



PUBLIC NOTICE

Federal Communications Commission
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DA 23-367

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BORDER INTERNATIONAL BROADCASTING, INC. SEEKS FOREIGN OWNERSHIP RULING PURSUANT TO SECTION 310(b)(4) OF THE COMMUNICATIONS ACT OF 1934, AS AMENDED

PLEADING CYCLE ESTABLISHED

MB Docket No. 23-153

Comment Date: June 5, 2023

Reply Date: June 20, 2023

A petition for declaratory ruling has been filed on behalf of Border International Broadcasting, Inc. (BIBI)¹ requesting that the Federal Communications Commission (Commission) find, pursuant to section 310(b)(4) of the Communications Act of 1934, as amended, (Act)² and section 1.5000(a)(1) of the Commission's rules,³ that it would serve the public interest to allow BIBI to accept foreign investment in excess of the 25% benchmarks set forth in section 310(b)(4).⁴ Specifically, BIBI seeks a Commission ruling to (1) permit up to 100% aggregate foreign investment (voting and equity) in the company, and (2) specifically approve⁵ certain foreign investors to hold more than 5% equity and/or voting interest in

¹ Petition for Declaratory Ruling of Border International Broadcasting, Inc., Application File No. 0000206397 (filed Jan. 12, 2023) (Petition); Supplement to Petition for Declaratory Ruling, Application File No. 0000206397 (filed Apr. 20, 2023) (First Supplement); Second Supplement to Petition for Declaratory Ruling, Application File No. 0000206397 (filed Apr. 26, 2023) (Second Supplement). Contemporaneously with the filing of the Petition, BIBI filed an application seeking Commission consent to the transfer of control of WLYK(FM), Cape Vincent, New York (Facility ID No. 8567), the sole broadcast license it holds. *See* Application of Border International Broadcasting, Inc. for Consent to Transfer Control, Application File No. 0000206397 (filed Jan. 5, 2023).

² 47 U.S.C. § 310(b)(4); *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 R&O*).

³ 47 CFR § 1.5000(a)(1); *2016 Foreign Ownership R&O*, 31 FCC Rcd 11272.

⁴ 47 U.S.C. § 310(b)(4) (“No broadcast station 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.”).

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 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).

BIBI.⁶ As detailed further below, 1234567 Corporation (123), as the transferee in the related transfer of control application and as the proposed direct 100% interest holder of BIBI, filed the Petition on behalf of itself, the licensee BIBI, and the individuals and entities that will hold a direct or indirect interest in BIBI.⁷

BIBI seeks this declaratory ruling in connection with the proposed transfer of control of the company, which is the licensee of WLYK(FM), Cape Vincent, New York, Facility ID No. 8567. Specifically, the application seeks Commission consent to transfer ownership of BIBI from the three natural persons who currently control the company today to 123, a Delaware corporation of which the sole shareholder is a Canadian corporation named Border Broadcasting Corporation (BBC). In turn, BBC will be owned by Canadian citizens Andrew Dickson and Jon Pole, as well as two family trusts.⁸ The family trusts are organized by each of the two principal individuals, respectively, The Andrew and Karen Dickson (2022) Family Trust (the Dickson Trust), and The Jon and Sasha Pole (2022) Family Trust (the Pole Trust⁹) (each a Trust or, collectively, the Trusts). The Trusts are each organized under the laws of Canada and their primary purpose is estate planning for the respective trustees.⁹ The co-trustees of the Dickson Trust are Andrew Dickson and Karen Dickson, Canadian citizens. The co-trustees of the Pole Trust are Jon Pole and Sasha Pole, also Canadian citizens. In each case, the two co-trustees each have 50% voting interest in their respective Trusts.

Accordingly, as the ownership structure proposed for BIBI post-closing will result in 100% indirect foreign ownership of the licensee, the Petition seeks a Declaratory Ruling to increase BIBI's indirect foreign ownership interests from a combined pre-transfer interest of 0.0% equity and voting, to a post-transfer indirect foreign ownership interest of 100.0%, equity and voting.

Specific Entities and Individuals for which Specific Approval is Sought

As a result of 123's proposed acquisition of 100% of the existing shares of BIBI, Delaware corporation 123 will have a *direct* 100% equity and voting interest in BIBI upon consummation of the transaction (following Commission approval).

