6712-01

FEDERAL COMMUNICATIONS COMMISSION

[MB Docket No. 13-50; FCC No. 13-150]

Commission Policies and Procedures Under the Communications Act, Foreign Investment in Broadcast Licensees

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: This Declaratory Ruling is intended to remove apparent uncertainty regarding Commission policies and procedures in reviewing broadcast applications for transfer of control, or requests for declaratory ruling, that seek greater than 25 percent indirect foreign ownership in the controlling U.S. parents of broadcast licensees pursuant to the Communications Act of 1934. The ruling clarifies that the Commission intends to evaluate any applications or proposed transactions that would exceed the statutory 25 percent benchmark on a case-by-case basis. The Declaratory Ruling responds to a request from a broad coalition of interested parties, including broadcasters, public interest groups and the financial sector, that the Commission clarify that it intends to exercise its statutory discretion to conduct a substantive, facts and circumstances evaluation of proposals seeking above-the-benchmark foreign investment.

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SUPPLEMENTARY INFORMATION: This Declaratory Ruling in MB Docket No. 13-50, FCC 13-150, was adopted and released on November 14, 2013. The complete text of the document is available for inspection and copying during normal business hours in the FCC Reference Center, 445 12th Street SW., Washington, DC 20554, and may also be purchased from the Commission's copy contractor, BCPI, Inc., Portals II, 445 12th Street SW, Washington, DC 20554. Customers may contact BCPI, Inc. at their web site http://www.bcpi.com or call 1-800-378-3160. This document is also available on the Commission's Web site at http://fcc.gov.

Synopsis of the Declaratory Ruling

I. Introduction

1. This Declaratory Ruling issued pursuant to § 1.2 of the Commission's rules[1] is intended to remove apparent uncertainty about the Commission's policies and procedures for evaluating potential foreign investment in broadcast licensees under section 310(b)(4) of the Communications Act of 1934, as amended (the Act).[2] That section restricts foreign ownership or voting interests exceeding 25 percent of the capital stock in U.S.-organized entities that control broadcast (and certain other types of) Commission licensees, when the Commission finds that the imposition of such a limitation is in the public interest. As noted below, broadcasters, public interest groups, and others have expressed the view that it would be in the public interest to increase access to capital and investment financing for the broadcast sector. These parties assert that, as they read Commission precedent, the application of section 310(b)(4) to broadcast licensees has restricted the flow of foreign capital to domestic broadcast licensees or to entities interested in entering the broadcast industry. They assert that foreign sources of capital would be available to broadcasters if section 310(b)(4) were not applied to block access to those sources. Some parties further believe that the benefits of increased capital from foreign investors would assist, among other beneficiaries, minorities, women, and small broadcast entities, for which access to capital is a particular impediment to market entry. In light of these stated concerns, we believe it useful to articulate and clarify the Commission's policies and procedures in reviewing applications or proposed transactions that propose foreign broadcast ownership that would exceed the 25 percent benchmark contained in section 310(b)(4) and to assure the broadcast industry and potential foreign investors that the Commission intends to consider such matters on a case-by-case basis.

II. Background

2. The Act's foreign ownership restrictions were originally conceived to address homeland security

[1] 47 CFR 1.2. See also 5 U.S.C. 554(e).

[2] 47 U.S.C. 310(b)(4).

interests during wartime. They were designed to protect the integrity of ship-to-shore and governmental communications and thwart the airing of foreign propaganda on broadcast stations.[3] Nevertheless, those statutory provisions have always provided the Commission with the discretion to approve foreign ownership in broadcast licensees in excess of the 25 percent benchmark. Section 310 currently states in pertinent part:

> (b) No broadcast or common carrier or aeronautical en route or aeronautical fixed radio station license shall be granted to or held by – *** (4) 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]

3. The Commission has traditionally viewed the 25 percent benchmark for foreign ownership and voting interests in U.S.-organized entities that control broadcast licensees as the presumptive limit consistent with the public interest.[5] It has done so based on a determination that foreign ownership of broadcast stations presents

