



Federal Communications Commission
Washington, D.C. 20554

July 28, 2020

DA 20-794
Released: July 28, 2020

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Re: Petition for Declaratory Ruling by Spanish Broadcasting System, Inc., Pursuant to 47 CFR § 1.5004(f)(3).

Counsel:

On May 7, 2020, Spanish Broadcasting System, Inc. (SBS), filed a voluntary dismissal (Notice or Notice of Withdrawal) of its December 4, 2017 Petition for Declaratory Ruling (PDR) regarding the foreign ownership limits prescribed by section 310(b)(4) of the Communications Act, as amended (the Act), asserting that the PDR is no longer necessary based on its determination that provisions in its corporate charter operated to remedy any possible violation.¹ Thereafter, Ravensource Fund, Stornoway Recovery Fund L.P., and West Face Long Term Opportunities Global Master, L.P. (collectively, Preferred Shareholders), filed a response to SBS's Notice of Withdrawal, asserting that SBS has never been in violation of the foreign ownership limits, but nevertheless asking that we decline to grant the withdrawal, as the Petition relates to ongoing litigation between the parties.² The Preferred Shareholders also later filed a copy of the transcript from the May 15, 2020 oral arguments made before the Court of Chancery of the State of Delaware (Delaware Chancery Court).³

Under Commission rules, a licensee that believes it has unintentionally exceeded the 25 percent foreign ownership benchmark or its permitted level of foreign ownership under an existing declaratory ruling can pursue one of two avenues, either of which must be completed within 30 days of the date the licensee learns of the non-compliant foreign interest: (1) the licensee can file a petition for declaratory ruling seeking approval of the overage, or (2) the licensee can remedy the overage on its own accord

¹ Notice of Withdrawal of Petition for Declaratory Ruling filed by Spanish Broadcasting System, Inc., (filed May 7, 2020), [https://ecfsapi.fcc.gov/file/10507090386853/Notice%20of%20Withdrawal%20of%20Petition%20\(5-07-2020\).pdf](https://ecfsapi.fcc.gov/file/10507090386853/Notice%20of%20Withdrawal%20of%20Petition%20(5-07-2020).pdf); 47 U.S.C. § 310(b)(4).

² Letter from Preferred Shareholders (filed May 12, 2020) (asserting that “embedded within the Delaware law questions the Chancery Court needs to address is a predicate question of whether there has been a Section 310 violation, a question uniquely and legally a matter within the FCC’s jurisdiction, and not a specific provision of SBS’s Charter.”).

³ Letter from Preferred Shareholders (filed June 11, 2020).

without filing a new petition for declaratory ruling.⁴ In either case, “the Commission does not expect to take enforcement action related to the non-compliance if the licensee complies with additional requirements set forth in the rules.”⁵ Specifically, the licensee must demonstrate that its noncompliance was due solely to circumstances beyond its control that were not reasonably foreseeable to or known by the licensee acting with due diligence.⁶ If the licensee files a petition for declaratory ruling, the Commission will not require that the licensee’s U.S. parent redeem the non-compliant foreign interests or take other action to remedy the non-compliance during the pendency of the petition; if the Commission declines to approve the petition, the licensee must have a mechanism available to come into compliance with the statutory benchmark or the terms of an existing declaratory ruling within 30 days following the Commission’s decision.⁷

