4).

12. In the *2013 Broadcast Clarification Ruling*,<sup>45</sup> the Commission clarified the policies and procedures for evaluating potential foreign investment in broadcast licensees under section 310(b)(4) of the Act.<sup>46</sup> Subsequently, in the *2016 Foreign Ownership Order*,<sup>47</sup> 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.<sup>48</sup> Further, in evaluating petitions relating to foreign ownership, the Commission accords deference to the expertise of the Executive Branch agencies on issues related to national security, law enforcement, foreign policy, and trade policy concerns.<sup>49</sup>

13. The Commission has explained that, in the context of the section 310(b)(4) review for broadcast licensees, the 25% benchmark for foreign ownership “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.”<sup>50</sup> Moreover, the *2016 Foreign Ownership Order* expressly provides for processing of petitions involving 100% foreign ownership of a broadcast licensee’s parent, such as here.<sup>51</sup> To exercise the discretion conferred by statute in a meaningful way, the Commission must receive detailed information from the applicant sufficient for the Commission to make the public interest finding the statute requires.<sup>52</sup>

14. *De Facto Control*. Upon review of the record and of the relationships between AGM and Terrier Media, and relying on our rules, the Act, and precedent, we conclude that under the facts presented in this case, Terrier Media will be under *de facto* control of AGM. AGM is controlled by BRH Holdings, a Cayman Islands-organized entity, which results in AGM being treated as a foreign-controlled entity under the Commission’s rules.<sup>53</sup> If Terrier Media is in turn controlled by AGM, it is also treated as foreign-controlled under our rules.<sup>54</sup> The Commission has previously held that determining whether a party holds or will hold *de facto* control over a licensee or an applicant “transcends formulas, for it

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<sup>45</sup> *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*).

<sup>46</sup> See generally *2013 Broadcast Clarification Ruling*, 28 FCC Rcd at 16244.

<sup>47</sup> *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*, GN Docket 15-236, Report and Order, 31 FCC Rcd 11272 (2016) (*2016 Foreign Ownership Order*).

<sup>48</sup> See generally *2016 Foreign Ownership Order*, 31 FCC Rcd 11272.

<sup>49</sup> *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*, Order on Reconsideration, 15 FCC Rcd 18158 (2000).

<sup>50</sup> *Application of Fox Television Stations, Inc.*, Memorandum Opinion and Order, 10 FCC Rcd 8452, 8472, para. 44 (1995).

<sup>51</sup> *2016 Foreign Ownership Order*, 31 FCC Rcd at 11274, para. 4.

<sup>52</sup> 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).

<sup>53</sup> 47 CFR § 1.5000(a)(1), Note 1, Example 1.

<sup>54</sup> *Id.* In the Petition, Terrier Media states that, although it is not aware of any Commission precedent that would result in its planned contractual relationship with AGM being treated as cognizable under the Commission’s foreign ownership rules, it recognizes that the Commission may prefer to evaluate that relationship under Section 310(b) or the foreign ownership rules and has decided to file the Petition to remove any uncertainty. Petition at ii.

involves an issue of fact which must be resolved by the special circumstances presented.”<sup>55</sup> The primary issue is the power to dominate the management of the business affairs of a licensee or applicant,<sup>56</sup> the specific indicia being the ability to determine the policies governing personnel, programming, and finances.<sup>57</sup> The circumstances surrounding the creation of the company are additional factors.<sup>58</sup>

