

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

In the Matter of)
Spanish Broadcasting System) MB Docket No. 22-61
Petition for Declaratory Ruling Under Section)
310(b)(4) of the Communications Act of 1934, as)
Amended)

DECLARATORY RULING

Adopted: February 2, 2023

Released: February 3, 2023

By the Chief, Media Bureau:

I. INTRODUCTION

1. In this Declaratory Ruling (Declaratory Ruling), the Media Bureau addresses the petition for declaratory ruling (Petition) filed by Spanish Broadcasting System, Inc. (SBS). The Petition asks the Commission to exercise its discretion to permit SBS to exceed the 25% benchmark for equity investment set out in section 310(b)(4) of the Communications Act of 1934, as amended (the Act), and sections 1.5000 et seq. of the Commission’s rules (Rules). As discussed below, the Petition seeks authority for foreign

1 Spanish Broadcasting System, Inc., Restated Petition for Declaratory Ruling, MB Docket No. 22-61 (filed Feb. 3, 2022) (Petition). SBS filed a supplement to its Petition on May 31, 2022, to add two additional existing direct shareholders that are entities organized outside the United States, correct the pre-Petition and proposed post-Petition equity and voting interests held by non-U.S. entities and individuals (or to be held upon grant of the Petition by such shareholders), and make other small changes. See Spanish Broadcasting System, Inc., Letter, MB Docket No. 22-61 (dated May 31, 2022) (Petition Supplement).

2 SBS is a U.S. Hispanic-controlled media and entertainment company serving the Spanish-speaking residents of the United States. Petition at 3. As part of a litigation settlement, certain investors would receive a combination of cash and new shares of SBS’s Class A Common Stock. Petition at 2-3. The issuance of the total number of shares required to implement the settlement could cause the aggregate equity foreign ownership of SBS to exceed section 310(b)(4)’s 25% benchmarks because some of the parties are foreign entities and/or individuals. Id. See also 47 § CFR 1.5000(a)(1) (a broadcast licensee shall “obtain such approval, before the aggregate foreign ownership of any controlling, U.S.-organized parent company exceeds, directly and/or indirectly, 25 percent of the U.S. parent’s equity interests and/or 25 percent of its voting interests . . .”) (emphasis added).

3 Section 310(b)(4) of the 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 See 47 U.S.C. § 310(b)(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).

investors to indirectly own up to 49.99% of SBS's *equity* in the aggregate.⁵ The Petition does not seek specific or advance approval for any individual or entity.⁶ No comments or oppositions were filed on the Petition.⁷ As discussed below, and consistent with the input we received from the National Telecommunications and Information Administration (NTIA) on behalf of the Committee for the Assessment of Foreign Participation in the United States Telecommunications Services Sector (Committee), we find that it will serve the public interest to grant the Petition, subject to the conditions specified below.⁸

II. BACKGROUND

2. *SBS Settlement and Transactions.* The Petition submits that since November 2017, SBS has been involved in litigation concerning, among other issues, the application of the FCC's foreign ownership rules and the validity of certain transactions involving its 10 ¾% Series B Cumulative Exchangeable Redeemable Preferred Stock (Series B Preferred stock).⁹ Petitioner notes that the litigation was settled on February 17, 2021, without disposition of the underlying issues.¹⁰ As a result of the settlement, Petitioner states that the plaintiffs have received or will receive a combination of cash and new shares of SBS's Class A Common Stock.¹¹ Since some of the settling parties are non-U.S. investment funds or include one or more interest holders who are not U.S. citizens or U.S.-organized business entities, Petitioner states that issuance of the total number of shares required to implement the settlement fully could increase SBS's aggregate foreign ownership above the 25% threshold set forth in section 310(b) of the Act.¹² SBS seeks the Commission's approval for non-U.S. entities or individuals to hold up to 49.99% of its equity in the aggregate.¹³