The avenue chosen by SBS did not fit neatly into either category. Rather, in its PDR, SBS seeks a ruling that (1) remedial steps it took prior to filing the PDR were sufficient to prevent non-compliance with the 25 percent foreign ownership benchmark or (2) that permitting temporary noncompliance, pending further steps to perfect the remediation, is in the public interest, should the Bureau determine that its remedial measures were not adequate.⁸ In its Notice of Withdrawal, SBS states that, by the terms of its corporate charter, the Preferred Shareholders’ stock acquisition was void *ab initio*.⁹ SBS states that the only relevant issue regarding its foreign ownership is “whether or not the SBS Charter operated to invalidate the [Preferred Shareholders’] purported stock purchase – which question has only been presented to, and can only be answered by, the Delaware court.”¹⁰ Although SBS seeks now to withdraw its PDR, the Preferred Shareholders urge us not to dismiss the PDR because, in their view, it presents a “predicate question” solely within the Commission’s jurisdiction that is central to the issues before the Delaware Chancery Court, i.e., whether their investment caused SBS to exceed 25 percent foreign ownership.¹¹ Preferred Shareholders maintain that their ownership interests did not cause SBS to exceed that benchmark, and they “agree with SBS that the Petition was not originally necessary — because there was no violation of the Commission’s foreign ownership rules.”¹²

Upon consideration of the record and issues presented therein, we conclude that dismissal of the PDR, as requested by SBS, serves the public interest in light of the circumstances. Further, we note that the SBS PDR, as supplemented, does not provide a basis to determine whether the Preferred Shareholders’ investment caused SBS to exceed the section 310(b)(4) benchmarks. The pending litigation in the Delaware Chancery Court raises issues that involve the alleged rights of the Preferred

⁴ 47 CFR § 1.5004(f)(3).

⁵ *Id.*

⁶ *Id.* § 1.5000(f)(3)(ii).

⁷ *Id.* § 1.5000(f)(3)(iii).

⁸ PDR at 1.

⁹ Notice at 2.

¹⁰ *Id.*

¹¹ Letter from Preferred Shareholders (filed May 12, 2020) at 3.

¹² *Id.* at 2.

Shareholders and alleged breaches of those rights by SBS. We take no position on the outcome of that litigation.¹³

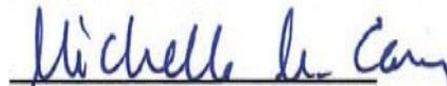
Furthermore, because SBS's belief that it remediated any foreign ownership violation appears to be premised on the validity of measures it believes are authorized by its corporate charter, and there is ongoing litigation regarding that question, we direct SBS, within 30 days after issuance of a determination by the Delaware Chancery Court, to notify the Media Bureau whether its foreign ownership exceeds the permissible benchmark and either demonstrate that it is in compliance or file a new petition for declaratory ruling seeking permission to exceed the benchmark.¹⁴

ACCORDINGLY, IT IS ORDERED that Spanish Broadcasting System, Inc.'s Petition for Declaratory Ruling is **DISMISSED**.

IT IS FURTHER ORDERED that within 30 days after issuance of a determination by the Delaware Court of Chancery in *Cedarview Opportunities Master Fund, L.P. v. Spanish Broadcasting System, Inc.*, Case No. C.A. 2017-0785-AGB (Del. Ch.), as to the question of whether the Preferred Shareholders' investment in Spanish Broadcasting System, Inc., was void *ab initio*, Spanish Broadcasting System, Inc., shall notify the Media Bureau whether its foreign ownership exceeds the benchmark established by section 310(b)(4) of the Communications Act of 1934, as amended, and either demonstrate that it is in compliance or file a new petition for declaratory ruling seeking permission to exceed the benchmark.

This action is taken pursuant to section 310(b)(4) of the Communications Act of 1934, as amended, the Commission's implementing rules, and authority delegated by section 0.283 of the Commission's rules.¹⁵

Sincerely,



Michelle M. Carey
Chief, Media Bureau

¹³ See, e.g., *Applications of Kirk Merkley*, 94 FCC 2d 829, 838 (1983) ("For example, where a licensee is accused of breaching a contract to assign its license, the determination of whether a breach occurred is left to a local state court.").

¹⁴ See 47 CFR § 1.5000(f)(3)(iii).

¹⁵ 47 U.S.C. § 310(b)(4); 47 CFR §§ 1.5000-1.5004; 47 CFR § 0.283.