

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

In the Matter of)	
)	
Hemisphere Media Group, Inc.)	MB Docket No. 16-238
)	
Petition for Declaratory Ruling)	

DECLARATORY RULING

Adopted: January 18, 2017**Released: January 18, 2017**

By the Chief, Media Bureau:

I. INTRODUCTION

1. Hemisphere Media Group, Inc. (HMTV) filed a Petition for Declaratory Ruling (Initial Petition)¹ requesting that the Commission find, pursuant to section 310(b)(4) of the Communications Act of 1934, as amended (the Act),² that the public interest would be served by permitting foreign ownership in excess of the 25 percent benchmark contained in that subsection.³ HMTV requests that the Commission permit foreign investors to own up to 49.99 percent of both its equity and voting interests.⁴ The petition is unopposed. Upon consideration of the record, we grant the Petition as set forth below.

II. BACKGROUND

2. *Existing Corporate Structure.* HMTV, a publicly held Delaware corporation whose shares are traded on NASDAQ, provides Spanish-language programming to audiences in the U.S. and Latin America.⁵ An indirect wholly-owned subsidiary of HMTV, Televisi3n de Puerto Rico, LLC, is the licensee of three television broadcast stations in Puerto Rico.⁶ Through subsidiaries, HMTV operates seven cable and satellite programming networks providing Spanish-language programming to millions of subscribers in the U.S., Latin America, and Canada.⁷

3. In its Petition, HMTV states that it currently has 42,408,228 shares of stock outstanding

¹ HMTV also filed a Supplement to Petition for Declaratory Ruling (Supplement), a Second Supplement to Petition for Declaratory Ruling (Second Supplement), a Third Supplement to Petition for Declaratory Ruling (Third Supplement), and a Fourth Supplement to Petition for Declaratory Ruling (Fourth Supplement) (Collectively Petition). The Second Supplement reflects changes in HMTV's ownership structure pursuant to the Commission's grant of a *pro forma* transfer of control that was consummated on October 21, 2016. *See* FCC File No. BTCCDT-20160916ABD-ABF (granted October 19, 2016).

² 47 U.S.C. § 310(b)(4).

³ Initial Petition at 1.

⁴ *Id.*

⁵ *Id.* at 1-3.

⁶ WAPA-TV, San Juan, Puerto Rico; WNJX-TV, Mayaguez, Puerto Rico; and WTIN-TV, Ponce, Puerto Rico.

⁷ Supplement at 1.

that are divided into two classes.⁸ There are 21,607,230 shares of Class A common stock with one vote per share and 20,800,998 shares of Class B common stock with 10 votes per share.⁹ The Class A stock constitutes the class of publicly traded stock.¹⁰

4. Gato Investments, L.P., a Delaware limited partnership (Gato), controls HMTV.¹¹ Gato owns 16,494,671 Class B shares of HMTV representing 71.84 percent of the votes and 38.89 percent of all outstanding stock.¹² Gato's general partner, Gemini Latin Holdings, LLC, a Delaware limited liability company (Gemini), holds 100 percent of the votes in Gato.¹³ Gemini's sole member, Peter M. Kern, a U.S. citizen, holds 100 percent of the votes in Gemini, and thereby in Gato, which gives him 71.84 percent of the votes in HMTV.¹⁴ Mr. Kern also holds 2.98 percent of the votes and 1.67 percent of the equity in HMTV directly, giving him aggregate control of 74.81 percent of the votes in HMTV.¹⁵ HMTV does not list any other person or entity that either holds an attributable interest in the company under the Commission's multiple ownership rules or that owns more than 10 percent of its stock.¹⁶ HMTV states that foreign investors directly or indirectly hold insulated limited partnership interests in Gato.¹⁷ HMTV also states that foreign ownership of Gato does not exceed 3 percent and, therefore, does not represent more than 3 percent of the votes or equity of HMTV.¹⁸