3. *Corporate Structure.* The Petition lays out in detail the proposed ownership structure of SBS. Following the completion of the transactions contemplated by the settlement and this Petition, SBS would have three classes of common stock outstanding — Class A Common Stock, Class B Common Stock, and Series C Convertible Preferred Stock (collectively, SBS's Stock).¹⁴ Raúl Alarcón, a United States citizen, is the only individual or entity that would hold an attributable interest in SBS.¹⁵ Mr. Alarcón would hold an approximately 80% voting interest in SBS and a 34% equity interest in SBS based on his interests in SBS's Stock.¹⁶ The remainder of SBS's stock would be held by various domestic and

⁵ Petition at 2-3, 9. SBS seeks approval for foreign investors to hold up to 49.99% aggregate equity interest in the company. It does not seek approval for foreign investors to exceed the 25% benchmark for voting interest set out in section 310(b)(4). *Id.*

⁶ *Id.* at 9. *See* 47 CFR § 1.5001(i), 47 CFR § 1.5001(k).

⁷ The Petition was placed on public comment on February 11, 2022, with comments due March 14, 2022, and replies due on March 29, 2022. *Media Bureau Announces Filing of Petition for Declaratory Ruling by Spanish Broadcasting System, Inc.*, Public Notice, MB Docket No. 22-61, DA 22-142 (Feb. 11, 2022) (*Public Notice*).

⁸ *See supra* at paras. 5, 10-11.

⁹ Petition at 2. *See also Cedarview Opportunities Master Fund, L.P., et al. v. Spanish Broadcasting System, Inc.*, C.A. No. 2017-0785-AGB (Del. Ch.) (Cedarview Litigation).

¹⁰ Petition at 2.

¹¹ *Id.*

¹² *Id.*

¹³ *Id.* at 3.

¹⁴ *Id.* at 4-5.

¹⁵ Only Mr. Alarcón would have a 5% or greater voting interest in SBS, thus no other individual or entity would hold an attributable interest in SBS. *See* 47 CFR § 1.5001(e)-(f); 47 CFR § 73.3555, Note 2(a); Petition at 7-8.

¹⁶ Petition at 4-5, 8, Exhibit B.

foreign investors.¹⁷ No foreign individual or entity would hold more than a 5% voting or equity interest in SBS.¹⁸

4. *Public Interest Showing.* SBS contends that granting the Petition is in the public interest because it would, *inter alia*, further the Commission's goals of encouraging foreign investment in the broadcast industry and promoting regulatory flexibility.¹⁹ SBS also asserts that approval of the Petition would serve the public interest by "affirming the ability of SBS and the proposed new shareholders to settle a long-standing legal dispute," which settlement comes in connection with a "timely refinancing of SBS's debt that has placed it on a firmer financial footing and poised for growth as the U.S. economy recovers."²⁰ Furthermore, SBS states that a grant would not pose any national security, trade policy, or law enforcement concerns, noting that Raúl Alarcón, a United States citizen, has long held over 75% of SBS's voting power, and will continue to do so following the issuance of all Class A Common shares to be issued in exchange for Series B Preferred holdings.²¹ Moreover, SBS contends that the parties acquiring new common stock in SBS are well-established investment companies, a mix of both Canadian and U.S. entities.²²

5. *National Security, Law Enforcement, Foreign Policy and Trade Policy Review.* Pursuant to Commission practice, we referred the Petition to the relevant Executive Branch agencies for their review of any national security, law enforcement, foreign policy, or trade policy concerns related to the foreign ownership of SBS.²³ On February 15, 2022, the Committee notified the Commission that it was reviewing the Petition for any national security and law enforcement concerns that may be raised by foreign participation in the United States telecommunications services sector and requested that the Commission defer action on the Petition.²⁴ Subsequently, on July 29, 2022, the Committee notified the Commission that SBS provided complete responses to the Committee's initial questions and that it was conducting its review to assess whether granting the Petition would pose a risk to the national security or law enforcement interests of the United States.²⁵ On September 9, 2022, the Committee notified the Commission that SBS requested and received an extension of time to complete responses to questions posed by the Committee, and again notified the Commission of a further extension of time on September

¹⁷ See *id.* at Exhibits B, C; Petition Supplement at Exhibit C.

