

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

In the Matter of )
Cumulus Media Inc. )
Petition for Declaratory Ruling Under Section ) MB Docket No. 19-143
310(b)(4) of the Communications Act of 1934, as )
Amended )

DECLARATORY RULING

Adopted: May 29, 2020

Released: May 29, 2020

By the Chief, Audio Division, Media Bureau:

I. INTRODUCTION

1. In this Declaratory Ruling, the Media Bureau (Bureau) addresses a petition for declaratory ruling (Petition) filed by Cumulus Media Inc. (Cumulus or Petitioner) on July 19, 2018. The Petition asks the Commission to exercise its discretion to permit Cumulus 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), pursuant to section 310(b)(4) and sections 1.5000 et seq. of the Commission's rules. Specifically, the Petition requests approval to permit up to and including an aggregate of 100 percent direct and/or indirect foreign investment (voting and equity) in Cumulus. Cumulus filed the Petition, which is unopposed, on behalf of itself and each of its direct and indirect subsidiaries which hold Commission broadcast licenses. As discussed below, we find that it will serve the public interest to grant the Petition, subject to the conditions specified below.

II. BACKGROUND

2. Foreign Ownership of Cumulus. Cumulus, a Delaware publicly traded corporation, filed the Petition in connection with the recent joint reorganization of the corporation and its debtor affiliates

1 Petition for Declaratory Ruling of Cumulus Media Inc., MB Docket No. 19-143 (filed July 19, 2018) (Petition). Cumulus filed a supplement on April 17, 2019, in response to inquiries from Commission staff. Supplement to Petition for Declaratory Ruling of Cumulus Media Inc., MB Docket No. 19-143 (filed April 17, 2019) (Supplement).

2 47 U.S.C. § 310(b)(4) (Section 310(b)(4)).

3 47 CFR §§ 1.5000 et seq; see also 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); 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).

4 See Petition, Ex. A, Information Regarding Applicant and Licensees. Cumulus owns and operates nearly 450 full power radio broadcast stations, together with translator and booster stations and other ancillary facilities licensed by the Commission, in 90 markets. Cumulus also owns Westwood One, LLC, a producer and syndicator of radio content.

pursuant to Chapter 11 of the Bankruptcy Code.<sup>5</sup> Pursuant to the reorganization plan, holders of secured and unsecured debt of Cumulus would receive equity and other securities of Cumulus (Units), as reorganized, in exchange for certain of their claims.<sup>6</sup> The Bankruptcy Court entered an order confirming the reorganization plan on May 10, 2018, and the Commission subsequently granted the Petitioner's applications for the transfer of control of Cumulus in connection with the reorganization.<sup>7</sup> In order to emerge from Chapter 11 bankruptcy at the earliest practicable time, the reorganization plan provided for a mechanism under which special warrants were issued to holders of claims which did not certify that they were 100 percent U.S. owned and controlled entities.<sup>8</sup>

3. Cumulus now requests approval to permit up to and including 100 percent aggregate direct and/or indirect foreign investment (voting and equity) in Cumulus. Cumulus states that obtaining Commission approval for such foreign investment will enable holders of warrants and non-voting stock to convert or exercise these instruments in exchange for voting stock *and* allow non-U.S. persons or entities to hold aggregately up to and including 100 percent of its voting stock and capital stock in the future.<sup>9</sup> Specifically, Cumulus explains that upon grant of the Petition, the special warrants would be automatically exchanged, and foreign ownership of Cumulus immediately following such exchanges would then be approximately 34 percent on a voting basis and 31 percent on an equity basis.<sup>10</sup> Notwithstanding that the foreign ownership which would result from exercise of the special warrants is expected to be much less than 100 percent, Cumulus states that it is requesting a ruling that would permit non-U.S. persons or entities to hold directly and/or indirectly up to and including an aggregate of 100 percent of its voting stock and 100 percent of its capital stock. Cumulus states that no foreign individual, entity, or group of such individuals or entities holds or would hold, directly and/or indirectly, more than five percent of the equity and/or voting interests, or a controlling interest, in Cumulus, such that specific

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<sup>5</sup> In November 2017, Cumulus and its direct and indirect subsidiaries filed voluntary petitions for relief under Chapter 11 of the Bankruptcy Code, 11 U.S.C. §§ 101 *et seq.*, with the U.S. Bankruptcy Court for the Southern District of New York. *In re Cumulus Media, Inc., et al.*, Case No. 17-13381 (SCC) (Bankr. SDNY) (Docket No. 446).