5. One company, Cinéma Aeropuerto, S.A. de C.V., a Mexican corporation (Cinéma Aeropuerto) owns 2,996,999 shares of HMTV's Class B stock, representing 7.07 percent of its equity and 13.05 percent of its votes.¹⁹ Cinéma Aeropuerto is 99.99 percent owned by Grupo Frecuencia Modulada Televisión, S.A. de C.V., a Mexican corporation, which is in turn 97.32 percent owned by Grupo MVS, S.A. de C.V., a Mexican corporation (MVS).²⁰ MVS is owned 99.56 percent (votes and equity) by HSBC 61549, a trust organized under the laws of Mexico for the benefit of descendants of Mr. José Joaquín Vargas Gómez.²¹ The sole trustee of HSBC 61549 is HSBC México S.A., a Mexican corporation (HSBC Mexico), which is an indirect wholly owned subsidiary of HSBC Holdings plc, which is organized under the laws of the United Kingdom.²² HSBC Mexico votes the shares of MVS at the direction of a trust committee, which consists of the following members, all of whom are children of José Joaquín Vargas Gómez: Joaquín Vargas Guajardo, Elsa Gabriela Vargas Guajardo, Ernesto Vargas Guajardo, Andrea Matilde Vargas Guajardo, Francisco Vargas Guajardo and Alejandro Vargas Guajardo. Mr. Ernesto Vargas Guajardo is also a member of the board of directors of HMTV.²³ HMTV seeks approval for

⁸ Initial Petition at 2. Second Supplement at 2.

⁹ *Id.*

¹⁰ Initial Petition at 3.

¹¹ Second Supplement at 2 and Exhibit A.

¹² *Id.*

¹³ *Id.*

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ Second Supplement at Exhibit A.

¹⁷ *Id.* at 3.

¹⁸ *Id.*

¹⁹ Initial Petition at 4-5. Second Supplement at 3 and Exhibit B.

²⁰ Initial Petition at 5.

²¹ *Id.* HSBC 61549 directly own 98.06% and indirectly owns 1.50% of MVS. *Id.*

²² *Id.*

²³ *Id.* All of the other board members are U.S. citizens. *Id.*

foreign investors, in the aggregate, to own up to 49.99 percent of both its equity and voting interests. In addition, HMTV seeks specific approval for each of the listed entities and individuals of the Cinéma Aerpuerto chain up through HSBC Holdings plc as described above, including the members of the trust committee, to own up to 49.99 percent of both its equity and voting interests.²⁴

6. In addition to the investment by Cinéma Aerpuerto and Gato, there are currently 3,112,566 shares of HMTV stock in HMTV's SEG-100 account, which represents 1.36 percent of its votes and 7.34 percent of its equity.²⁵ HMTV states that these shares are widely held. Based on a review of SEC filings, HMTV states that it has no reason to believe that any foreign investor with stock in the SEG-100 account holds 5 percent or more of HMTV's stock.²⁶ HMTV states that it has reviewed its list of registered shareholders²⁷ and identified those who are foreign other than Cinéma Aerpuerto and the foreign interests held through Gato.²⁸ It states that these foreign registered shareholders hold 0.93 percent of the votes and 5.06 percent of the equity of HMTV and that none holds 5 percent of the votes or equity of the company.²⁹ HMTV estimates that its total foreign ownership may be as high as 18.34 percent of the votes and 22.47 percent of the equity of the company.³⁰

7. *HMTV's Monitoring Procedures.* To track its level of foreign ownership, HMTV states that, in addition to participation in SEG-100, it monitors reports filed with the SEC, including Schedules 13G and 13D, and that its articles of incorporation contain multiple provisions to monitor foreign ownership and maintain compliance with 310(b)(4), including the ability to:

- restrict the ownership, or proposed ownership, of shares of its capital stock by any person if such ownership or proposed ownership is or could be in violation of the Communications Act;
- require a person owning or proposing to own stock to furnish such information as HMTV requests;
- refuse to permit the transfer of shares;
- suspend rights of stock ownership;
- redeem shares;
- require conversion of Class B shares to Class A; or
- exercise any and all appropriate remedies, at law or in equity, in any court of competent jurisdiction, with a view toward obtaining requested information or curing a violation.³¹

8. *HMTV's Request for Declaratory Ruling.* HMTV requests a declaratory ruling to permit foreign ownership because its estimated current foreign ownership is near the 25 percent statutory benchmark and it is a publicly traded company, which does business internationally and attracts foreign

²⁴ *Id.* at 11-14.