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[3] See, e.g., Radio Communications: Hearing on S. 3620 and S. 5334 Before the House Commerce Committee, 62nd Cong 35-37 (Mar. 1, 1912) (adopting predecessor language to section 310). See also Fox Television Stations, Inc., 10 FCC Rcd 8452 (1995) (Fox I); Wilner & Scheiner, Request for Declaratory Ruling Concerning the Citizenship Requirements of Section 310(b)(3) and (4) of the Communications Act of 1934, 103 FCC 2d 511, 516-17 (stating that . . . Section 310(b) reflects the broader purpose of 'safeguard[ing] the United States from foreign influence' in the field of broadcasting. The specific citizenship requirements governing positional, ownership and voting interests reflect a deliberate judgment on the part of Congress as to the limitations necessary to prevent undue alien influence in broadcasting.) (1985) (Wilner & Scheiner); Request for Declaratory Ruling Concerning section 310(a)(5) of the Communications Act, 67 FCC 2d 604 (1974) (the prior section 310(a)(5) is now section 310(b)(4)). See also Letter from Mace Rosenstein and Gerard J. Waldron, Counsel for the Coalition for Broadcast Investment (CBI), to Marlene H. Dortch, Secretary, Federal Communications Commission at 2 (Aug. 31, 2012) (CBI Request); Nexstar Broadcasting, Inc. Comments at 2 (Nexstar).

[4] 47 U.S.C. 310(b)(4). The officer and director thresholds originally contained in section 310(b)(4) were eliminated by Section 403(k) of the Telecommunications Act of 1996, Pub Law 104-104, 110 Stat 56 (1996); see also Implementation of section 403(k) of the Telecommunications Act of 1996 (Citizenship Requirements), 61 CFR 55579-01, Oct. 28, 1996 (FCC 96-396) (amending Commission rules, 47 CFR parts 20, 21, 22 and 101 (Communications common carriers, Radio); and 47 CFR parts 24, 26, 80, 87, 90 and 100 (Radio).

[5] Traditionally, the Commission has considered the type of radio license at issue in assessing whether foreign ownership in excess of the benchmark would serve the public interest. See, e.g., Review of Foreign Ownership Policies for Common Carrier and Aeronautical Radio Licensees under section 310(b)(4) of the Communications Act of 1934, As Amended, IB Docket No. 11-133, Notice of Proposed Rulemaking, FCC 11-121, 26 FCC Rcd 11703, 11704 n.3 (2011) (Foreign Ownership NPRM) (noting

different questions from those raised by foreign ownership in other types of radio spectrum licensees.[6] The Commission's approach to the benchmark for foreign investments in broadcast licensees has reflected heightened concern for foreign influence over or control of [broadcast] licensees which exercise editorial discretion over the content of their transmissions.[7] Over time, the Commission's approach to foreign investment in the common carrier context has resulted in the development of a body of precedent, rules, and procedures for transactions involving such carriers. The Commission has not been presented with a similar number of applications in the broadcast sector and therefore has not had the opportunity to develop its policies and procedures in this context.

4. A number of diverse interested parties have asked the Commission to review its policies and procedures regarding the assessment of applications or proposed transactions that would exceed the 25 percent threshold in section 310(b)(4) in the broadcast context. On August 31, 2012, the Coalition for Broadcast Investment (CBI) filed a "Request for Clarification of the Commission's Policies and Procedures Under 47 U.S.C. 310(b)(4). Therein, CBI sought clarification that the Commission will exercise its statutory discretion to conduct a substantive, facts and circumstances evaluation of proposals for foreign investment in excess of 25 percent in the parent

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that the Commission historically has recognized different policy concerns for foreign ownership in the U.S.-organized parents of broadcast licensees under section 310(b)(4)); Review of Foreign Ownership Policies for Common Carrier and Aeronautical Radio Licensees under Section 310(b)(4) of the Communications Act of 1934, As Amended, IB Docket No. 11-133, First Report and Order, FCC 12-93, 27 FCC Rcd 9832, 9834 n.11 (2012) (same) (Foreign Ownership First Report and Order); Review of Foreign Ownership Policies for Common Carrier and Aeronautical Radio Licensees under Section 310(b)(4) of the Communications Act of 1934, As Amended, IB Docket No. 11-133, Second Report and Order, FCC 13-50, 28 FCC Rcd 5741, 5742 n.4 (2013) (Foreign Ownership Second Report and Order), citing to Foreign Ownership NPRM at 11704 n.3. For example, the Commission has noted common carrier radio licenses are passive in nature and confer no control over the content of transmissions. Broadcast transmissions have been found to present additional national security concerns because they implicate content. See, e.g., Foreign Ownership NPRM, 26 FCC Rcd at 11704 n.3, citing Cable & Wireless, Inc., Declaratory Ruling and Memorandum Opinion, Order, Authorization, and Certificate, 10 FCC Rcd 13177, 13179, para. 18 (1995); Market Entry and Regulation of Foreign-Affiliated Entities, Notice of Proposed Rule Making, 10 FCC Rcd 4844, 4852 n.19 and accompanying text (1995) (Market Entry NPRM).