Further, as a result of the transaction there will be six *indirect* foreign interest holders in BIBI that require specific approval, as follows. BBC, a Canadian corporation, will hold through 123 an indirect 100% equity and 100% voting interest in BIBI. In turn, Andrew Dickson, a Canadian citizen, will hold through BBC and the Dickson Trust an indirect 21.42% equity and 49.995% voting interest in BIBI; Jon Pole, a Canadian citizen, will hold through BBC and the Pole Trust an indirect 10.71% equity and 49.995% voting interest in BIBI;¹⁰ and Karen Dickson, a Canadian citizen, will hold through the Dickson Trust an indirect 7.14% equity and 4.545% voting interest in BIBI.¹¹ In addition, two Canadian Trusts

⁶ Petition at 1.

⁷ *Id.* at 2, 4-7.

⁸ The petitioners indicate that Jon Pole, President, and Andrew Dickson, Secretary-Treasurer, are the sole directors and officers of BBC and that no other parties control BBC or have the power to appoint directors. Further, they state that the company's by-laws provide that questions at board meetings must be decided by a majority of voting directors, and that no party is entitled to a second or casting vote when the board is deadlocked. Supplement at 2-3.

⁹ Petition at 6.

¹⁰ *Id.* at 5; *see also* Second Supplement at 2-3.

¹¹ Supplement at 3; Second Supplement at 2-3.

will each hold through BBC an indirect 50.0% equity and 4.545% voting interest in BIBI.¹² The Petition requests specific approval for the indirect foreign interests these six entities or individuals will hold upon consummation of the proposed transaction.¹³

BIBI asserts that grant of the Petition will serve the public interest as it would further the Commission's stated goals of encouraging foreign investment in U.S. broadcast stations and the continuation of operations by such stations.¹⁴ BIBI asserts further that the two principals, Andrew Dickson and Jon Pole, have extensive experience operating broadcast radio stations in Canada with an emphasis on localism.¹⁵ In sum, BIBI asserts that the combination of the parties' broadcasting expertise and infusion of capital will allow BIBI to continue operations of WLYK and facilitate its provision of local news programming and music to the listeners in the Cape Vincent, New York market.¹⁶

Pursuant to Commission practice, the Petition will be referred to relevant Executive Branch agencies for their views on any national security, law enforcement, foreign policy, or trade policy concerns related to the foreign ownership of BIBI.¹⁷

EX PARTE STATUS OF THIS PROCEEDING

Pursuant to section 1.1200(a) of the Commission's rules,¹⁸ the Commission may adopt modified or more stringent *ex parte* procedures in particular proceedings if the public interest so requires. We announce that this proceeding will be governed by permit-but-disclose *ex parte* procedures that are applicable to non-restricted proceedings under section 1.1206 of the Commission's rules.¹⁹

Parties making oral *ex parte* presentations are directed to the Commission's *ex parte* rules. Parties are reminded that memoranda summarizing the presentation must contain the presentation's substance and not merely list the subjects discussed.²⁰ More than a one- or two-sentence description of

¹² Andrew Dickson and Karen Dickson are co-trustees of the Dickson Trust, with each co-trustee holding a 50.0% voting interest, and thus negative control, in the trust. Similarly, Jon Pole and Sasha Pole are the co-trustees of the Pole Trust, with each co-trustee holding a 50.0% voting interest, and thus negative control, in the trust. Petition at 4-7; Second Supplement at 3, Exhibit F (Amended).

¹³ None of the other beneficiaries of the Trusts besides Andrew Dickson, Jon Pole, and Karen Dickson will hold an interest that requires specific approval under the Commission's rules, and the Petition does not seek specific approval for any entities or individuals besides the six entities and individuals detailed above. See Supplement at 4. Additionally, the Petition does not seek advance approval pursuant to 1.5001(k) for any foreign individual or entity named in the Petition to increase its direct and/or indirect equity and/or voting interests in the controlling U.S. parent of the broadcast licensee in the future. *Id.*

¹⁴ Petition at 8.

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ See *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). See also *Rules and Policies on Foreign Participation in the U.S. Telecommunications Market; Market Entry and Regulation of Foreign-Affiliated Entities*, IB Docket Nos. 97-142 and 95-22, Report and Order and Order on Reconsideration, 12 FCC Rcd 23891, 23918-19, paras. 61-63 (1997) (*Foreign Participation Order*), recon. denied, 15 FCC Rcd 18158 (2000).