²⁵ Second Supplement at 3.

²⁶ *Id.* at 3-4.

²⁷ "Registered Shareholders" are Shareholders who hold their shares directly with a company. <https://www.investor.gov/research-before-you-invest/research/shareholder-voting/what-registered-what-beneficial>. Registered holders have their names and addresses recorded in the company's share registry, which is usually maintained by its transfer agent.

²⁸ Second Supplement at 3-4. HMTV states that these foreign registered shareholders acquired their shares pursuant to the *pro forma* transaction. *Id.* Cinéma Aerpuerto and Gato are registered shareholders. Fourth Supplement at 1.

²⁹ *Id.*

³⁰ *Id.* Foreign Voting Interests: 13.05 (Cinema Aerpuerto) + < 3 (Gato) + 1.36 (SEG-100) + 0.93 (Registered shareholders) = 18.34. Foreign Equity Interests: 7.07 (Cinema Aerpuerto) + <3 (Gato) + 7.34 (SEG-100) + 5.06 (Registered shareholders) = 22.47.

³¹ Initial Petition at 3-4.

investment.³² HMTV claims that it needs additional foreign capital to compete against larger, better funded rival foreign language programmers, such as Telemundo.³³ HMTV also indicates that its future growth strategy includes potential further expansion into Latin America and that consideration for acquisition of Latin American assets may include cash and/or HMTV common stock such that, without an increase in the amount of allowable foreign ownership, HMTV will be limited in its ability to acquire assets owned by foreign partners.³⁴ Finally, HMTV argues that permitting more foreign investment in broadcast companies will encourage reciprocity by other countries and lower barriers to U.S. investment abroad.³⁵

9. The Petition was put out for public comment on July 27, 2016 with comments due August 29, 2016. No parties have opposed the Petition or asked for conditions to be placed on it.³⁶

III. DISCUSSION

10. As described below, we find that the public interest would not be served by refusing to grant HMTV's petition for a declaratory ruling to permit foreign ownership of Hemisphere Media Group, Inc., as described herein, above the statutory cap of 25 percent in Section 310(b) and up to 49.99 percent. In this section, first we summarize the relevant law and Commission precedent related to foreign ownership of broadcast licensees. Then we consider facts presented by HMTV regarding its foreign ownership status and its public interest arguments.

11. *Relevant Law and Commission Precedent:* Section 310(b) of the Act restricts investment by non-U.S. citizens in broadcast, common carrier, aeronautical en route, and aeronautical fixed radio licensees.³⁷ 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.³⁸

12. In the *2013 Broadcast Clarification Order*,³⁹ the Commission clarified the policies and procedures for evaluating potential foreign investment in broadcast licensees under Section 310(b)(4) of

³² *Id.* at 6.

³³ *Id.* at 4-5.

³⁴ *Id.*

³⁵ *Id.* at 5. In particular, HMTV states that Mexico permits non-citizens to own up to 49% of the outstanding voting stock of a Mexican television or radio broadcast licensee, subject to reciprocity by the relevant foreign country. Petition at 16, n.13; Supplement at 5.

³⁶ On August 16, 2016, the Commission received a request to defer action on the Petition pending review by Executive Branch agencies. See *Letter from Bermel Paz to Marlene Dortch, Secretary, Federal Communications Commission*, dated August 16, 2016, MB Docket 16-238. A further letter withdrawing the deferral request and stating that the reviewing agencies have no objection to the Petition was received by the Commission on January 12, 2017. See *Letter from Bermel Paz to Marlene Dortch, Secretary, Federal Communications Commission*, dated January 12, 2017, MB Docket 16-238.

