

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

In the Matter of)	
)	
Alpha Media Holdings Inc.)	MB Docket No. 23-11
)	
Petition for Declaratory Ruling Under Section)	
310(b)(4) of the Communications Act of 1934, as)	
Amended)	

DECLARATORY RULING

Adopted: September 28, 2023

Released: September 28, 2023

By the Chief, Audio Division, Media Bureau:

I. INTRODUCTION

1. In this Declaratory Ruling (Declaratory Ruling), the Media Bureau grants the petition for declaratory ruling (Petition) filed by Alpha Media Holdings Inc. (New Alpha or Petitioner).¹ The Petition asks the Commission to exercise its discretion to permit New Alpha to exceed the 25% benchmarks for investment established in section 310(b)(4) of the Communications Act of 1934, as amended (the Act),² and sections 1.5000 *et seq.* of the Commission's rules (Rules).³ As discussed below, the Petition seeks authority for up to 100% aggregate foreign investment (voting and equity) in the controlling U.S. parent, New Alpha, and specific approval⁴ for certain foreign investors to hold more than 5% equity and/or voting

¹ Petition for Declaratory Ruling of Alpha Media Holdings Inc., Application File Nos. 0000157131, 0000157330, *et al.* (filed Aug. 13, 2021) (Petition); Supplement to Petition for Declaratory Ruling, Application File Nos. 0000157131, 0000157330, *et al.* (filed Apr. 12, 2022) (First Supplement); Supplement to Petition for Declaratory Ruling, Application File Nos. 0000157131, 0000157330, *et al.* (filed Sept. 21, 2022) (Second Supplement). Concurrent with the filing of the Petition, New Alpha submitted related applications seeking Commission consent to the transfer of control of the licenses held by its indirect wholly owned subsidiaries. *See* Application of Alpha Media Licensee LLC for Consent to Transfer Control, Application File No. 0000157131 *et al.* (filed Aug. 13, 2021); Application of Alpha 3E Licensee LLC, Application File No. 0000157330 *et al.* (filed Aug. 13, 2021).

² 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).

³ *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).

⁴ 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 the equity and/or voting interests, or a controlling interest, in the petitioner's controlling

interest in New Alpha.⁵ New Alpha filed the Petition on behalf of itself and each of its indirect wholly owned subsidiaries that hold Commission broadcast licenses.⁶ No comments or oppositions were filed in response to the Petition.⁷ As discussed below, and consistent with the input 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. *Bankruptcy Proceeding and Transactions.* New Alpha seeks a declaratory ruling due to changes in its ownership structure that are an outgrowth of the bankruptcy reorganization of the company and its subsidiaries, which hold broadcast licenses. After filing voluntary petitions for relief under Chapter 11 of the United States Bankruptcy Code before the United States Bankruptcy Court for the Eastern District of Virginia, Richmond Division,⁹ New Alpha's predecessor, Alpha Media Holdings LLC, Debtor-in-Possession (Old Alpha), sought Commission consent to a two-step plan to facilitate the company's emergence from bankruptcy. Specifically, the parties sought Commission consent to transfer control of the broadcast licenses to New Alpha and the grant of a temporary waiver to permit the company to emerge from bankruptcy before filing a petition for declaratory ruling that would seek approval for foreign ownership in excess of the 25% benchmarks set forth in section 310(b)(4) of the Act.¹⁰

3. On July 13, 2021, the Commission granted New Alpha's transfer applications along with a temporary waiver of section 1.5000(a)(1) of the Commission's rules conditioned upon New Alpha filing a petition for declaratory ruling within 30 days of closing the transaction.¹¹ New Alpha emerged from bankruptcy on July 15, 2021.¹² As a result, New Alpha became owned by former creditors that held

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).

⁵ Petition at 1-2. Each of the entities and individuals requiring specific approval will hold a non-controlling interest in New Alpha. *Id.* According to the Petition, following grant of this Declaratory Ruling, day-to-day operations of New Alpha will remain under the control of U.S. citizens. *Id.* at 2.

⁶ Petition at 2 & Attach. A, *Petitioners, Subsidiaries, Licenses, and Applications*. New Alpha, a Delaware corporation, through two wholly owned subsidiaries, Alpha Media Licensee LLC and Alpha 3E Licensee LLC, owns and operates 236 full power radio broadcast stations and translator stations licensed by the Commission. The licensees, Alpha Media Licensee LLC and Alpha 3E Licensee LLC, are Delaware limited liability companies.

