

**DISSENTING STATEMENT OF
COMMISSIONER BRENDAN CARR**

Re: *In the Matter of Audacy License, LLC, as Debtor-in-Possession (Assignor) and Audacy License, LLC (Assignee) Application for Consent to Assignment of Licenses*, Memorandum Opinion and Order, Application File Nos. 0000241074 et al.

The Commission’s decision today is unprecedented. Never before has the Commission voted to approve the transfer of a broadcast license—let alone the transfer of broadcast licenses for over 200 radio stations across more than 40 markets—without following the requirements and procedures codified in federal law.¹ Not once. And yet the Commission breaks this new ground today without seeking public comment on altering our established regulations, without actually changing the rules on the books, and without seeking the feedback of other federal agencies with relevant equities.

Let’s start with black letter law. Section 310(b) of the Communications Act requires the FCC to review foreign investment in broadcast licenses.² Specifically, Congress provided in Section 310(b)(4) that no broadcast radio license shall be granted to any corporation that has more than 25 percent foreign investment if the FCC determines that the public interest would be served by refusing to approve the license transfer.³ Historically, Section 310(b)(4)’s 25 percent benchmark operated as a *de facto* cap on foreign ownership in the broadcast context. But that changed during the 2010s.

In 2015, through a Commission vote, we sought comment on establishing a process for reviewing and approving license transfers to corporations with excessive foreign ownership—meaning, ownership in excess of Section 310(b)(4)’s statutory benchmark.⁴ Back then, the Commission issued a Notice of Proposed Rulemaking,⁵ it proposed the text of specific rules,⁶ it published a summary of those proposals in the Federal Register,⁷ and it sought public comment over the course of nearly an entire year. Importantly, during that rulemaking, the Commission solicited input from the relevant Executive Branch agencies known as “Team Telecom,” which are responsible for reviewing excessive foreign ownership of FCC licensees for national security and related policy concerns. Then, in 2016, the Commission adopted an order that codified in federal law one and only one mechanism for the FCC to review and approve the acquisition of broadcast licenses by corporations with excessive foreign ownership.⁸

¹ See 47 C.F.R. § 1.5000(a)(1).

² 47 U.S.C. § 310(b).

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

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*, Notice of Proposed Rulemaking, 30 FCC Rcd 11830 (2015).

⁵ *Id.*

⁶ *Id.*

⁷ See *Review of Foreign Ownership Policies for Broadcast, Common Carrier and Aeronautical Radio Licensees*, 80 Fed. Reg. 68815-68833 (2015).

⁸ *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”) (adopting 47 C.F.R. § 1.5000(a)(1)).

That one mechanism requires applicants to go through a specific petition for declaratory ruling process. First, the Code of Federal Regulations expressly states that, in cases involving excessive foreign ownership, licensees “shall file the petition for declaratory ruling required by this paragraph *at the same time* that it files its application.”⁹ Second, the Code of Federal Regulations provides that the petitioner must also “obtain . . . approval, *before* the aggregate foreign ownership” exceeds the 25 percent benchmark.¹⁰ Third, the Code of Federal Regulations and the Commission’s own decisions flesh out the petition for declaratory ruling process itself. In particular, the petition for declaratory ruling enables the Executive Branch’s Team Telecom agencies to review the transaction and advise the Commission of any national security, law enforcement, foreign policy, or trade policy concerns.¹¹ The Executive Branch’s Team Telecom review process historically could take in the neighborhood of six months.¹²

So far, so good. Federal law requires applicants with excessive foreign ownership to file a petition for declaratory ruling at the same time that they seek FCC approval for the relevant license transfers, they must then complete that process before the FCC can approve the assignment of licenses, and that process must enable Executive Branch agencies with national security and specific policy expertise to weigh in.¹³

But in this case, the Applicants decided that they did not need to comply with any of those legal requirements. The Applicants expressly state in their filings that they will have foreign investment in excess of Section 310(b)(4)’s 25 percent benchmark. Did they file the petition for declaratory ruling required by the Code of Federal Regulations? No, they did not. Did they obtain approval from the FCC for their excessive foreign ownership? No, they did not. Did the Applicants afford the Executive Branch agencies with national security and relevant policy expertise an opportunity to consider their application as well as the source and amount of foreign investment? No, they did not.