[6] Market Entry and Regulation of Foreign-Affiliated Entities, Report and Order, 11 FCC Rcd 3873, 3947 (1995) (Market Entry Order) (Commission determination not to adopt an effective competitive opportunities (ECO) approach for broadcast foreign ownership similar to that applied in common carrier section 310 evaluations). See also supra note 5.

[7] Market Entry NPRM, 10 FCC Rcd at 4884 paragraph 99.

company of a broadcast licensee.[8] On February 26, 2013, the Media Bureau issued a public notice inviting comment on the CBI Request. The Commission received nine comments and five reply comments, the majority of which support CBI's position.[9]

5. CBI asserts that the Commission, for over 80 years, has failed to exercise its authority and discretion to permit foreign ownership interests in entities that control the licensees of broadcast radio or television stations in excess of the 25 percent benchmark. It is commenters' view that the Commission "maintains an irrebutable presumption" against relief from the 25 percent restriction, which inhibits financial institutions and other investors from considering broadcast transactions where the 25 percent benchmark would be surpassed and frustrates the public interest. CBI contends that by confirming its intention to exercise the discretion afforded the agency by the plain language of the statute the Commission can ease the path for new broadcast entrants, while enabling existing broadcasters to offer expanded, innovative services. National Association of Media Brokers (NAMB) indicates that banks from Canada and Europe have expressed their interest in making equity investments in U.S. broadcast stations but that the alien ownership limitations in section 310(b)(4) of the Act, as applied to the broadcast industry, have limited their participation. Broadcasters support CBI's request for clarification as a way to attract new sources of capital to their industry.

6. Commenters also highlight the fact that the Commission adjusted its policies and procedures involving common carrier licensees over 15 years ago to authorize foreign investment in excess of the statutory benchmark in order to encourage a more open and competitive U.S. telecommunications market. Commenters attribute globalization, growth and innovation in the telecommunications sector to that Commission decision. NAB adds that

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[8] CBI Request at 1; see also CBI May 28, 2013, Ex Parte at 1. CBI members comprise national broadcast networks, radio and television station licensees, and community and consumer organizations.

[9] Media Bureau Announces Filing of Request for Clarification of the Commission's Policies and Procedures Under 47 U.S.C. 310 (b)(4) by the Coalition for Broadcast Investment, MB Docket No. 13-50, Public Notice, 28 FCC Rcd 1469 (MB 2013). Comments were filed by Adelante Media Group, Nexstar Broadcasting, Inc., Asian American Justice Center, Minority Media and Telecommunications Council, National Association of Broadcasters, National Association of Media Brokers, Dale A. Ganske, Bradley L. Gould and David A. Schum. Reply comments were filed by CBI, National Association of Broadcasters, Alaska Broadcast Communications, Inc. et al., Wiley Rein LLP, and National Association of Black Elected Legislative Women. See also Letter from Sen. Harry Reid (D-Nevada) to Julius Genachowski, FCC Chairman (June 8, 2012); Letter from Sen. Charles Schumer (D-New York) to Julius Genachowski, FCC Chairman (July 2, 2012). Senators Reid and Schumer support a case-by-case review process for foreign broadcast investments and coordination of national security reviews with Executive Branch agencies.

the Commission has issued approximately 150 section 310(b)(4) rulings authorizing foreign investment in U.S. telecommunications carriers exceeding the 25 percent statutory benchmark. By comparison, in the view of industry commenters, the Commission's inflexibility in its review of broadcast foreign investment over the 25 percent benchmark has deprived the broadcast sector of available capital.

7. Several commenters remark that the media landscape has evolved significantly since section 310 was enacted and that those changes eliminate the need to restrict foreign ownership in broadcast licensees to 25 percent. CBI member Adelante Media Group states that imposition of the limit on broadcasters is unfair because broadcasters must compete against distribution platforms that are not subject to the same statutory policy – Netflix, Apple, Google, Twitter, multichannel video program distributors, and pay TV networks.[10] Others concur,[11] stating that wireless carriers and cable operators have seen significant capital investments from foreign interests while broadcasters have been denied those same opportunities. Wiley Rein LLP similarly contends that a revised foreign investment policy for broadcasting would correct the current marketplace distortion that exists between broadcasters and their competitors in other services. NAB states that today's security concerns stem principally from the possibility that foreign interests will engage in cyber-warfare over wired and wireless communications networks, not from the possibility of editorial control over broadcast transmissions.