³⁷ 47 U.S.C. § 310(b).

³⁸ 47 U.S.C. § 310(b)(4).

³⁹ *Commission Policies and Procedures Under Section 310(b)(4) of the Communications Act, Foreign Investment in Broadcast Licensees*, MB Docket No. 13-50, Declaratory Ruling, 28 FCC Rcd 16244 (2013) (*2013 Broadcast Clarification Order*).

the Act to remove apparent uncertainty.⁴⁰ The Commission declined to adopt a standardized review process in that proceeding, and instead clarified that it would continue to conduct a fact-specific, individualized case-by-case review of each application or petition for declaratory ruling involving broadcast stations.⁴¹ The Commission reiterated its position that, in the context of Section 310(b)(4) review for broadcast licensees, the 25 percent benchmark “is only a trigger for the exercise of our discretion, which we then exercise based upon a more searching analysis of the circumstances of each case.”⁴² The Commission also recognized 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.”⁴³

13. In its *2015 Pandora Declaratory Ruling*, the Commission granted a petition for declaratory ruling filed by Pandora Radio LLC (Pandora) to exceed the 25 percent foreign ownership benchmark set out in Section 310(b)(4), in connection with an application for consent to assignment of license of KXMZ(FM) Box Elder, South Dakota.⁴⁴ In its petition, Pandora sought permission for its parent company, Pandora Media, a publicly traded company organized and headquartered in the United States, to have varying levels of foreign ownership (voting and equity) because it could not prove that foreign entities did not own or vote more than 25 percent of its shares.⁴⁵ Based on the facts specific to that case and in view of existing broadcast foreign ownership policies, the Commission approved the request to exceed the 25 percent benchmark under Section 310(b)(4) provided that Pandora obtain prior Commission approval for (1) aggregate foreign equity and/or foreign voting interests in Pandora Media exceeding 49.99 percent; (2) any change in the Pandora Media Board of Directors that would result in a majority of foreign members; or (3) any individual foreign investor or “group” acquiring a greater than 5 percent voting or equity interest (or greater than 10 percent for certain institutional investors) in Pandora Media.⁴⁶ The Commission required Pandora Media to modify its organizational documents to ensure that its Board of Directors has all necessary powers to maintain compliance with Section 310(b)(4), including the right to request and obtain information regarding citizenship of Pandora Media’s interest holders, and the necessary powers to cure noncompliance, specifically: (1) the right to restrict the transfer of shares to aliens; (2) the right to require disclosure when an alien acquires an equity and/or voting interest; and (3) the right to compel the redemption of shares held by aliens.⁴⁷

14. The Commission recently adopted its *2016 Foreign Ownership Order*,⁴⁸ which modified the broadcast licensee foreign ownership review process by extending the streamlined rules and

⁴⁰ *Id.*

⁴¹ The Commission stated that it would not entertain petitions to exceed the foreign ownership limits of Section 310(b)(3) for foreign investment in broadcast licensees. *2013 Broadcast Clarification Order*, 28 FCC Rcd at 5752, para. 15, n.49. Unlike Section 310(b)(4), Section 310(b)(3) does not afford the Commission discretion to approve foreign investment in broadcast licensees in excess of the limitations contained therein.

⁴² *2013 Broadcast Clarification Order*, 28 FCC Rcd at 16249-50, para. 11.

⁴³ *Id.* at 16249, para. 10.

⁴⁴ *Pandora Radio LLC Petition for Declaratory Ruling Under Section 310(b)(4) of the Communications Act of 1934, as Amended*, MB Docket No. 14-109, Declaratory Ruling, 30 FCC Rcd 5094, 5095-96, para. 4 (2015) (*2015 Pandora Declaratory Ruling*), *recon denied*, 30 FCC Rcd 10570 (2015).

⁴⁵ *Id.*

⁴⁶ *Id.* at 5101, para. 19.

