

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

In the Matter of
Estrella Broadcasting, Inc.
MB Docket No. 19-386

DECLARATORY RULING

Adopted: December 31, 2020

Released: December 31, 2020

By the Chief, Media Bureau:

I. INTRODUCTION

1. In this Declaratory Ruling (Declaratory Ruling), the Media Bureau (Bureau) addresses the Petition for Declaratory Ruling (Petition) filed by Estrella Broadcasting, Inc. (Estrella). The Petition asks the Commission to exercise its discretion to permit Estrella to exceed the 25% benchmark for investment set out in section 310(b)(4) of the Communications Act of 1934, as amended (the Act), pursuant to section 310(b)(4) and sections 1.5000 et seq. of the Commission's rules. In the Petition, Estrella also requests specific approval of certain entities and individuals. Upon consideration of the record, and pursuant to section 310(b)(4) of the Act, as well as the Commission's foreign ownership rules and policies, we find that the public interest would not be served by prohibiting the foreign ownership that would be held in Estrella.

1 See 47 CFR § 1.5000 et seq. After filing its Petition, Liberman Broadcasting, Inc., filed a supplement indicating that it had changed its name to Estrella Media, Inc. See Letter from Estrella Broadcasting, Inc., MB Docket No. 19-386 (filed Nov. 16, 2020). Accordingly, we will refer to it as Estrella in this Declaratory Ruling.

2 Petition for Declaratory Ruling of Estrella Broadcasting, Inc., MB Docket No. 19-386 (filed Nov. 14, 2019) (Petition).

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 U.S.C. § 310(b)(4).

4 47 CFR §§ 1.5000 et seq.; 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 No. 15-236, Report and Order, 31 FCC Rcd 11272 (2016) (2016 Foreign Ownership Order), pet. for recon. dismissed, 32 FCC Rcd 4780 (2017).

5 Petition at 14. 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 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).

6 The Petition was placed on public comment on December 20, 2019, with comments due January 21, 2020, and replies due on February 5, 2020. Media Bureau Announces Filing of Petition for Declaratory Ruling by Liberman Broadcasting, Inc., Public Notice, DA 19-1317, 2019 WL 7168115 (MB Dec. 20, 2019). On January 17, 2020,

(continued....)

## II. BACKGROUND

2. *Pending Transactions.* On April 17, 2019, the United States Bankruptcy Court for the District of Delaware (Bankruptcy Court) approved Estrella's Plan,<sup>7</sup> permitting LBI Debtors (now Estrella) to complete their restructuring and emerge from bankruptcy subject to, among other things, Commission consent to its applications for a temporary waiver of section 1.5000(a)(1) of the Commission's rules. On October 4, 2019, the Commission granted Estrella's applications and granted it a temporary waiver of section 1.5000(a)(1), conditioned upon Estrella filing a petition for declaratory ruling within 30 days of closing the transaction. In accordance with the conditional grant of the aforementioned temporary waiver, Estrella timely filed the present Petition for Declaratory Ruling on November 14, 2019.

3. Estrella Broadcasting currently has six applications pending that seek consent to the transfer of control and assignment of Commission licenses held by the following: (1) Estrella Radio License of California, LLC; (2) Estrella Television License of Houston, LLC; (3) Estrella Television License of Dallas, LLC; (4) Estrella Radio License of Houston, LLC; (5) Estrella Television License, LLC; and (6) Estrella Radio License of Dallas, LLC.<sup>8</sup> Based on the record, as a result of the court-approved bankruptcy reorganization plan, the structure of the combined company and its relationship with Estrella will be as described below.

4. *Corporate Structure.* The Petition lays out the proposed post-declaratory ruling structure of Estrella, its parent, and subsidiary entities. Pursuant to its reorganization plan, SLA, a Delaware limited liability company, will acquire 100% of the outstanding New Equity Interests<sup>9</sup> and 100% of the outstanding Warrants of Estrella.<sup>10</sup> HPS Group GP, LLC (HPS Group GP), a Delaware limited liability company, will be the sole non-member manager of SLA.<sup>11</sup> Scott Kapnick (Kapnick), a U.S. citizen, is the sole member and manager of HPS Group GP.<sup>12</sup> Through HPS Group GP, LLC, Kapnick will control 100% of the voting rights in SLA and, indirectly, 100% of the voting rights in Estrella.<sup>13</sup> SLA will exercise 100% of the Warrants for New Equity Interests and SLA will be the sole shareholder of Estrella.<sup>14</sup>