15. AGM’s *de facto* control of Terrier Media is principally demonstrated by its control of the personnel of the company and its parent entities. As discussed above, the managing members and officers of VoteCo are officers or employees of AGM, including AGM’s co-president and chief legal officer,<sup>59</sup> and will be simultaneously employed by AGM and VoteCo. VoteCo is the sole general partner of Titan, which, via Terrier Media Holdings and Terrier Media Holdings II, is the parent of Terrier Media. With the exception of an unnamed minority director at Terrier Media Holdings, all other officers and directors set out for these companies in the Petition are employees of AGM or its affiliates and under its ultimate control.<sup>60</sup> Terrier Media has stated that, although an employee would not lose his or her position solely because of termination of his or her relationship with AGM, “it would be customary, as a practical matter for a private equity professional to resign from his or her position as an officer in a portfolio company in the event he or she terminates his or her relationship with the private equity fund.”<sup>61</sup> In this instance, Terrier Media would be the “portfolio company” of AGM, which would be the “private equity fund.”<sup>62</sup> Terrier Media’s argument that the continued employment of its leadership and officers might not depend upon their continued employment at AGM is undercut by the fact that any officers appointed by the managing members may be removed at any time with or without cause and any officers appointed by the Board of Directors may be removed at any time by a majority vote of the board,<sup>63</sup> a majority of which will be designated by AGM and its affiliates.<sup>64</sup> Likewise, we disagree with Terrier Media’s contention that the managing members and officers of VoteCo and Terrier Media will “act in his or her individual capacity in those roles” and not on behalf of AGM because two out of the three members of VoteCo/Terrier are also

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<sup>55</sup> *Applications of Univision Holdings, Inc.*, Memorandum Opinion and Order, 7 FCC Rcd 6672, 6675, para. 15 (1992) (*Univision*) (citing *Stereo Broadcasters, Inc.*, Memorandum Opinion and Order, 55 FCC 2d 819, 821 (1975)).

<sup>56</sup> *Id.*

<sup>57</sup> *Id.*; *WGPR, Inc. & CBS, Inc.*, Memorandum Opinion and Order, 10 FCC Rcd 8140, 8142, para. 11 (1995) (“The touchstone of control, in short, is not divining who executes the station’s programming, personnel and finance responsibilities, but who establishes policies governing the three areas and exercises ultimate control.”); *cf.* 47 CFR § 1.2105(a)(4)(i) (noting that, in the auction context, examples of *de facto* control include constituting or appointing 50% or more of the board of directors or management committee; having authority to appoint, promote, demote, and fire senior executives that control the day-to-day activities of the entity; or playing an integral role in management decisions).

<sup>58</sup> *Univision*, 7 FCC Rcd at 6675.

<sup>59</sup> Petition at Exhibit C, p. 5.

<sup>60</sup> *Id.* at Exhibit C, p. 1-5.

<sup>61</sup> RFI Response at 7.

<sup>62</sup> Terrier Media provided the quoted response in reply to the following question: “[s]tate whether a managing member or officer of VoteCo/Terrier would lose his/her position at VoteCo/Terrier if he/she left AGM.” *Id.* at 6.

<sup>63</sup> *Id.* at 6-7.

<sup>64</sup> As discussed above, a member of the board of directors of Terrier Media Holdings, but not Terrier Media Buyer, will be a representative of Brian Brady. This minority representative is unlikely to be sufficient to outweigh the influence of the single majority shareholder, Titan, in Terrier Media. As discussed above, Titan’s 100% general partner is AP IX Titan Holdings GP, LLC, and its sole member is VoteCo, which is controlled by Scott Kleinman, David Sambur, and John Suydam, who are all officers or employees of AGM. Petition at Exhibit B. Scott Kleinman is the Co-President of AGM and John Suydam is the Chief Legal Officer of AGM. Petition at Exhibit C, p. 5. David Sambur is a Senior Partner and Co-Lead of Private Equity at AGM. [www.apollo.com/about-apollo](http://www.apollo.com/about-apollo).

officers of AGM<sup>65</sup> and given the overlapping fiduciary responsibilities that they will have. Thus, we find that AGM will control the leadership and decision-making of Terrier Media and its parent companies given that its own officers and employees hold all key leadership positions of Terrier Media and its affiliates, roles that are effectively contingent on their continued employment at AGM. We also believe it is probable that AGM will exert effective control over finances and programming, the other two indicia of *de facto* control that the Commission typically considers.<sup>66</sup>