8. CBI maintains that a regulatory infrastructure exists that is sufficient for the Commission to evaluate broadcasters' foreign investment proposals. They recommend that the Commission utilize the procedures already in place with respect to proposed common carrier foreign ownership to coordinate with the relevant Executive Branch agencies on any issues related to national security, law enforcement, foreign policy, or trade policy with respect to

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[10] Adelante Comments at 2. Adelante Media Group specializes in Spanish language radio and television broadcasting in emerging Hispanic markets, owning and operating 18 radio stations in nine markets. Jay Meyers, Chief Executive Officer of Adelante, is also President and CEO of Broadcast Management and Technology, a firm that consults with financial institutions and broadcast owners. Adelante Comments at 1-2; see also Nexstar Comments at 2-3; AJT Joint Reply Comments at 3-4 n.11 (citing Statement of Ajit Pai, Commissioner, Federal Communications Commission, Hearing Before the Committee on Commerce, Science, and Transportation of the United States Senate, Oversight of the Federal Communications Commission, 2013 WL 987095 *11 (Mar. 12, 2013); Wiley Rein Reply Comments at 4.

[11] See, e.g., NAB Reply Comments at 2 n.4, citing Foreign Ownership Second Report and Order, Statement of Commissioner Jessica Rosenwercel (available at http://transition.fcc.gov/Daily_Releases/Daily_Business/2013/db0418/FCC-13-50A4.pdf) and Statement of Commissioner Ajit Pai (available at http://transition.fcc.gov/Daily_Releases/Daily_Business/2013/db0418/FCC-13-50A5.pdf).

particular applications or proposed transactions that would exceed 25 percent foreign investment in the controlling U.S. parents of telecommunications entities. CBI notes that, pursuant to current procedures, the Commission regularly refers requests for section 310(b)(4) declaratory rulings involving such proposed investments in common carriers to the relevant Executive Branch agencies with expertise in national security matters. CBI suggests that a similar process would ensure that broadcast transactions that propose foreign investment over the 25 percent benchmark would receive national security review.

9. NAB and other commenters observe that Congress and the Commission have long recognized lack of access to capital as a leading barrier to increased ownership opportunities for small businesses, including women and minorities, in broadcasting and other communications sectors.[12] Commenters in other Commission proceedings have raised similar concerns. For example, in the current quadrennial review of broadcast ownership rules, Diversity and Competition Supporters[13] request that the Commission relax its foreign ownership policies pursuant to section 310(b)(4) to provide new funding options for minority broadcast entrepreneurs . . . and give all U.S. broadcasters the opportunity to increase their investments in foreign broadcast outlets.[14] Diversity and Competition Supporters (DCS) includes 50 trade, civil rights, legislative and scholarly organizations. Furthermore, in its comments in this proceeding, Minority Media and Telecommunications Council (MMTC), on behalf of 31 national minority and civil rights organizations, states that encouraging foreign investment in broadcasting would create

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[12] Asian American Justice Center Comments at 1; CBI Request at 4; see also NAB Comments at 5 n.13(the Commission has previously recognized that the primary impediment to the participation of women and minorities in spectrum-based services is lack of access to capital, caused by factors which include higher costs in raising capital and lending discrimination).

[13] Diversity and Competition Supporters (DCS) includes 50 trade, civil rights, legislative and scholarly organizations. See Initial Comments of the Diversity and Competition Supporters in Response to the Notice of Proposed Rulemaking, 2010 Quadrennial Regulatory Review – Review of the Commission's Broadcast Ownership Rules and Other Rules Adopted Pursuant to section 202 of the Telecommunications Act of 1996, Promoting Diversification of Ownership in the Broadcasting Services, MB Docket Nos. 09-182, 07-294 (DCS Initial Comments).

[14] See DCS Initial Comments at 24. Several commenters in that proceeding broadly endorsed DCS' proposal that the Commission relax foreign ownership policies. See Reply Comments of Tribune Company, Debtor-in-Possession, MB Docket Nos. 09-182, 07-294 at 41-42; Bonneville/Scranton Reply to the Report on Ownership of Commercial Broadcast Stations, MB Docket Nos. 09-182, 07-294 at 13 (323 Report); see also NAB 323 Report Reply at 3. See also Azteca: Raise Foreign Ownership Limits, by Harry A. Jessell, TV NEWSCHECK (July 13, 2010) (Azteca International Corp. urges the Commission to relax foreign ownership rules to allow foreign companies to own up to 51 percent of U.S. broadcasting companies).