⁷ The Petition was placed on public comment on January 6, 2023, with comments due February 6, 2023, and replies due February 21, 2023. *Media Bureau Announces Filing of Petition for Declaratory Ruling by Alpha Media Holdings Inc.*, Public Notice, MB Docket No. 23-11, DA 23-18 (Jan. 6, 2023) (*Public Notice*).

⁸ See *infra* at paras. 12-14 and 18.

⁹ See Final Decree Closing Chapter 11 Cases Pursuant to 11 U.S.C. § 350(A) and Federal Rules of Bankruptcy Procedure 3022 for Alpha Media Holdings LLC et al., Case No. 21-30209 (KRH) (Bankr. E.D.V.A. Mar. 4, 2022).

¹⁰ *Alpha Media Licensee LLC, Debtor-in-Possession (Assignor) and Alpha Media Licensee LLC (Assignee); Alpha 3E Licensee LLC, Debtor-in-Possession (Assignor) and Alpha 3E Licensee LLC (Assignee)*, Application File Nos. 0000138519, 0000138678, 0000138727, 0000138774, et al., Order, DA 21-825 (July 13, 2021) (*Alpha Approval Order*).

¹¹ *Alpha Approval Order* at 15-16, paras. 42-46 (granting a temporary and limited waiver of section 1.5000(a)(1) of the Commission's rules, which requires an applicant for a broadcast station license to file a petition for declaratory ruling to exceed the aggregate foreign ownership benchmarks set forth in section 310(b)(4) of the Act "at the same time that it files its application" for transfer of control, and requiring that New Alpha file a petition for declaratory ruling within 30 days of emerging from bankruptcy).

¹² Petition at 3; see also *Alpha Approval Order*.

second lien note claims in Old Alpha prior to New Alpha's emergence from bankruptcy (the Owners).¹³ Shortly thereafter, and consistent with the condition imposed in the *Alpha Approval Order*, New Alpha timely filed the present Petition seeking approval of the proposed foreign ownership pursuant to section 1.5000(a)(1) of the Commission rules.¹⁴ Based on the record, at the end of these transactions the structure of Petitioner will be as described below.

4. *Corporate Structure.* As detailed in the Petition, the Owners holding direct attributable interests in New Alpha following its emergence from bankruptcy are: (1) MetLife Private Equity Holdings, LLC (MPEH), a Delaware limited liability company (41.7% equity and voting); (2) Florida Growth Fund LLC (FGH), a Delaware limited liability company (27.4% equity and voting); (3) Hamilton Lane Strategic Opportunities 2016 Fund LP (HLSOF), a Delaware limited partnership (21.6% equity and voting); and (4) ICG North America Holdings Ltd. (ICGNA), a Cayman Islands corporation (5.7% equity and voting).¹⁵

5. The Petition and pending applications seek Commission consent to the final step of New Alpha's bankruptcy Plan, which would permit a "substantial majority of the New Alpha Warrants [to] be exercised for New Equity Interests that would cause (a) New Alpha's aggregate foreign ownership to exceed 25 percent and (b) certain foreign Owners to hold equity and/or voting interests in New Alpha that would require specific approval."¹⁶ New Alpha estimates that once the Warrants are fully exercised it will have foreign ownership of more than 70% on both an equity and voting basis.¹⁷ Pursuant to section 1.5001(h) of the Commission's rules, the Petitioner requests approval of up to 100% aggregate foreign voting and equity investment in order to permit flexibility for New Alpha to take on additional foreign ownership in the future.

6. After the exercise of the Warrants, five entities will hold the following attributable interests in New Alpha: (1) MPEH (23.6% equity; 25% voting);¹⁸ (2) FGH (7.9% equity; 8.3% voting);¹⁹

¹³ Petition at 3. In accordance with New Alpha's Joint Plan of Reorganization (Plan), by which New Alpha acquired 100% of the equity interests in Old Alpha, the Owners exchanged their second lien note claims in Old Alpha for *pro rata* equity shares representing (1) New Alpha Common Stock (Equity Interests), which confer voting rights, and (2) New Alpha Warrants (Warrants). Petition at 4. In the Petition, New Alpha states that the Warrants carry no voting rights, confer no rights to economic distributions, and are convertible instruments that by their terms may be exercised only if consistent with the Communications Act. Petition at 3, n.6.