16. As discussed in *Univision*, with a newly created company, such as Terrier Media, the circumstances surrounding its creation are relevant to issues of *de facto* control.<sup>67</sup> Significantly, AGM also played a material role in the financing and creation of Terrier Media. According to Terrier Media, Apollo Investment Fund IX, L.P.—an AGM-affiliated fund—will make capital calls on its predominately U.S. investors to purchase limited partnership interests in PMC Equity.<sup>68</sup> As discussed above, Terrier Media states that its members and officers are employees of AGM, including AGM’s co-president and chief legal officer,<sup>69</sup> and indicates all of these individuals will simultaneously hold their AGM and Terrier Media positions.<sup>70</sup> The hands-on involvement of these current and to-be ongoing AGM officers and employees in Terrier Media’s creation and in its future operations indicates that Terrier Media was effectively created by AGM for the purpose of this transaction. Finally, Terrier Media will enter into two consulting agreements with affiliates of AGM, one to provide strategic advice about financing and other material transactions to the members of Terrier Media’s senior management, who, as discussed above, are also AGM employees, and the other to provide advice specifically with respect to future acquisitions.<sup>71</sup> As a practical matter, under these agreements and in the context of the facts of this case, AGM will be advising individuals who are simultaneously its own current officers and employees and Terrier Media’s directors and officers.

17. Though we find that AGM will exercise *de facto* control over Terrier Media based on AGM’s control of Terrier Media’s personnel, we do not find this relationship a bar to grant of the relief requested in the instant petition. We do not find any evidence that either Terrier Media or AGM has in any way lacked candor, was misrepresentative in any certified statement, or sought to evade our foreign

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<sup>65</sup> Petition at 10.

<sup>66</sup> AGM’s ability to exercise control over the personnel and decision making of Terrier Media is so pervasive that, as a practical matter, it is likely to have the ability to exercise control over the proposed licensee’s programming and financing. Unlike *Univision*, where the Commission found the fact that its controlling individual was an experienced broadcaster to be persuasive in determining licensee independence, none of the managing members or officers of Terrier Media or its affiliates have broadcast experience, with the possible exception of the minority board representative designated by Brian Brady. *Univision*, 7 FCC Rcd at 6679, para. 29. Also, in *Univision*, the controlling individual had his own financial resources and no history of dependence on, or employment by, the entity that was alleged to have a potential *de facto* control relationship. *Id.* Here, in contrast, all controlling individuals at Terrier Media and its parent would be simultaneously employed by both companies and financially dependent upon AGM. Also, Terrier Media will receive its financing via an AGM affiliated fund. In any event, we note that the Commission has previously found that control over any one of the areas of personnel, programming, and finances is sufficient for a finding of *de facto* control. *Hicks Broadcasting of Indiana, LLC*, Hearing Designation Order, MM Docket 98-66, 13 FCC Rcd 10662, 10667 (1998).

<sup>67</sup> *Univision*, 7 FCC Rcd at 6675.

<sup>68</sup> The remaining capital commitments, including those made by investors with significant foreign investment, will be met by the purchase of warrants to acquire limited partnership interests in Titan. The parties have not identified any third-party sources of financing.

<sup>69</sup> *Id.* at Exhibit C, p. 5.

<sup>70</sup> Response to Request for Information (Redacted) to Barbara Kreisman, Chief, Video Division, FCC Media Bureau, Response to Question 6 (April 4, 2019).

<sup>71</sup> Petition at 10.



ownership rules regarding the relationships between the companies.<sup>72</sup> At all stages of this proceeding and the concurrent transactions, the parties have been transparent about the current and proposed future relationships between AGM and Terrier Media, and the relationships between the employees of AGM and Terrier Media. They have also been transparent about AGM's role in the financing and creation of Terrier Media. Furthermore, the parties sought Commission review of those relationships in this declaratory ruling.

18. *Public Interest Analysis.* We find that the public interest would not be served by prohibiting foreign ownership of Terrier Media and AGM in excess of the 25% benchmark in section 310(b)(4) of the Act. We also find that it would be in the public interest to grant Terrier Media's request to permit foreign investors to own up to 100% in the aggregate of both Terrier Media and AGM's equity and voting interests and to grant specific approval of the entities named in Section III. Specifically, we find that a grant will provide the companies greater access to foreign capital and thereby contribute to the strengthening of the broadcast industry.<sup>73</sup> The Executive Branch agencies with expertise on issues pertaining to national security, law enforcement, foreign policy, and trade policy concerns, have reviewed the Petition and did not file any objection to issuance of a declaratory ruling or request that we impose conditions on the grant. We also note that no pleadings have been filed opposing the Petition.