¹⁸ See *id.* at 9, Exhibits B-C; Petition Supplement at Exhibit C. In total, the proposed investment would result in foreign entities and/or individuals holding approximately a 7.24% voting interest in SBS and a 23.63% equity interest in SBS via ownership of SBS's Stock. See Petition Supplement at Exhibit C. These foreign shareholders have been identified as organized in, or citizens of, Belgium, Brazil, the British Virgin Islands, Canada, the Cayman Islands, Ecuador, France, Germany, Hong Kong, India, Ireland, Israel, Italy, Latvia, Mexico, the Netherlands, Singapore, the United Kingdom, Uruguay, and Venezuela. *Id.*

¹⁹ Petition at 9-10; see also *2016 Foreign Ownership Order*, para. 12 (2016).

²⁰ *Id.*

²¹ *Id.* at 10.

²² *Id.* at 10-11.

²³ *Public Notice* at 2 (citing *Process Reform for Executive Branch Review of Certain FCC Applications and Petitions Involving Foreign Ownership*, IB Docket 16-155, Report and Order, 35 FCC Rcd 10927 (2020) (setting rules and procedures for referring applications for Executive Branch review consistent with Executive Order No. 13913)).

²⁴ Letter from Elizabeth K. McIntyre, Attorney Advisor, National Security Division, DOJ, to Marlene H. Dortch, Secretary, FCC, MB Docket No. 22-61 (filed Feb. 15, 2022).

²⁵ Letter from Elizabeth K. McIntyre, Attorney Advisor, National Security Division, DOJ, to Marlene H. Dortch, Secretary, FCC, MB Docket No. 22-61 (filed July 29, 2022).

30, 2022.²⁶ On December 8, 2022, the NTIA submitted a Petition to Adopt Conditions on behalf of the Committee (NTIA Petition).²⁷ In this filing, the Committee advised the Commission that it has no objection to grant of this Petition, provided that the Commission condition its approval on the assurance of SBS that it will abide by the commitments and undertakings set forth in the 2022 SBS/DOJ Letter of Agreement.²⁸

6. *Standard of Review.* We review the Petition under section 310(b)(4) of the Act, which states that “[n]o broadcast . . . license shall be granted to or held by . . . any corporation directly or indirectly controlled by any other corporation of which more than one-fourth of the capital stock is owned of record or voted by aliens, their representatives, or by a foreign government or representative thereof, or by any corporation organized under the laws of a foreign country, if the Commission finds that the public interest will be served by the refusal or revocation of such license.”²⁹ This section of the Act grants the Commission discretion to allow foreign investment in a licensee’s controlling U.S.-organized parent above 25 percent unless the Commission finds that the public interest would be served by refusing to permit such foreign investment.³⁰ 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.³¹

7. 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.³² The *2016 Foreign Ownership Order* expressly provides for processing of petitions requesting approval for up to and including 100% aggregate foreign voting and/or equity investment by unnamed and future foreign investors in the controlling U.S. parent of a broadcast licensee.³³ 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.³⁴

III. DISCUSSION

8. We find that the public interest is served by permitting foreign ownership of SBS in excess of the 25% benchmark for equity investment in section 310(b)(4) of the Act and grant the Petition

²⁶ Letter from Elizabeth K. McIntyre, Attorney Advisor, National Security Division, DOJ, to Marlene H. Dortch, Secretary, FCC, MB Docket No. 22-61 (filed Sept. 9, 2022); Letter from Elizabeth K. McIntyre, Attorney Advisor, National Security Division, DOJ, to Marlene H. Dortch, Secretary, FCC, MB Docket No. 22-61 (filed Sept. 30, 2022).