"reciprocal opportunities" for American broadcasters to expand their footprints into radio and television markets in regions and countries such as Central and South America, China, Korea, and Australia.[15] These groups maintain that relaxing the strict interpretation and application of section 310(b)(4) is one of the most significant steps the Commission can take to reverse the decline in minority broadcast ownership.[16] Commenters, including Adelante and NAMB, assert that access to additional capital will support the creation of more programming aimed at racial and ethnic minorities and bilingual speakers, and foster new entrants into broadcast ownership.[17]

III. Discussion

10. We believe the broadcast industry, the financial sector, and ownership diversity advocates will each benefit from a fresh statement of our policy and procedures governing Commission review under section 310(b)(4) of the Act of proposals for foreign investment exceeding the 25 percent benchmark in U.S.-organized entities that control broadcast licensees. We acknowledge commenters' common position that changes have occurred in the media landscape and marketplace since the foreign ownership restriction was enacted and that limited access to capital is a concern in the broadcast industry, especially for small business entities and new entrants, including minorities and women. We read the plain language of the statute as providing us the opportunity to review on a case-by-case basis applications for approval of foreign investment in the controlling U.S. parent of a broadcast licensee above the 25 percent benchmark. Such applications may be granted unless the Commission finds that a denial will serve the public interest. In light of the concerns many commenters raised, we believe that a clear articulation of the Commission's approach to section 310(b)(4) in the broadcast context has the potential to spur new and increased opportunities for capitalization for broadcasters, and particularly for minority, female, small business

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[15] Comments of MMTC on behalf of Thirty-one Civil Rights Organizations at 1; see also CBI Reply Comments at 1, 5; Asian American Justice Center Comments at 1; Letter from Margaret L. Tobey, Vice President for Regulatory Affairs, NBC Universal, to Marlene H. Dortch, FCC Secretary (Nov. 7, 2013) (the Declaratory Ruling . . . could help U.S. broadcast companies gain greater access to foreign media markets).

[16] Comments of MMTC on behalf of Thirty-one Civil Rights Organizations at 1; see also National Organization of Black Elected Legislative Women Reply Comments at 2. But see Letter from Lauren M. Wilson, Policy Counsel, Free Press, to Marlene H. Dortch, FCC Secretary (Nov. 7, 2013) (raising concerns about the availability of foreign investment for new entrants and smaller broadcasters).

[17] Adelante Comments at 2; NAMB Comments at 4; NAB Reply Comments at 3.

entities, and new entrants.[18] Greater capitalization may in turn yield greater innovation, particularly in programming directed at niche or minority audiences.

11. Section 310(b)(4) of the Act authorizes us to evaluate whether or not, in a particular situation, it is in the public interest to permit an entity to obtain or to hold a station license notwithstanding the fact that the alien interest in the U.S. parent of the station licensee would exceed the statutory benchmark – and to make such determinations on a case-by-case basis.[19] Congress' directive is that 25 percent alien ownership is the point at which the Commission must act and exercise its discretion in making a public interest determination on proposed ownership arrangements that would exceed this level.[20] Congress entrusts to the Commission the discretion to reject alien voting or ownership above the benchmark if the Commission finds that the public interest would be served by the refusal of the transaction which would confer a greater than 25 percent alien interest in the controlling U.S. parent of a domestic broadcast license or by the revocation of the licenses involved. The Commission's decision in such cases is based on the specific facts and unique circumstances presented by each application before it. The bulk of the Commission's precedent under section 310(b)(4) has involved foreign investment in the controlling U.S. parents of telecommunications carriers, not broadcast station licensees.[21] To the extent that the Commission's past practice may have been interpreted as precluding case-by-case review of applications involving foreign investment in the controlling U.S. parents of broadcast licensees, as some commenters have suggested, we take this occasion to clarify that the contrary is true. We have given, and will continue to give, the fact-specific, individual case-by-case review the statute calls for to applications involving broadcast stations. As we have previously concluded with respect to the application of section 310(b)(4) in broadcast cases, the 25 percent benchmark is only a trigger for the

[18] We also hope that clarifying our policy regarding foreign investment will encourage other countries to liberalize restrictions on investment in their media markets and pave the way for greater U.S. investment opportunities in those markets.