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Kymberleigh Richards filed a comment (Comment) to the Public Notice, making allegations unrelated to the Petition for Declaratory Ruling and unsupported by factual evidence or affidavit. Because of the speculative, unsupported, and unrelated nature of Ms. Richard's statements, we dismiss her Comment. *See* Comment from Kymberleigh Richards, MB Docket No. 19-386 (filed Jan. 17, 2020). On December 7, 2020, the Commission received a letter stating that the reviewing Executive Branch agencies have no objection to the Petition. *See* Letter from Kathy Smith, National Telecommunications and Information Administration, U.S. Department of Commerce, to Tom Sullivan, Chief, International Bureau, Federal Communications Commission, MB Docket 19-386 (Dec. 7, 2020).

<sup>7</sup> *See* Third Amended Joint Chapter 11 Plan of Reorganization of LBI Media, Inc., and Its Affiliated Debtors, In re LBI Media, Inc., et al., Case No. 1-18-bk-12655 (Chapter 11) (Bankr. D. Del. Apr. 12, 2019) (Jointly Administered) (Plan).

<sup>8</sup> Estrella, through its wholly owned subsidiaries, owns and operates 21 full-power broadcast television and radio stations pursuant to licenses issued by the Commission. After filing its Petition for Declaratory Ruling, Estrella notified the Commission that it also changed the names of several of its aforementioned subsidiaries. *See* Letter from Estrella Broadcasting, Inc., MB Docket No. 19-386 (filed Nov. 16, 2020).

<sup>9</sup> Petition at 3.

<sup>10</sup> *Id.* at 6.

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

<sup>12</sup> *Id.*

<sup>13</sup> *Id.*

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

5. In addition to its sole non-member manager, SLA will have nine insulated members, six of which will have a direct equity interest in SLA of 10% or less and, in turn, an indirect equity interest of the same amount in Estrella.<sup>15</sup> The three members that would each hold an indirect equity interest in Estrella exceeding 10% are: (1) SLF 2016 JL Subsidiary I, L.P.; (2) SLF 2016 JL Subsidiary I-A, L.P.; and (3) Aiguilles Rouges Sector F Investment Fund, L.P.<sup>16</sup>

6. SLF 2016 JL Subsidiary I, L.P., a Cayman Islands limited partnership, will hold a 26.45% indirect equity interest in Estrella and will be deemed to hold, under the rules, a 26.45% indirect voting interest.<sup>17</sup> SLF 2016 JL Subsidiary I, L.P. has two insulated limited partners—one, Specialty Loan Fund 2016 L.P., a Cayman Islands limited partnership, has a 19.43% indirect equity interest (and a 19.43% indirect deemed held voting interest) in Estrella.<sup>18</sup> HPS GP, Ltd., a Cayman Islands corporation, is a general partner of SLF 2016 JL Subsidiary I, L.P., and is owned equally by Clive Harris (Harris) (50%) and Richard Crawshaw (Crawshaw) (50%), both citizens of the United Kingdom.<sup>19</sup> HPS GP, Ltd., would hold no equity and would have a voting interest equal to SLF 2016 JL Subsidiary I, L.P.'s 26.45% voting interest in SLA.<sup>20</sup>

7. SLF 2016 JL Subsidiary I-A, L.P., a Cayman Islands limited partnership, will hold a 27.19% indirect equity interest in Estrella and will be deemed to hold a 27.19% indirect voting interest. SLF 2016 JL Subsidiary I-A, L.P. has four insulated limited partners, and only one, SLF 2016 Institutional Holdings, L.P., a Cayman Islands limited partnership, would hold an indirect equity interest in Estrella greater than 10% (13.12% equity and 13.12% deemed held voting interest).<sup>21</sup> SLF 2016 Institutional Holdings, L.P.'s sole general partner is HPS GP, Ltd., and its sole limited partner is SLF 2016 Institutional Holdings Lux Sàrl.<sup>22</sup> SLF 2016 Institutional Holdings Lux Sàrl's sole member is Specialty Loan Institutional Fund 2016-L, L.P., a Cayman Islands limited partnership, whose general partner is HPS GP, Ltd.<sup>23</sup>