### III. DECLARATORY RULING

19. 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 Terrier Media and AGM in excess of the 25% benchmark in section 310(b)(4) of the Act. Specifically, this ruling permits the aggregate foreign equity and voting interest in Terrier Media and AGM to exceed 25% and to increase up to and including 100%.

20. *Specific Approval.* We also find no grounds to object to the requests for specific approvals. Therefore, this Declaratory Ruling grants specific approval for the following individuals and entities to hold up to the following percentages of the voting interests and of the equity of Terrier Media and AGM:

- BRH Holdings GP, Ltd. 100%

This Declaratory Ruling also grants specific approval for each of the following entities to hold up to a non-controlling 49% of the voting interests and 49% of the equity interests of AGM, with an overall combined non-controlling 49% limit:

- Tiger Global Investments, L.P. 49%
- Tiger Global Private Investment Partners X, L.P. 49%
- Tiger Global PIP Partnership X, L.P. 49%
- Tiger Global PIP Management X, Ltd. 49%

21. 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 Terrier Media and/or AGM exceeds the terms and conditions of this ruling.<sup>74</sup> If, at any time, Terrier

<sup>72</sup> See 47 CFR 1.5004(f)(2); *Amendment of Section 1.17 of the Commission's Rules Concerning Truthful Statements to the Commission*, Report and Order, 18 FCC Rcd 4016, 4021-22, para. 13 (2003) (noting that the Commission "expect[s] parties to be truthful in rulemakings and declaratory ruling proceedings" even though section 1.17 does not apply specifically to such proceedings).

<sup>73</sup> 2016 *Foreign Ownership Order*, 31 FCC Rcd at 11273.

<sup>74</sup> See generally 47 CFR § 1.5004. Section 1.5004, *inter alia*, specifies that licensees have an ongoing, proactive obligation to monitor their foreign ownership compliance and to take preemptive action to remain in compliance with the Commission's foreign ownership rules and any declaratory ruling they have received. *Id.* at 1.5004(a). It

(continued....)

Media and/or AGM 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.<sup>75</sup> Terrier Media and/or AGM will be subject to enforcement action by the Commission for such non-compliance, including an order requiring divestiture of the foreign investment.<sup>76</sup>

#### IV. ORDERING CLAUSES

22. 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 Terrier Media Buyer, Inc., **IS GRANTED** to the extent specified in this Declaratory Ruling and subject to the conditions specified herein.

23. **IT IS FURTHER ORDERED** that this Declaratory Ruling **SHALL BE EFFECTIVE** upon release.

FEDERAL COMMUNICATIONS COMMISSION

Michelle M. Carey  
Chief, Media Bureau

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sets out the requirements for when a licensee must seek Commission approval prior to any new, not previously approved foreign individuals, entities, or groups acquiring an interest in excess of the specific approval threshold. *Id.* It sets out a licensee's obligations regarding subsidiaries and affiliates and regarding the insertion of new controlling or non-controlling foreign-organized companies. *Id.* at 1.5004(b)-(d). This section specifies when a new petition for declaratory ruling must be filed and the obligations for continuing compliance, including how to report inadvertent non-compliance, and how to file a remedial petition for declaratory ruling, as well as the consequences of trying to evade the foreign ownership rules. *Id.* at 1.5004(e)(f).

<sup>75</sup> *See id.* § 1.5004(f)(1). If, for example, a foreign individual or entity should invest in either company above the specific approval threshold without Commission approval or if Tiger breached its 49% specific approval, Terrier Media, as licensee, is obligated to follow the steps set out in 47 CFR § 1.5004(f). Subsequent actions taken by or on behalf of Terrier Media to remedy non-compliance shall not relieve it of the obligation to notify the Commission of the circumstances (including duration) of non-compliance.

<sup>76</sup> *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").