[19] See, e.g., Wilner & Scheiner, 103 FCC 2d at 524 (clarifying, inter alia, that limited partnership interests are within the scope of section 310(b)).

[20] The statutory benchmark reflects Congress' judgment of the point at which foreign ownership and voting may conflict with the national interest. Fox Television Stations Inc., 11 FCC Rcd 5714, 5722 (1995); see also Univision Holdings, Inc. (Transferor) and Perenchio Television, Inc. (Transferee) for Transfer of Control of Univision Station Group, Inc., Licensee of Television Station Group Inc., 7 FCC Rcd 6672 (1992) (examining alien de facto control and real-party-in-interest issues for section 310(b)(4) compliance).

[21] See, e.g., supra note 5; see also Foreign Ownership Second Report and Order, 28 FCC Rcd 5741.

exercise of our discretion, which we then exercise based upon a more searching analysis of the circumstances in each case.[22]

12. The Commission has not interpreted the benchmark as a permissive threshold that would allow foreign investors to hold more than 25 percent interests in the controlling U.S. parents of licensees absent Commission action.[23] Rather, under the Commission's precedent the 25 percent benchmark set forth in section 310(b)(4) of the Act has been applied to restrict foreign ownership of the controlling U.S. parents of broadcast licensees absent an affirmative Commission finding in a particular case that such ownership is in the public interest. The parties to this proceeding have not asked us to reconsider this precedent. Thus, we reiterate that, under this precedent, applicants may not exceed the section 310(b)(4) benchmark absent the express prior consent of the Commission. To exercise the statute's discretion in a meaningful way, the Commission must receive from the applicant detailed information sufficient for the agency to make the public interest finding required by the statute.[24]

13. Applicants seeking approval of broadcast assignments or transfers must continue to inform the Commission of their proposed transaction's compliance with section 310 of the Act.[25] For example, Section III,

[22] Fox I, 10 FCC Rcd at 8472. See also GRC Cablevision Inc., 47 FCC 2d 467, 468 paragraph 6 (1974) (alien ownership in broadcast television presents different questions which we will deal with as they arise in concrete situations.).

[23] Fox I, 10 FCC Rcd at 8745-46 (stating that . . . [T]he Commission must be given the opportunity to make a public interest determination specifically focused upon the implications of exercising its discretion before an ownership structure above the foreign ownership benchmark is vested with corporate prerogatives over a Commission licensee.); Galesburg Broadcasting Company, Notice of Apparent Liability for Forfeiture, 6 FCC Rcd 2210, 2210 (1991) (Galesburg) (finding that the transfer of a majority of the voting stock in the U.S.-organized parent of the licensee to a trustee wholly owned by a Canadian bank without prior Commission approval deprived the Commission of the opportunity to pass on the propriety of alien ownership which section 310(b)(4) of the Act contemplates). See also Foreign Ownership First Report and Order, 27 FCC Rcd at 9843 n.58; Foreign Ownership Second Report and Order, 28 FCC Rcd at 5759, n.98 (both citing to Fox I and Galesburg for the same proposition).

[24] Fox I, 10 FCC Rcd at 8476-77; Galesburg Broadcasting Company, 6 FCC Rcd at 2210; compare In re Hispanic Broadcasting Corp., 18 FCC Rcd 18834 (2003) (finding that the equity and voting interests held by foreign entities in Univision comply with the alien ownership restrictions set forth in section 310 of the Communications Act). See also Foreign Ownership Second Report and Order, 28 FCC Rcd at 5759 (confirming the Commission's long-standing policy that the statute requires us to review and approve foreign ownership of licensees subject to section 310(b)(4) before that foreign ownership exceeds the 25 percent statutory limit).

[25] See FCC Form 314 – Application for Consent to Assignment of Broadcast Station Construction Permit or License, Section III, Question 9, Alien Ownership and Control (Oct. 2012) (available at http://transition.fcc.gov/Forms/Form314/314.pdf); FCC Form 315 – Application for Consent to Transfer

Question 9 of Form 314 requires proposed assignees to certify their compliance with the provisions of section 310 relating to interests of aliens and foreign governments. Applicants must continue either to certify that their transactions will comply with section 310 benchmarks or, in the event they will not, to indicate that they will not comply and provide an explanatory exhibit.[26] A petition for declaratory ruling to allow foreign ownership to exceed the 25 percent benchmark must be filed along with any application in which the applicant cannot certify compliance with section 310(b)(4).[27] Again, in all cases, before the benchmark may be exceeded, we must approve the transaction.