⁴⁷ *Id.* at 5101, para. 20.

⁴⁸ *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, GN Docket 15-236 (2016) (*2016 Foreign Ownership Order*). See note 39 *supra*.

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.⁴⁹ In the *2016 Foreign Ownership Order*, the Commission also reformed the methodology used by both common carrier and broadcast licensees to assess compliance with the foreign ownership limits in Sections 310(b)(3)⁵⁰ and 310(b)(4) of the Act, as appropriate, in recognition of the difficulty that U.S. publicly traded companies face in attempting to ascertain their level of foreign ownership.⁵¹ This reformed methodology provides a framework for a publicly traded licensee or its controlling U.S. parent to ascertain its foreign ownership using information that “is known or reasonably should be known” to the company in the ordinary course of business and eliminates the need for shareholder surveys.⁵²

15. The rules adopted in the *2016 Foreign Ownership Order* have not yet taken effect, and thus our foreign ownership review process is still governed by the *2013 Broadcast Clarification Order*.⁵³ As noted, in the *2013 Broadcast Clarification Order* the Commission adopted a case-by-case approach to reviewing petitions for declaratory ruling to exceed 310(b)(4) benchmark.⁵⁴ In that order, the Commission stated that “[b]y their nature, these case-by-case reviews will lead to distinct, factually driven results.”⁵⁵ Thereafter, in the *Pandora Declaratory Ruling*, the Commission granted such a petition based on the facts and circumstances of that case and, imposed a series of conditions appropriate to those circumstances.⁵⁶ The *2013 Broadcast Clarification Order* allows us discretion in considering petitions such as the instant one to impose terms and conditions on a licensee if warranted based on the facts and circumstances of each particular case.⁵⁷ Because the Commission clearly acknowledged that fact-specific inquiries will lead to different results in different cases, we need not conclude that the conditions imposed in the *Pandora Declaratory Ruling* are necessarily appropriate under the facts and circumstances of this case⁵⁸ or that we are limited to those conditions here if we conclude new or different conditions would be more appropriate to the present case.

16. In the context of considering whether to grant this petition, and, if so, whether conditions

⁴⁹ *Id.*

⁵⁰ 47 U.S.C. § 310(b)(3) (Prohibiting grant of a broadcast, common carrier, aeronautical en route and aeronautical fixed radio license to “[A]ny corporation of which more than one-fifth of the capital stock is owned of record or voted by aliens or their representatives or by a foreign government or representative thereof or by any corporation organized under the laws of a foreign country...”).

⁵¹ *2016 Foreign Ownership Order*, at para. 35-72.

⁵² *Id.* at para. 44-53.

⁵³ By its terms, the *2016 Foreign Ownership Order* takes effect 60 days after publication in the Federal Register, except those provisions that contain new or modified information collection requirements that require approval by the Office of Management and Budget (OMB) under the Paperwork Reduction Act. *Id.* at para. 113. Those sections will become effective after the Commission publishes a notice in the Federal Register announcing such approval and the relevant effective date. *Id.* The *2016 Foreign Ownership Order* was published in the Federal Register on December 1, 2016. *Review of Foreign Ownership for Broadcast, Common Carrier and Aeronautical Radio Licensees*, 81 Fed. Reg. 86568 (Dec. 1, 2016). The order will be effective on January 30, 2017, except for those sections requiring OMB approval.

⁵⁴ *2013 Broadcast Clarification Order*, 28 FCC Rcd at 16252.

⁵⁵ *Id.*

⁵⁶ *Pandora Declaratory Ruling*, 30 FCC Rcd at 5101-5103.