The Commission has never done this before. So why are we voting for a first-ever fast track today?

For their part, the Applicants argue that they should be able to skip the FCC’s regular review process because, in their view, subordinate components of the agency previously waived the rules in a few specific cases. As a threshold matter, though, many of the cited decisions did not involve any waiver of FCC rules.¹⁴ But putting aside whether or not those bureau-level decisions are on all fours, the Applicants’ reliance on them is misplaced for a more fundamental reason. It is hornbook law that staff-level decisions (whether they complied with federal law or not) do not set precedent for the

⁹ 47 C.F.R. § 1.5000(a)(1) (emphasis added).

¹⁰ *Id.* (emphasis added).

¹¹ *See, e.g., 2016 Foreign Ownership Order*, 31 FCC Rcd at 11273.

¹² *See generally Process Reform for Executive Branch Review of Certain FCC Applications and Petitions Involving Foreign Ownership*, Report and Order, 35 FCC Rcd. 13164 (2020) (adopting process reforms for the Team Telecom review).

¹³ After we codified this declaratory ruling framework in 2016, the Commission adopted orders in 2020 and 2021 that spelled out the information that any petition must include, and the Commission established a shot clock for the Team Telecom review. *See Process Reform for Executive Branch Review of Certain FCC Applications and Petitions Involving Foreign Ownership*, Second Report and Order, 36 FCC Rcd 14848 (2021); *Process Reform for Executive Branch Review of Certain FCC Applications and Petitions Involving Foreign Ownership*, Report and Order, 35 FCC Rcd 10927 (2020).

¹⁴ *See, e.g., Order at para. 21 & n.48* (citing *Cumulus Media, Inc., Debtor-in-Possession Seeks Approval to Transfer Control of and Assign FCC Authorizations and Licenses*, Memorandum Opinion and Order, 33 FCC Rcd 5243 (MB 2018); *iHeart Media, Inc., Debtor-in-Possession Seeks Approval to Transfer Control of and Assign FCC Authorizations and Licenses*, Memorandum Opinion and Order, 34 FCC Rcd 2409 (MB 2019)).

Commission.¹⁵ So the Applicants' argument here only takes us back to the original starting point. Confronted with an issue of first impression, should we, the Commission, require the Applicants to follow the rules on the books or should the Commission vote, for the first time ever, to create a novel exception to those rules?

I think we should require the Applicants to follow our rules. Indeed, the Applicants make no compelling argument to the contrary. In fact, they make no real showing at all. The Applicants simply assert that following the established rules would imperil their quick emergence from bankruptcy. But that argument cannot be squared with the chronology in this case. The Applicants sought Commission approval for their license transfer over six months ago. There is no reason to think that the federal government could not have completed the normal review process by or around this time. And plainly, the restructuring has not been imperiled by the FCC's six-month consideration of this Application. So their one argument—that they do not have time to follow the law—comes up short.

But these are not my only concerns. The FCC's decision today rests on several additional errors that warrant reversal on appeal. For one, the decision cannot be squared with the agency's current approach to transaction reviews. For instance, in the Standard General-TEGNA proceeding, the agency found that it could not approve the requested license transfers because the applicants in that case failed to persuade the agency that they would not layoff or cut newsroom and other jobs.¹⁶ Under *Goose v. Gander*,¹⁷ the FCC must ding these Applicants for the same reason.¹⁸ Indeed, the Applicants in this case have made no jobs showing or commitment at all. If job losses are relevant to the FCC's transaction review analysis, then the agency cannot approve this takeover.