14. We also clarify that, prospectively, if a proposed foreign investment in a broadcast licensee's controlling U.S. parent would exceed the benchmark but does not require the filing of a Form 314 or other FCC application, a petition for declaratory ruling must be filed with the Commission in advance. We expect to process Form 314 and other applications, as well as petitions for declaratory rulings in this category, in a similar manner for purposes of section 310(b)(4) review. Following preliminary staff review to ensure completeness of the filing materials, both types of submissions will be subject to public notice seeking comment from interested parties. The Commission will coordinate as necessary and appropriate with Executive Branch agencies regarding such applications and petitions. Consistent with the Commission's long-standing policy in reviewing foreign ownership of common carrier applicants and licensees, the Commission will continue to afford appropriate deference to the expertise of the Executive Branch agencies on issues related to national security, law enforcement, foreign policy, and trade policy.[28] As part of its review, the Commission may send the applicants or petitioners letters of inquiry or

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Control of Entity Holding Broadcast Station Construction Permit or License, Section IV, Question 11, Alien Ownership and Control (Oct. 2012) (available at http://transition.fcc.gov/Form/Form315/315.pdf; FCC Form 316 – Application for Consent to Assign Broadcast Station Construction Permit or License or Transfer of Control of Entity Holding Broadcast Station Construction Permit or License, Section III, Question 10, Alien Ownership and Control (June 2010) (available at http://transition.fcc.gov/Forms/Form316/316.pdf).

[26] We use the long-form broadcast assignment application, FCC Form 314, as an example. The same standard would apply whenever compliance with the alien ownership provisions or certification to such compliance arises. See, e.g., supra note 25.

[27] 47 CFR 1.2(a) (the Commission may on motion or on its own motion issue a declaratory ruling terminating a controversy or removing uncertainty).

[28] See generally Foreign Ownership Second Report and Order, 28 FCC Rcd at 5751 paragraph 13, 5762 paragraph 34; 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. 97-14 and 95-22, Report and Order and Order on Reconsideration, 12 FCC Rcd 23891, 23920 para. 63 (1997) (Foreign

document requests, request additional materials, or take any other needed measures in order to conduct a comprehensive public interest review. Once the Commission has concluded its inquiry, it will release a written opinion or other notice authorizing, denying, or conditioning the requested foreign ownership.[29]

15. We expect to evaluate proposals on the basis of our body of decisions relating to broadcast ownership and foreign ownership and the framework set forth in this item, evaluating the facts as they are presented in each specific application or petition for declaratory ruling.[30] By their nature, these case-by-case reviews will lead to distinct, factually driven results. Each application or petition will be assessed on its own merits, and we will determine, given the particular circumstances presented in a particular case, whether the public interest would be

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Participation Order) (We thus will continue to accord deference to the expertise of Executive Branch agencies in identifying and interpreting issues of concern related to national security, law enforcement, and foreign policy that are relevant to an application pending before us.); see also Market Entry Order, 11 FCC Rcd at 3955 para. 219. We anticipate that we may further develop our broadcast foreign ownership policies and procedures as we conduct our case-by-case reviews of particular applications and petitions and as we coordinate such filings with the appropriate Executive Branch agencies.

[29] See, e.g., Applications of Cellco Partnership d/b/a Verizon Wireless and SpectrumCo LLC and Cox TMI, LLC For Consent To Assign AWS-1 Licenses, Applications of Verizon Wireless and Leap for Consent To Exchange Lower 700 MHz, AWS-1, and PCS Licenses, Applications of T-Mobile License LLC and Cellco Partnership d/b/a Verizon Wireless for Consent to Assign Licenses, WT Docket No. 12-4, Memorandum Opinion and Order and Declaratory Ruling, FCC 12-95, 27 FCC Rcd 10699, 10769 paragraphs 191-92 (2013), pet. for recon. pending (conditioning grant of applications to assign licenses and grant of declaratory ruling to Verizon Wireless on its compliance with the terms and conditions contained in the March 27, 2008, Letter to Stewart Baker, Assistant Secretary of Policy, U.S. Department of Homeland Security; and conditioning grant of applications to assign licenses to T-Mobile License on its compliance with the terms contained in the National Security Agreement entered into on January 12, 2001, as amended as of January 4, 2008, between Deutsche Telekom and the U.S. Department of Justice, the Federal Bureau of Investigation, and the U.S. Department of Homeland Security).