8. Aiguilles Rouges Sector F Investment Fund, L.P. (Aiguilles), a Canadian limited partnership, will hold a 22.79% indirect equity interest and a 22.79% deemed held voting interest in Estrella. Aiguilles has one general partner, Highbridge GP III, Ltd., a Cayman Islands corporation owned equally by Harris and Crawshaw.<sup>24</sup> Aiguilles has two insulated limited partners, a Canadian limited partnership and an Irish corporation.<sup>25</sup> Only the Canadian limited partnership, Aiguilles Rouges Specialty Loan Fund, L.P., would have an indirect equity and deemed held voting interest in Estrella that exceeds 10% (13.40%).<sup>26</sup> Both the Canadian limited partnership and the aforementioned Irish corporation are

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<sup>15</sup> Chengdong Investment Corporation, a Chinese sovereign wealth fund, would acquire an insulated indirect equity interest of approximately 4.64% in Estrella. *Id.* at 13.

<sup>16</sup> *Id.* at 7.

<sup>17</sup> *Id.*; *see also id.* at 2, n.3 (citing 47 CFR § 1.5002(b)(2)(ii)(B)).

<sup>18</sup> *Id.* at 8.

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

<sup>20</sup> *Id.*

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

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

<sup>23</sup> *Id.* at 9–10.

<sup>24</sup> *Id.* at 10.

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

<sup>26</sup> *Id.* at 11.

indirectly controlled by AXA SA (AXA), a French corporation.<sup>27</sup> AXA would hold indirectly an aggregate equity interest and voting interest of approximately 24.25% in Estrella.<sup>28</sup>

9. Estrella asserts that granting its Petition will be in the public interest. First, Estrella states that a grant will enhance its abilities to compete and innovate in the media distribution marketplace.<sup>29</sup> Second, Estrella states that a grant will serve the Commission's interest in encouraging foreign investment in broadcasting and ensuring comity with the bankruptcy laws.<sup>30</sup> Lastly, Estrella states that a grant will also further U.S. trade policy without raising any national security, law enforcement, or other risks.<sup>31</sup> No party substantively opposes grant of the Petition.

10. Estrella 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,<sup>32</sup> or a controlling interest in Estrella, as a result of any new investment or the conversion of any currently owned investment vehicle.

### III. DISCUSSION

11. We conclude that the public interest is served by permitting foreign ownership of Estrella 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 interests in Estrella to exceed 25% and to increase the interest up to and including 100% equity and voting. Finally, we conclude that it is in the public interest to grant specific approval for the equity and voting interests to be held by the foreign individuals and foreign-organized entities in the amounts specified in Section III below.

12. *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.”

13. In the *2016 Foreign Ownership Order*,<sup>33</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>34</sup> Further, in evaluating petitions relating to

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

<sup>28</sup> *Id.* The Petition states that entities ultimately controlled by AXA also hold interests in certain other entities that would hold insulated indirect interests in Estrella. As a result, Estrella states, AXA would hold an aggregate 24.25% indirect equity interest in Estrella and would be deemed to hold, under the rules, an aggregate 24.25% indirect voting interest in Estrella. *Id.*

<sup>29</sup> *Id.* at 15–17.

<sup>30</sup> *Id.* at 17–19.

<sup>31</sup> *Id.* at 20–26.

<sup>32</sup> We note that section 1.5002(b)(2) will apply for purposes of calculating the equity and voting interests. 47 CFR § 1.5002(b)(2); *see also* 47 CFR § 1.5003 (Insulation criteria for interests in limited partnerships, limited liability partnerships, and limited liability companies).

<sup>33</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>34</sup> *See generally 2016 Foreign Ownership Order*, 31 FCC Rcd 11272.

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>35</sup>

14. The Commission has explained that, in the context of 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>36</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>37</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>38</sup>

15. *Public Interest Analysis.* We conclude that the public interest is served by permitting foreign ownership of Estrella in excess of the 25% benchmark set forth in section 310(b)(4) of the Act. We further find that it is in the public interest to grant Estrella’s request to permit foreign investors to own up to 100% in the aggregate of Estrella’s equity and voting interests, and to grant specific approval, under section 1.5001 of the rules, of the foreign individuals and foreign-organized 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>39</sup> As noted above, the reviewing Executive Branch agencies have no objection to the Petition, and the only comment filed against the Petition made unsupported allegations unrelated to the Petition; we are therefore not persuaded that it demonstrates harm to the public interest.<sup>40</sup>

#### IV. DECLARATORY RULING

16. Under these circumstances, pursuant to section 310(b) of the Act, as well as 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 Estrella in excess of the 25% benchmark in section 310(b)(4) of the Act. Specifically, this ruling permits the aggregate foreign equity and voting interests in Estrella to exceed 25% and to increase up to and including 100%.