¹⁴ See *Alpha Approval Order* at 17, para. 48 (requiring filing of a petition for declaratory ruling within 30 days of emergence from bankruptcy).

¹⁵ Petition at 4. The foreign equity and voting percentages include interests held directly and indirectly in New Alpha. The remaining 3.6% voting and equity interests in New Alpha are held by non-attributable interest holders. See Petition at Attach. C-1.

¹⁶ Petition at 5; *Public Notice* at 2-3, note 14.

¹⁷ Petition at 8. New Alpha indicates that "this estimate is based upon direct inquiry of the entities that will hold direct and/or indirect ownership interests in New Alpha and calculations performed by New Alpha's advisors." *Id.*, Attach. D.

¹⁸ Petition at 13 (detailing MPEH's interest in New Alpha).

¹⁹ *Id.* at 14 (detailing FGH's interest in New Alpha).

(3) HLSOF (7.9% equity; 8.3% voting);²⁰ (4) ICGNA (39.1% equity; 41.4% voting);²¹ and (5) BigSur Capital Partners Three Corp. (BigSur), a British Virgin Islands corporation (6.3% equity; 6.7% voting).²²

7. Petitioner requests specific approval for BigSur, ICGNA, and four foreign entities affiliated with ICGNA, to each hold, indirectly, more than 5% of New Alpha's equity and/or voting interests. In addition, Petitioner seeks advance approval for these same six entities to hold up to 49.99% of New Alpha's equity and/or voting interests.²³ Specifically, Petitioner makes the following requests for advance approval: BigSur Capital Partners Three Corp. (British Virgin Islands) to hold up to 49.99% equity and 49.99% voting; ICG North America Holdings Ltd. (Cayman Islands) to hold up to 49.99% equity and 49.99% voting; Intermediate Capital Group PLC (United Kingdom) to hold up to 49.99% equity and 49.99% voting; ICG FMC Limited (United Kingdom) to hold up to 49.99% equity and 49.99% voting; ICG Global Investment Jersey Limited (Jersey) to hold up to 49.99% equity and 49.99% voting; and ICG Global Investment UK Limited (United Kingdom) to hold up to 49.99% equity and 49.99% voting.

8. *Public Interest Showing.* New Alpha 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.²⁴ New Alpha further asserts that grant of the Petition is in the public interest as it would enable New Alpha "to better compete in the media marketplace, incentivizing foreign investment in broadcasting, and promoting U.S. trade policy by encouraging reciprocal investment opportunities for U.S. companies in foreign markets, while avoiding any risks to national security, law enforcement, or foreign or trade policy."²⁵ New Alpha emphasizes that the proposed foreign owners of interests requiring specific approval are organized under the laws of the United Kingdom, the British Virgin Islands, the Cayman Islands, and Jersey, "all of which are allies of the United States and investors in its economy, and with which the U.S. is engaged in robust reciprocal trade."²⁶

9. *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

²⁰ *Id.* at 15 (detailing HLSOF's interest in New Alpha).

²¹ *Id.* at 9-12 (detailing ICGNA's interest in New Alpha).

²² Petition at 12 (detailing BigSur's interest in New Alpha); *see also* Petition at Attach. B (listing all the entities and individuals that will hold direct and indirect attributable interests in New Alpha); Attach. C (detailing New Alpha's current ownership structure following emergence from bankruptcy and its proposed ownership structure following the exercise of the Warrants); and Attach. D (listing percentage estimates of New Alpha's aggregate direct and indirect foreign equity and voting interests following the exercise of the Warrants and a general description of the methods used to determine the percentages). The remaining equity and voting interests in New Alpha are held by other non-attributable shareholders. *See* Petition at Attach. C-5.

²³ *See* Petition at 16 & nn. 40-41. The ownership of these entities, and projected equity and voting interests in New Alpha, is discussed in detail in the Petition. *See* Petition, Attach. E; Supplement at 2-3 & Attach. A; *see also* *Public Notice* at 2-6.

²⁴ Petition at 9-10; *see also* *2016 Foreign Ownership Order*, para. 12 (2016).