<sup>6</sup> Petition at 2-3.

<sup>7</sup> See FCC File Nos. BTC-20180322ABI, BTCH-20180322AKR, BTC-20180322ALP, BTCH-20180322AMO, BTC-20180322AMU, BTC-20180322AMW, and BTCH-20180322AMV. The Commission granted the applications on June 1, 2018; the transfer was consummated on June 4, 2018. *Current Shareholders of Cumulus Media, Inc., Debtor-in-Possession, and Shareholders of Cumulus Media, Inc. (as Reorganized), et al.*, Memorandum Opinion and Order, 33 FCC Rcd 5243 (MB-AD 2018); Consummation Notice of Cumulus Licensing LLC, File Nos. BTC-20180322ABI et al. (filed June 5, 2018).

<sup>8</sup> Cumulus asserts that upon emergence from bankruptcy, foreign ownership of its stock was no greater than 22.5 percent on a voting and equity basis, due to the equity allocation mechanism in the reorganization plan, and no more than five percent of its voting stock, upon emergence, was held, directly or indirectly, by any single foreign holder (or commonly controlled group thereof) on either a voting or equity basis. See Petition at 13.

<sup>9</sup> See Petition at 13-14.

<sup>10</sup> *Id.* at 13. Cumulus explains that the “numbers were calculated based on information provided by holders of debt claims which were entitled to receive Units in the Reorganization.” Supplement at 2. In Attachment A to the Supplement, Cumulus lists each non-U.S. holder of Units constituting one percent more of the total outstanding Units, the percentage of all outstanding Units held by non-U.S. funds, and the nationality of such funds. The calculations presented in Attachment A assume that all special warrants have been exchanged for, and all shares of Class B Common Stock have been converted to, Class A Common Stock. *Id.* at 6, n.4.

approval is required pursuant to section 1.5001(i) of the Commission's rules.<sup>11</sup> Cumulus believes that grant of its Petition will, *inter alia*, enhance the market liquidity of its stock and "provide the Company with the greatest degree of flexibility in accessing foreign investment capital."<sup>12</sup> Cumulus asserts that grant of the Petition is consistent with the public interest.

4. In support of the Petition, Cumulus asserts that grant of the Petition is consistent with the reorganization plan, which has enabled Cumulus to emerge from bankruptcy in a stronger financial condition, and which, in turn, will enable Cumulus to raise capital, enhance its programming, better serve the public, and compete with non-FCC regulated entities on a more level playing field.<sup>13</sup> Cumulus also maintains that grant of the Petition aligns with U.S. foreign trade policy and the U.S. government's desire to "promote inbound foreign investment" and encourage reciprocity with U.S. trading partners.<sup>14</sup> Cumulus further emphasizes that grant of the Petition fosters the purposes of the U.S. bankruptcy laws.<sup>15</sup> Finally, Cumulus states that wide-ranging benefits would accrue from grant of the Petition without any countervailing harm because the Petition presents no national security, law enforcement, foreign policy, or trade policy concerns.<sup>16</sup>

5. *Section 310(b)(4) Foreign Ownership Review.* We review the foreign ownership of Cumulus 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>17</sup> This section of the Act also grants the Commission discretion to allow higher levels of foreign ownership in a licensee's controlling U.S.-organized parent unless the Commission finds that the public interest would be served by refusing to permit such foreign ownership.<sup>18</sup>

6. 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.<sup>19</sup> 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.<sup>20</sup>

7. The *2016 Foreign Ownership Order* expressly provides for processing of petitions requesting advance approval for up to and including 100 percent aggregate foreign ownership (voting and/or equity)

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<sup>11</sup> Supplement at 2 (citing 47 CFR § 1.5001(i)); *see also* Supplement at 6, n.4 (explaining the assumption that all special warrants have been exchanged for, and all shares of Class B Common Stock have been converted to, Class A Common Stock). Given this assumption, we need not and do not make any determination as to whether the terms of the special warrants are such as to constitute "capital stock" for purposes of 47 U.S.C. § 310(b).