For another, and related reason, both the Commission and the Applicants have failed to rebut record evidence on this exact point. The record here shows that concerns have been raised about the Applicants cutting jobs once they take the reins at these more than 200 radio stations.¹⁹ But neither the Commission nor the Applicants offer any response. This is plain error meriting reversal on reconsideration or appeal.²⁰

¹⁵ See, e.g., *Comcast Corp. FCC*, 526 F.3d 763, 769 (D.C. Cir. 2008) (“[A] long line of cases in this circuit . . . unambiguously holds that an agency is not bound by unchallenged staff decisions. As we stated in a recent case, ‘[t]here is no authority for the proposition that a lower component of a government agency may bind the decision making of the highest level.’”) (quoting *Cnty. Care Foundation v. Thompson*, 318 F.3d 219, 227 (D.C. Cir. 2003)).

¹⁶ *Consent to Transfer Control of Certain Subsidiaries of TEGNA, Inc., et al.*, Hearing Designation Order, MB Docket No. 22-162, DA 23-149, at paras. 36-44 (MB Feb. 24, 2023).

¹⁷ See generally Merriam-Webster.com, Dictionary, “What’s good for the goose is good for the gander” (idiom, meaning “one person or situation should be treated the same way that another person or situation is treated”).

¹⁸ *CEI v. FCC*, 970 F.3d 372, (D.C. Cir. 2020) (“We have further held that the FCC can have an ‘opportunity to pass’ on a question even if the party seeking judicial review never raised it with the agency. . . . The FCC has such an opportunity . . . when a dissenting Commissioner raises the issue.”) (citing *ICO Glob. Commc’ns (Holdings) Ltd. v. FCC*, 428 F.3d 264, 269 (D.C. Cir. 2005)).

¹⁹ See, e.g., Media Research Center, Memorandum in Support of Petition to Deny, Audacy License, LLC Debtor-in-Possession to Audacy, LLC, Lead File No. 0000241074 (July 30, 2024) (“And there is reason for concerns about this Soros-backed entity and job losses”) (citing Thalia Beaty, *George Soros’ Open Society Foundations to Lay Off 40% of Staff Under Son’s New Leadership*, Associated Press (July 6, 2023)).

²⁰ See, e.g., *Motor Vehicle Mfrs. Ass’n v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 42-43 (1983) (agency action that fails to respond to relevant arguments or does not consider key aspects of the issue will be turned aside as arbitrary and capricious).

For still another, the Communications Act expressly requires applicants in cases like these to demonstrate that the public interest would be served by granting the requested license transfer.²¹ But the Applicants in this case have apparently failed to make that showing. Indeed, the Commission decision granting this license transfer contains no public interest analysis specific to this transaction. To be sure, the analysis section dismisses concerns raised in a petition to deny and some related filings, and the analysis section resolves the Applicants' request for a waiver of FCC rules. But the analysis section of the Commission's decision is devoid of any findings or showings that the public interest would be served by granting this request.

For yet another still, the Applicants provide the Commission with virtually no information at all about their plans to wall off the unvetted foreign interests. How can the Commission be sure that those interests will be isolated for the time being when today's decision offers no specifics about those protections? Indeed, the Commission does not even indicate that it knows how much foreign investment is at issue or its source.

To be clear, I am sympathetic to the need for licensees to emerge quickly from bankruptcy, and I agree that there are public interests reasons for moving through the restructuring process without undue delay. That is why I would vote for a rulemaking proceeding that examines how the agency might create a process to accomplish that while complying with the statute and considering the equities of the Team Telecom agencies. The Commission has had several opportunities to create a new process in the years since we adopted our 2016 rules, including in our 2020 and 2021 rulemaking orders.²² But despite multiple opportunities to do so, at no point did the Commission itself consider, let alone adopt, a special rule that allows us to expedite, relax, or defer the necessary national-security and related policy reviews for licensees going through bankruptcy.

Unless and until the Commission changes our rules, I cannot support the special shortcut adopted today. Accordingly, I dissent.

²¹ 47 U.S.C. § 310(d); *see also* 47 U.S.C. § 309.

²² *See supra* note 13.