²⁵ Petition at 2, 17-25. New Alpha states that the "important public interest benefits with enabling greater foreign investment in communications companies take on added significance in the context of a company, such as New Alpha, that has recently restructured its debt load through the Chapter 11 bankruptcy process." *Id.* at 19. According to New Alpha, "permitting the conversion of debt to equity (or warrants to equity) following the grant of any necessary declaratory ruling will serve the important goal of incentivizing . . . foreign debt investments in companies subject to the Communication Act's foreign ownership limitations, allowing such companies to emerge in a stronger economic position." *Id.*

²⁶ *Id.* at 23.

foreign ownership of New Alpha.²⁷ On January 12, 2023, 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.²⁸ Subsequently, on June 14, 2023, the Committee notified the Commission that New Alpha had 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.²⁹ On September 7, 2023, the NTIA submitted a letter to the Commission in which the Committee advised that it has no recommendation at this time to the Commission and no objection to the Commission granting the Petition.³⁰

10. *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.”³¹ This section of the Act grants the Commission discretion to allow foreign investment in a licensee's controlling U.S.-organized parent above 25% unless the Commission finds that the public interest would be served by refusing to permit such foreign investment.³² 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.³³

11. 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.³⁴ 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.³⁵ To exercise in a meaningful way the discretion conferred by statute, the

²⁷ Public Notice at 6 (citing, *inter alia*, *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)).

²⁸ Letter from Mark Goldberg, Attorney Advisor, National Security Division, DOJ, to Marlene H. Dortch, Secretary, FCC, MB Docket No. 23-11 (filed Jan. 12, 2023).

²⁹ Letter from Mark Goldberg, Attorney Advisor, National Security Division, DOJ, to Marlene H. Dortch, Secretary, FCC, MB Docket No. 23-11 (filed June 14, 2023).

³⁰ Letter from Stephanie Weiner, Chief Counsel, NTIA, to Ethan Lucarelli, Chief, Office of International Affairs, FCC, MB Docket No. 23-11 (filed Sept. 7, 2023).

³¹ 47 U.S.C. § 310(b)(4).

³² See *id.*; *2016 Foreign Ownership Order*, 31 FCC Rcd at 11276, para. 5.

³³ *2016 Foreign Ownership Order*, 31 FCC Rcd at 11277, para. 6.

³⁴ See generally *2016 Foreign Ownership Order*.

³⁵ *Id.* at 11282, para. 15.

Commission must receive detailed information from the applicant sufficient for the Commission to make the public interest finding the statute requires.³⁶

III. DISCUSSION

12. We find that the public interest would be served by permitting foreign ownership of New Alpha in excess of the 25% benchmarks in section 310(b)(4) of the Act and grant the Petition subject to the conditions described below. We also find that it is in the public interest to grant New Alpha's request to permit foreign investors to indirectly own up to 100% of New Alpha's voting and equity interests, in the aggregate. In addition, we grant the requests for specific and advance approval under the Commission's rules.

13. *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 New Alpha in excess of the 25% benchmarks 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 Petitioner's request for approval of up to an aggregate 100% indirect foreign ownership of New Alpha. We further find that it is in the public interest to grant specific and advance approval for the percentages set out to the entities specified in Section IV below. Specifically, we conclude that grant of New Alpha's Petition is in the public interest because it, among other things, provides the company with greater access to foreign capital and thereby contributes to the strengthening of the broadcast industry.³⁷

14. *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.³⁸ The Executive Branch agencies with expertise on issues pertaining to national security, law enforcement, foreign policy, and trade policy concerns, have reviewed the Petition and do not object to the Commission granting it, nor do they request imposition of any conditions on the grant.³⁹ We also note that no pleadings were filed opposing the Petition.

IV. DECLARATORY RULING

15. Under these circumstances, pursuant to section 310(b) of the Act and sections 1.5001 through 1.5004 of the Commission's rules, we find that the public interest would be served by permitting foreign ownership of New Alpha to exceed the 25% benchmarks in section 310(b)(4) of the Act, as amended. We also find that it is in the public interest to permit up to an aggregate 100% indirect foreign ownership of New Alpha.

16. *Specific Approval.* We also find no grounds to deny the requests for specific approval. Therefore, pursuant to section 1.5001(i) of the Commission's rules,⁴⁰ this Declaratory Ruling grants

³⁶ 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).

³⁷ See Petition at 9-11 (describing public interest benefits related to this Declaratory Ruling).

³⁸ 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).