<sup>12</sup> Petition at 14.

<sup>13</sup> *Id.* at 3-4, 11, 18-19.

<sup>14</sup> *Id.* at 17-18.

<sup>15</sup> *Id.* at 14-17, 20.

<sup>16</sup> *Id.* at 4, 20.

<sup>17</sup> 47 U.S.C. § 310(b)(4).

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

<sup>19</sup> *2016 Foreign Ownership Order*, *supra* note 3.

<sup>20</sup> *See 2013 Broadcast Clarification Order*, 28 FCC Rcd at 16251, para. 14; *2016 Foreign Ownership Order*, 31 FCC Rcd at 11277, para. 6.

by unnamed and future foreign investors in the controlling U.S. parent of a broadcast licensee.<sup>21</sup> 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.<sup>22</sup>

### III. DISCUSSION

8. We find that grant of this unopposed Petition is in the public interest, subject to the conditions discussed below. Specifically, we find that grant of the Petition is likely to: (1) enable Cumulus to be in a stronger financial condition post-bankruptcy and provide the company greater flexibility to access foreign investment capital, thereby allowing Cumulus to better compete with other media companies, enhance its programming, and better serve the public interest;<sup>23</sup> (2) facilitate foreign investment in the U.S. broadcast radio market;<sup>24</sup> and (3) potentially encourage reciprocal investment opportunities for U.S. companies in foreign markets.<sup>25</sup>

9. As explained above, Cumulus requests approval to permit up to and including 100 percent aggregate direct and/or indirect foreign investment (voting and equity) to (1) help enable holders of warrants and non-voting stock to convert or exercise these instruments in exchange for voting stock, and (2) facilitate additional investment by unnamed and future foreign investors in Cumulus. Following the procedures outlined in the *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.<sup>26</sup> The Executive Branch agencies have filed a letter with the Commission stating that they have no objection to grant of the request and have not requested that we impose any conditions on grant.<sup>27</sup>

10. Accordingly, upon review of the facts and circumstances set out in the 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 Cumulus, the owner of nearly 450 radio broadcast station licenses, in excess of the 25 percent benchmark set forth in section 310(b)(4) of the Act.<sup>28</sup>

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<sup>21</sup> *2016 Foreign Ownership Order*, 31 FCC Rcd at 11282, para. 15.

<sup>22</sup> Subsequent to the *2016 Foreign Ownership Order*, the Bureau has granted petitions for declaratory ruling allowing aggregate foreign investment of 49 percent in the controlling U.S. parent companies of two broadcast licensees, as well as petitions 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); *Corvex Master Fund LP*, 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, 33 FCC Rcd 4465 (2018) (permitting 100 percent foreign ownership in the licensee's parent company); *Border Media Licenses*, Declaratory Ruling and Memorandum Opinion and Order, 33 FCC Rcd 8324 (2018) (same); *Zoo Communications LLC*, Declaratory Ruling and Memorandum Opinion and Order, 2019 WL 937029 (2019) (same); *Terrier Media Buyer*, Declaratory Ruling, 2019 WL 6318886 (2019) (permitting foreign investors to own up to 100 percent of company's voting and equity interests).

<sup>23</sup> See Petition at 3-4, 11, 14-20

<sup>24</sup> See *2016 Foreign Ownership Order*, 31 FCC Rcd 11273, para. 2.

<sup>25</sup> See *id.* at 11316, para. 98.

<sup>26</sup> See *id.* at 11277, 11289, paras. 6, 34; *2013 Broadcast Clarification Order*, 28 FCC Rcd at 16251, para. 14.

<sup>27</sup> See Letter from Lee Licata, Attorney Advisor, National Security Division, U.S. Department of Justice, to Marlene H. Dortch, Secretary, FCC (February 20, 2020) (on file in MB Docket No. 19-143).

Specifically, pursuant to section 1.5000(a) of the rules,<sup>29</sup> this Declaratory Ruling permits the aggregate direct and/or indirect foreign equity and voting interests in Cumulus to exceed 25 percent and to increase up to and including 100 percent.