17. *Specific Approval.* We also grant Estrella’s requests for specific approval. Therefore, this Declaratory Ruling grants specific approval for the following foreign individuals and foreign-organized entities to hold, directly and/or indirectly, equity and voting interests in Estrella, up to and including the following percentages:

- SLF 2016 JL Subsidiary I, L.P. (26.45% equity and voting) (Cayman Islands);
- Specialty Loan Fund 2016, L.P. (19.43% equity and voting) (Cayman Islands);
- SLF 2016 JL Subsidiary I-A, L.P. (27.19% equity and voting) (Cayman Islands);

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<sup>35</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>36</sup> *Application of Fox Television Stations, Inc.*, Memorandum Opinion and Order, 10 FCC Rcd 8452, 8472, para. 44 (1995).

<sup>37</sup> *2016 Foreign Ownership Order*, 31 FCC Rcd at 11274, para. 4.

<sup>38</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>39</sup> *Id.* at paras. 23-24.

<sup>40</sup> *See supra* fn. 5.

- SLF 2016 Institutional Holdings, L.P. (13.12% equity and voting) (Cayman Islands)
- SLF 2016 Institutional Holdings Lux Sàrl % (13.12% equity and voting) (Luxembourg);
- Specialty Loan Institutional Fund 2016-L, L.P. (13.12% equity and voting) (Cayman Islands);
- Aiguilles Rouges Sector F Investment Fund, L.P. (22.79% equity and voting) (Canada);
- Aiguilles Rouges Specialty Loan Fund, L.P. % (13.40% equity and voting) Canada);
- Highbridge GP III, Ltd. (0% equity and 22.79 % voting) (Cayman Islands);
- HPS GP, Ltd. (less-than-1.0% equity and 64.18% voting) (Cayman Islands);
- Richard Crawshaw 100% (less-than-1.0% equity and 47.9% voting) (United Kingdom);
- Clive Harris (less-than-1.0% equity and 47.9% voting) (United Kingdom); and
- AXA SA (24.25% equity and voting) (France).

18. In addition, this Declaratory Ruling grants advance approval, pursuant to section 1.5001(k)(2), for each of the non-controlling foreign interest holders named above to increase their interests in Estrella up to and including a non-controlling 49.99% of its equity and voting interests. The ruling also grants advance approval, pursuant to section 1.5001(k)(1), for each of the controlling interest holders, HPS GP, Ltd., Crawshaw, and Harris to increase their respective equity and voting interests in Estrella up to and including 100%.

19. 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 Estrella exceeds the terms and conditions of this ruling.<sup>41</sup> If, at any time, Estrella 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, Estrella 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.<sup>42</sup> Estrella will be subject to enforcement action by the Commission for such non-compliance, including an order requiring divestiture of the foreign investment.<sup>43</sup>

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<sup>41</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 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>42</sup> See *id.* § 1.5004(f)(1). If, for example, a foreign individual or entity should invest in Estrella above the specific approval threshold without Commission approval or if any entity breaches its 49.99% specific approval, Estrella, as licensee, is obligated to follow the steps set out in 47 CFR § 1.5004(f). Subsequent actions taken by or on behalf of Estrella to remedy non-compliance shall not relieve it of the obligation to notify the Commission of the circumstances (including duration) of non-compliance.

<sup>43</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”).

**V. ORDERING CLAUSES**

20. Accordingly, **IT IS ORDERED** that the Comment filed by Kymberleigh Richards **IS DISMISSED**.

21. **IT IS FURTHER ORDERED** that, pursuant to section 310(b)(4) of the Communications Act of 1934, as amended, and sections 1.5001 through 1.5004 of the Commission's rules, and pursuant to authority delegated to the Media Bureau in section 0.283 of the Commission's rules, the Petition for Declaratory Ruling filed by Estrella Broadcasting, Inc., **IS GRANTED** to the extent specified in this Declaratory and subject to the conditions specified herein.

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

FEDERAL COMMUNICATIONS COMMISSION

Michelle M. Carey  
Chief, Media Bureau