[30] We will not entertain petitions to exceed the foreign ownership limits of section 310(b)(3) for foreign investment in broadcast licensees. Foreign interests in a U.S.-organized parent that controls a licensee are subject to section 310(b)(4), not section 310(b)(3). Unlike section 310(b)(4), section 310(b)(3) does not afford the Commission any discretion to approve foreign investment in broadcast licensees in excess of the limitations contained therein. While the Commission has statutory authority to forbear from applying any regulation or provision of the Act to a telecommunications carrier or service if the Commission determines that forbearance is in the public interest, that authority is limited to application of those requirements to telecommunications carriers or services. See 47 U.S.C. 160. It does not extend to broadcast station licensees covered by section 310(b)(3). Foreign Ownership Second Report and Order, 28 FCC Rcd at 5749 paragraph 9 n.31. See also Foreign Ownership First Report and Order, 27 FCC Rcd 9832 (adopting forbearance from applying the section 310(b)(3) limit to the class of common carrier licensees in which foreign ownership in the licensee is held through U.S.-organized entities that do not control the licensee, to the extent the Commission determines such foreign ownership is consistent with the public interest under the policies and procedures the Commission has adopted for the public interest review of foreign ownership subject to section 310(b)(4) of the Act).

served by permitting the requested foreign ownership. We anticipate that applicants may propose ownership by a range of foreign interests and countries, involving varying corporate and organizational structures, with differing public interest showings. Although many commenters have suggested that there is significant availability of foreign capital for broadcasters, we cannot predict whether applications proposing new foreign investment will in fact increase. If they do increase, over time, the Commission's case-by-case review may suggest policy issues or streamlined procedural mechanisms that could be addressed in future Commission proceedings. We may in the future elect to create a standardized review process similar to that adopted in the common carrier context.[31] At this time, however, we are cognizant of the distinctions between common carrier facilities and broadcast stations and of the differences in the Commission's experiences with proposals to exceed the section 310(b)(4) benchmark for foreign investments in these two categories of Commission licensees. Therefore, we believe it is appropriate that our review of proposed broadcast investments remain on a case-by-case basis and be allowed to mature before we consider comprehensive rules and procedures similar to those applicable to foreign investment in common carrier licensees.[32]

16. Some commenters have asserted that the underlying national security rationale for section 310(b)(4) in the broadcast area, protection from foreign propaganda on radio and television stations, no longer exists. Although many new potential threats and national security issues have arisen as technology has advanced,[33] we do not believe that the historical statutory concern for foreign influence over broadcast stations has disappeared. Broadcast stations are licensed to serve the needs and interests of local U.S. communities. They uniquely offer a range of critical information services to the American public, including, for instance, the provision of local, state, national, and international news, national Emergency Alerts, local severe weather alerts, Amber Alerts for missing children, and

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[31] See Foreign Ownership Second Report and Order, 28 FCC Rcd 5741 (codifying policies and procedures for authorizing foreign ownership of common carrier, aeronautical en route, and aeronautical fixed radio station licensees under section 310(b)). See also Foreign Participation Order, 12 FCC Rcd at 24033 paragraph 323.

[32] Some commenters raise additional suggestions for Commission review of foreign investment in broadcast licensees. Although many of these recommendations proffer thoughtful contributions to the proceeding record, it is premature to adopt them at this time. Our consideration of the numerous overarching issues involved in this area is ongoing. As we continue to address applications on a case-by-case basis, we will ascertain whether it is appropriate to conduct a rulemaking proceeding.

[33] See, e.g., Confidential Reports List U.S. Weapon System Designs Compromised by Chinese Cyberspies, by Ellen Nakashima, THE WASHINGTON POST (May 27, 2013).

homeland security information. Ensuring that the ownership of broadcast licensees serves the public interest is embodied in a statutory directive with which we must faithfully comply and we will evaluate applications proposing foreign broadcast ownership accordingly. In particular, we will address each specific situation in terms of its potential public interest benefits and any relevant public interest concerns, including national security concerns, consistent with the statute and this Declaratory Ruling.

IV. Ordering Clause

17. Accordingly, IT IS ORDERED that, pursuant to the authority contained in sections 4(i) and 310(b) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 310(b), 5 U.S.C. 554(e) and § 1.2 of the Commission's rules, 47 CFR 1.2, this Declaratory Ruling in MB Docket No. 13-50 IS ADOPTED.

Federal Communications Commission.

Marlene H. Dortch,
Secretary.

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