³⁹ See Letter from Stephanie Weiner, Chief Counsel, NTIA, to Ethan Lucarelli, Chief, Office of International Affairs, FCC, MB Docket No. 23-11 (filed Sept. 7, 2023).

⁴⁰ 47 CFR § 1.5001(i).

specific approval for the following entities to hold, indirectly, more than 5% of the equity and/or voting interests of New Alpha:

- BigSur Capital Partners Three Corp. (6.3% Equity and 6.7% Voting) (British Virgin Islands);
- ICGNA (39.1% Equity and 41.4% Voting) (Cayman Islands);
- Intermediate Capital Group PLC (10.6% Equity and 46.7% Voting) (United Kingdom);
- ICG FMC Limited (ICG FMC) (0% Equity and 43.2% Voting) (United Kingdom);
- ICG Global Investment Jersey Limited (7.3% Equity and 7.7% Voting) (Jersey); and
- ICG Global Investment UK Limited (7.3% Equity and 7.7% Voting) (United Kingdom).

17. *Advance Approval.* Pursuant to section 1.5001(k) of the Commission's rules,⁴¹ this Declaratory Ruling also grants advance approval for each of the following entities to increase their interests in New Alpha up to the percentages noted below at some future time:

- BigSur Capital Partners Three Corp. (Up to 49.99% Equity and Voting) (British Virgin Islands);
- ICGNA (Up to 49.99% Equity and Voting) (Cayman Islands);
- Intermediate Capital Group PLC (Up to 49.99% Equity and Voting) (United Kingdom);
- ICG FMC Limited (ICG FMC) (Up to 49.99% Equity and Voting) (United Kingdom);
- ICG Global Investment Jersey Limited (Up to 49.99% Equity and Voting) (Jersey); and
- ICG Global Investment UK Limited (Up to 49.99% Equity and Voting) (United Kingdom).

18. *Additional Terms and Conditions.* Under this Declaratory Ruling, Petitioners have an affirmative duty to monitor their foreign equity and voting interests, calculate their interests consistent with the principles enunciated by the Commission, including the standards and criteria set forth in sections 1.5002 through 1.5003 of the Commission's rules,⁴² and otherwise ensure continuing compliance with the provisions of section 310(b) of the Act.⁴³ This Declaratory 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 New Alpha exceeds the terms and conditions of this Declaratory Ruling.⁴⁴ This includes the requirement that New Alpha obtain Commission approval for any new or additional foreign individual, entity, or group of such individuals or entities to hold, directly and/or

⁴¹ 47 CFR § 1.5001(k).

⁴² 47 CFR §§ 1.5002-1.5003.

⁴³ 47 CFR § 1.5004, note to paragraph (a).

⁴⁴ 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 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).

indirectly, more than 5% (or more than 10% for certain investors) of the equity and/or voting interests, or for any foreign individual, entity, or group to hold a controlling interest, in the company.⁴⁵ If at any time New Alpha 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, New Alpha 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.⁴⁶ New Alpha may be subject to enforcement action by the Commission for such non-compliance, including an order requiring divestiture of the foreign investment.⁴⁷

V. ORDERING CLAUSES

19. 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 Alpha Media Holdings Inc., **IS GRANTED** subject to the conditions specified herein.

⁴⁵ 47 CFR §§ 1.5001(i), 1.5004(a)(1). Given the assumptions underlying the Petition (*see, e.g.*, Petition at 5-7), we clarify that, for purposes of calculating whether an individual or entity is a disclosable interest holder or requires specific approval, New Alpha 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) (reviewing the assignment of broadcast licenses held by indirect, wholly-owned subsidiaries of Liberman Broadcasting, Inc., Debtor-in-Possession (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) 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% benchmarks 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); *Fusion Connect, Inc., Debtor-In-Possession*, Public Notice, DA 20-43 (WCB 2020) (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.").

⁴⁶ *See* 47 CFR § 1.5004(f)(1). If, for example, a foreign individual or entity should invest in New Alpha above the specific approval threshold without Commission approval, New Alpha, as licensee, is obligated to follow the steps set out in 47 CFR § 1.5004(f). Subsequent actions taken by or on behalf of New Alpha to remedy non-compliance shall not relieve it of the obligation to notify the Commission of the circumstances (including duration) of non-compliance.

⁴⁷ *Id.*

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

FEDERAL COMMUNICATIONS COMMISSION

Albert Shuldiner
Chief, Audio Division
Media Bureau