²⁷ Petition to Adopt Conditions to Authorization and License, MB Docket No. 22-61 (filed Dec. 8, 2022).

²⁸ *Id.* See also November 28, 2022, Letter from Richard D. Lara, EVP, General Counsel on behalf of Spanish Broadcasting System, Inc. to Chief, Foreign Investment Review Section (FIRS), Deputy Chief, Compliance and Enforcement (FIRS) On Behalf of the Assistance Attorney General for National Security, U.S. Department of Justice, MB Docket No. 22-61 (dated Nov. 28, 2022) (2022 SBS/DOJ Letter of Agreement).

²⁹ 47 U.S.C. § 310(b)(4).

³⁰ See *id.*; *2016 Foreign Ownership Order*, 31 FCC Rcd at 11276, para. 5.

³¹ *2016 Foreign Ownership Order*, 31 FCC Rcd at 11277, para. 6.

³² See generally *2016 Foreign Ownership Order*.

³³ *Id.* at 11282, para. 15.

³⁴ 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).

subject to the conditions described below. We also find that it is in the public interest to grant SBS's request to permit foreign investors to indirectly own up to 49.99% of SBS's equity in the aggregate. SBS does not make any requests for specific or advance approval under the Commission's rules and therefore no such determinations are required in granting this Petition.

9. *Section 310(b)(4) Determination and Public Interest Analysis.* Pursuant to section 310(b)(4) of the Act, as well as sections 1.5001 through 1.5004 of the Commission's rules, we find that the public interest is served by permitting foreign ownership of SBS in excess of the 25% benchmark for equity investments set forth in section 310(b)(4) of the Act, and consequently, grant the Petition as conditioned below. We also find that it is in the public interest to grant SBS's request for foreign investors to indirectly own up to 49.99% of SBS's equity in the aggregate. Specifically, we conclude that grant of SBS's Petition is in the public interest because it, *inter alia*, provides the company with greater access to foreign capital and thereby contributes to the strengthening of the broadcast industry.³⁵ Lastly, the Committee has indicated that it has no objection to a grant of the Petition so long as SBS complies with the terms of the 2022 SBS/DOJ Letter of Agreement.³⁶

10. *National Security and Law Enforcement Review.* As stated, as part of its public interest analysis, the Commission coordinates petitions for section 310(b) foreign ownership rulings with the relevant Executive Branch agencies for national security, law enforcement, foreign policy and trade policy issues.³⁷ At the request of the Committee, and in light of SBS's commitments and undertakings pursuant to the 2022 SBS/DOJ Letter of Agreement, as well as the absence of any objection from SBS, we grant the NTIA Petition. Accordingly, we condition grant of the Petition on compliance by SBS with the commitments and undertakings set out in the 2022 SBS/DOJ Letter of Agreement. A failure to comply with and/or remain in compliance with any of the provisions of the 2022 SBS/DOJ Letter of Agreement shall constitute a failure to meet a condition of this Declaratory Ruling and potential violation of section 310(b)(4) of the Act, which could result in monetary sanctions or other enforcement action by the Commission.³⁸

11. *Additional Terms and Conditions.* In addition to compliance with the terms of the 2022 SBS/DOJ Letter of Agreement, 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 SBS exceeds the terms and conditions of this ruling.³⁹ This includes the

³⁵ See Petition at 9-11 (describing public interest benefits related to this Declaratory Ruling).

³⁶ See Petition to Adopt Conditions to Authorization and License, MB Docket No. 22-61 (filed Dec. 8, 2022). The 2022 SBS/DOJ Letter of Agreement sets forth the commitments that SBS makes to the DOJ to address national security and law enforcement risks, which include, *inter alia*, an obligation to notify the DOJ of any material changes to its business, complete third-party financial audits, and other miscellaneous commitments. The 2022 SBS/DOJ Letter of Agreement contains the specific terms of these commitments and undertakings. See 2022 SBS/DOJ Letter of Agreement.