¹⁸ 47 CFR § 1.1200(a).

¹⁹ 47 CFR § 1.1206.

²⁰ See 47 CFR § 1.1206(b)(1).

the views and arguments presented is generally required.²¹ Other rules pertaining to oral and written presentations are set forth in section 1.1206(b) as well.²²

GENERAL INFORMATION

The petition for declaratory ruling referred to in this Public Notice has been accepted for filing upon initial review. The Commission reserves the right to return any filing if, upon further examination, it is determined to be defective and not in conformance with the Commission's rules or policies. Interested persons must file comments no later than **June 5, 2023**. Replies must be filed no later than **June 20, 2023**.

To allow the Commission to fully consider all substantive issues regarding the Petition in as timely and efficient a manner as possible, commenters should raise all issues in their initial filings. A party or interested person seeking to raise a new issue after the pleading cycle has closed must show good cause why it was not possible for it to have raised the issue previously.²³ Submissions after the pleading cycle has closed that seek to raise new issues based on new facts or newly discovered facts should be filed within 15 days after such facts are discovered. Absent such a showing of good cause, any issues not timely raised may be disregarded by the Commission.

All filings concerning matters referenced in this Public Notice should refer to MB Docket No. 23-153, as well as the specific file number of any relevant individual application or other matters to which the filings pertain.

Submissions in this matter may be filed electronically (i.e., through ECFS) or by filing paper copies.

- *Electronic Filers*: Documents may be filed electronically using the Internet by accessing the ECFS: <http://fjallfoss.fcc.gov/ecfs2/>.
- *Paper Filers*: Parties who choose to file by paper must file an original and one copy of each filing. Filings can be sent by commercial overnight courier or by first-class or overnight U.S. Postal Service mail.²⁴ All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission. Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9050 Junction Drive, Annapolis Junction, MD 20701. U.S. Postal Service first-class, Express, and Priority mail must be addressed to 45 L Street, NE, Washington, DC 20554.

One copy of each pleading must be delivered electronically, by e-mail, or if delivered as paper copy, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (according to the procedures set forth above for paper filings), to: (1) Albert Shuldiner, Audio Division, Media Bureau, at albert.shuldiner@fcc.gov; (2) Christopher Clark, Audio Division, Media Bureau, at christopher.clark@fcc.gov; and (3) Brendan Holland, Audio Division, Media Bureau, at

²¹ See *id.*

²² 47 CFR § 1.1206(b).

²³ 47 CFR §§ 1.46(a), 73.3584(e).

²⁴ Effective March 19, 2020, and until further notice, the Commission no longer accepts any hand or messenger delivered filings. This is a temporary measure taken to help protect the health and safety of individuals, and to mitigate the transmission of COVID-19. See *FCC Announces Closure of FCC Headquarters Open Window and Change in Hand-Delivery Filing*, Public Notice, DA 20-304 (rel. Mar. 19, 2020), <https://www.fcc.gov/document/fcc-closes-headquarters-open-window-and-changes-hand-delivery-policy>.

brendan.holland@fcc.gov. Any submission that is e-mailed to Albert Shuldiner, Christopher Clark, and Brendan Holland should include in the subject line of the e-mail: (1) MB Docket No. 23-153; (2) the name of the submitting party; and (3) a brief description or title identifying the type of document being submitted (e.g., MB Docket No. 23-153, [name of submitting party], Comments).

Copies of the Petition and any subsequently filed documents in this matter are available electronically through the Commission's Electronic Filing Comment System (ECFS), which may be accessed on the Commission's Internet website.

To request materials in accessible formats for people with disabilities (Braille, large print, electronic files, audio format), send an email to fcc504@fcc.gov or call the Consumer and Governmental Affairs Bureau at (202) 418-0530 (voice). Contact the FCC to request reasonable accommodations for filing comments (accessible format documents, sign language interpreters, CART, etc.) by email: FCC504@fcc.gov; phone: (202) 418-0530.

For further information, contact Albert Shuldiner, Audio Division, Media Bureau, at (202) 418-2726. Press inquiries should be directed to Janice Wise, Media Bureau, (202) 418-8165 or (888) 835-5322.

This action is taken by the Chief, Media Bureau, pursuant to authority delegated by sections 0.61 and 0.283 of the Commission's rules.²⁵

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²⁵ 47 CFR §§ 0.61 and 0.283.