11. This ruling is subject to the terms and conditions set forth in section 1.5004 of the Commission's rules,<sup>30</sup> including the requirement to obtain Commission approval before foreign ownership of Cumulus exceeds the terms and conditions of this ruling. Further, the ruling is subject to the requirement that Cumulus obtain specific approval for any foreign individual, entity, or group of such individuals or entities that holds, or would hold, directly and/or indirectly, more than five percent (or more than 10 percent for certain institutional investors) of the equity and/or voting interests, or a controlling interest, in the company.<sup>31</sup> If, at any time, Cumulus, or any of its direct or indirect subsidiaries, knows, or has reason to know, that Cumulus and/or the subsidiary is no longer in compliance with this Declaratory Ruling, section 310(b) of the Act, or the Commission's foreign ownership rules, Cumulus and/or the subsidiary shall file a statement with the Commission explaining the circumstances within 30 days of the date that Cumulus and/or the subsidiary knew, or had reason to know, that it was no longer in compliance.<sup>32</sup> Cumulus and its direct and indirect subsidiaries will be subject to enforcement action by the Commission for such non-compliance, including an order requiring divestiture of the foreign investment.<sup>33</sup>

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<sup>28</sup> 47 U.S.C. § 310(b)(4).

<sup>29</sup> 47 CFR § 1.5000(a).

<sup>30</sup> *Id.* § 1.5004.

<sup>31</sup> *Id.* §§ 1.5001(i), 1.5004(a)(1). Given the assumptions underlying the Petition and Supplement (*see, e.g.*, Supplement at 6, n.4), we clarify that, for purposes of calculating whether an individual or entity is a disclosable interest holder or requires specific approval, Cumulus should include any outstanding special warrants in its calculation of the individual's or entity's *pro rata* equity interest (*i.e.*, on a fully diluted basis). Special warrants are considered on a case-by-case, temporary and limited basis in the context of a bankruptcy proceeding until the filing of a petition for declaratory ruling concerning foreign ownership upon closing of the transaction. *See, e.g., Liberman Television of Dallas License LLC, Debtor-in-Possession*, Order, DA 19-1012 (MB 2019) (*Liberman Order*) (reviewing the assignment of broadcast licenses in several markets held by indirect, wholly-owned subsidiaries of Liberman Broadcasting, Inc., Debtor-in-Possession (LBI, and, together with affiliated entities, the LBI Debtors), from the licensees, as debtors-in-possession, to the same licensees, as non-debtors in possession, following the emergence of the LBI Debtors from bankruptcy; granting a temporary and limited waiver of section 1.5000(a)(1) of the rules to permit the LBI Debtors to emerge from bankruptcy before filing any petition for declaratory ruling that may be required to allow aggregate foreign ownership in excess of the 25% benchmark in section 310(b)(4) of the Act; and conditionally granting the applications on the filing of a petition for declaratory ruling concerning foreign ownership within 30 days of the closing of the transaction). *See also Fusion Connect, Inc., Debtor-In-Possession*, Public Notice, DA 20-43 (WCB 2020) (*Fusion Public Notice*) (finding temporary and limited waiver of section 1.5000(a)(1) would effectively provide interim section 310(b)(4) authority only, in order to enable Fusion Connect's prompt emergence from bankruptcy while preserving the Commission's ability to review and rule on its proposed foreign ownership upon emergence from bankruptcy.) *See also id.* (stating that "facilitating successful and timely emergence from bankruptcy 'advances the public interest by providing economic and social benefits, especially including the compensation of innocent creditors'"); *LaRose v. FCC*, 494 F.2d 1145, 1146, n.2 (D.C. Cir. 1974) (stating that, in applying its policies where an application arises from bankruptcy, the Commission should consider "the public interest in the protection of innocent creditors.").

<sup>32</sup> *Id.* § 1.5004(f). Subsequent actions taken by or on behalf of Cumulus, and/or its direct and indirect subsidiaries, to remedy non-compliance shall not relieve them of the obligation to notify the Commission of the circumstances (including duration) of non-compliance. *Id.*

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

**IV. ORDERING CLAUSES**

12. 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 Cumulus Media Inc. IS GRANTED subject to the conditions specified herein.

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

FEDERAL COMMUNICATIONS COMMISSION

Albert Shuldiner  
Chief, Audio Division  
Media Bureau