³⁷ See 2016 Foreign Ownership Order, 31 FCC Rcd at 11282, 11289, paras. 15, 34. See also *Process Reform for Executive Branch Review of Certain FCC Applications and Petitions Involving Foreign Ownership*, IB Docket 16-155, Report and Order, 35 FCC Rcd 10927, 10934-36, paras. 17, 24 (2020).

³⁸ See also 2022 SBS/DOJ Letter of Agreement at 5 ("SBS agrees that in the event that SBS breaches the commitments set forth in this LOA, to include conduct contrary to timely USDOJ objection to any notice submitted pursuant to this LOA, a recommendation may be made that the FCC modify, condition, revoke, cancel, enter other declaratory relief, or render null and void any relevant license, permit, or other authorization granted by the FCC to SBS or its successors-in-interest, in addition to pursuing any other remedy available by law or equity").

³⁹ 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. 47 CFR § 1.5004(a). It sets out the requirements for when a licensee must seek Commission approval prior for any new, not previously

requirement that SBS obtain Commission approval for any new or additional foreign individual, entity, or group of such individuals or entities to hold, directly and/or indirectly, more than 5% (or more than 10% for certain investors) of the equity and/or voting interests, or a controlling interest, in the company.⁴⁰ If, at any time, SBS knows, or has reason to know, that it is no longer in compliance with this Declaratory Ruling, the terms of the 2022 SBS/DOJ Letter of Agreement, section 310(b) of the Act, or the Commission's foreign ownership rules, SBS 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.⁴¹ SBS may be subject to enforcement action by the Commission for such non-compliance, including an order requiring divestiture of the foreign investment.⁴²

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 sections 1.5001 through 1.5004 of the Commission's rules, 47 C.F.R. §§ 1.5001-04, and pursuant to authority delegated to the Media Bureau in sections 0.61 and 0.283 of the Commission's rules, 47 CFR §§ 0.61, 0.283, the Petition for Declaratory Ruling filed by Spanish Broadcasting System, Inc., **IS GRANTED** subject to the conditions specified herein.

13. **IT IS FURTHER ORDERED** that, pursuant to sections 154(i)-(j) and 310(b) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i)-(j), 310(b), and sections 1.40001-04 of the Commission's rules, 47 C.F.R. §§ 1.40001-04, the Petition to Adopt Conditions filed by the National Telecommunications and Information Administration on December 8, 2022, **IS GRANTED**.

14. **IT IS FURTHER ORDERED** that, pursuant to sections 154(i)-(j), 303(r), 309, and 310(b) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i)-(j), 303(r), 309, and 310(b), and sections 1.40001-04 of the Commission's rules, 47 C.F.R. §§ 1.40001-04, grant of the Petition for Declaratory Ruling is **CONDITIONED UPON** compliance by Spanish Broadcasting System, Inc. with the commitments and undertakings set forth in the November 28, 2022, Letter of Agreement between Spanish Broadcasting System, Inc. and the U.S. Department of Justice.

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

FEDERAL COMMUNICATIONS COMMISSION

Holly Saurer
Chief, Media Bureau

approved foreign individuals, entities, or groups acquiring an interest in excess of the specific approval threshold. 47 CFR § 1.5004(a). It sets out a licensee's obligations regarding subsidiaries and affiliates and the insertion of new controlling or non-controlling foreign-organized companies. 47 CFR § 1.5004(b)-(d). It also 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. 47 CFR § 1.5004(e)-(f).

⁴⁰ 47 CFR § 1.5004(a)(1).

⁴¹ See 47 CFR § 1.5004(f)(1). If, for example, a foreign individual or entity should invest in SBS above the specific approval threshold without Commission approval, SBS, as licensee, is obligated to follow the steps set out in 47 CFR § 1.5004(f). Subsequent actions taken by or on behalf of SBS to remedy non-compliance shall not relieve it of the obligation to notify the Commission of the circumstances (including duration) of non-compliance.

⁴² *Id.*