⁵⁷ *Id.*

⁵⁸ For example, HMTV has stated that as part of its compliance monitoring processes it already performs the same broadcast industry best practices set out in the *Pandora Declaratory Ruling* and that it already has in place the types of restrictions that required changes to Pandora’s organizational documents. *Pandora Declaratory Ruling*, 20 FCC Rcd. at 5101. *See also* para. 7, *supra*. We do, however, require that HMTV maintain these practices.

are necessary and what conditions should apply, we are cognizant of the Commission's recent decision in the *2016 Foreign Ownership Order*, which is scheduled to become effective soon after the adoption of this declaratory ruling. Although the rules adopted in that order are not yet in effect, we note that our action here is not inconsistent with the policies or rules the Commission adopted.⁵⁹

17. *Facts Regarding HMTV's Foreign Ownership Status:* HMTV has identified each U.S. broadcast station license that it currently holds.⁶⁰ HMTV has described how it conducted its foreign ownership review and the methodology it employed, using information that it knew or reasonably should have known at the time the Petition was filed. It has demonstrated that it has used due diligence to conduct a thorough review of its existing shareholders. Based on its review, HMTV has shown that there are no unaccounted for attributable shareholders with a greater than 5 percent interest, equity or voting in the company, and no alien shareholders with a greater than 5 percent interest, equity or voting in the company. HMTV has submitted the necessary ownership diagrams and demonstrated that it is currently in compliance with the 25 percent benchmark under Section 310(b)(4). We find that HMTV has provided sufficient information regarding its current foreign ownership status and its proposed future foreign ownership status to inform our decision on the pending petition.

18. *Public Interest Analysis:* In both the *2013 Broadcast Clarification Order* and the *2016 Foreign Ownership Order*, the Commission emphasized the need to encourage new sources of investment in the broadcast industry, including foreign investment.⁶¹ The Commission has also emphasized the need to protect important issues related to national security, law enforcement, foreign policy, trade policy, and other public policy goals while maintaining compliance with Section 310(b).⁶² The relevant Executive Branch agencies with expertise on issues related to national security, law enforcement, foreign policy, and trade policy have not filed any objection to issuance of the declaratory ruling or requested that we impose conditions on the grant. HMTV has submitted information that it is approaching the 25 percent cap and that, because it is a publicly traded company that does business internationally and attracts foreign investors, permitting it to increase its foreign investment up to 49.99 percent would facilitate its ability to do business and to attract additional capital. We find persuasive HMTV's contention that granting its petition would serve the public interest in encouraging new foreign investment. HMTV has also demonstrated that grant of its Petition has the potential to encourage reciprocity in parts of Latin America, the region in which it does international business.⁶³ As noted above, no parties have opposed the Petition for declaratory ruling or asked for conditions to be placed on it.

IV. DECLARATORY RULING

19. Under these circumstances, pursuant to Section 310(b) of the Act, we find that the public

⁵⁹ HMTV's petition was on public notice, under review by the Executive Branch, and amended repeatedly during the pendency of the proceeding that resulted in the *2016 Foreign Ownership Order*. *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 15-236, Notice of Proposed Rulemaking, 30 FCC Rcd 11830 (2015) (*2015 Foreign Ownership NPRM*). The *2016 Foreign Ownership Order NPRM* was released on October 22, 2015 and HMTV filed its Initial Petition on July 8, 2016, and supplemented it after the release of the *2016 Foreign Ownership Order*. HMTV's petition is therefore differently situated than Pandora's. Pandora did not have the benefit of the Commission's guidance in the *2015 Foreign Ownership NPRM* or the *2016 Foreign Ownership Order*.

⁶⁰ Initial Petition at 2.

⁶¹ *2013 Broadcast Clarification Order* at 16249; *2016 Foreign Ownership Order* at para. 2.

⁶² *2013 Broadcast Clarification Order*, 28 FCC Fed at 16251; *2016 Foreign Ownership Order* at para. 2.

⁶³ Initial Petition at 16, fn 13. U.S. Department of State, 2014 Investment Climate Statement at 4-5 (2014). See also, *Ley Federal de Telecomunicaciones y Radiofusión*, Artículo Segundo (issued July 14, 2014), http://www.dof.gob.mx/nota_detalle.php?codigo=5352323&fecha=14/07/2014 (available in English at http://www.sct.gob.mx/fileadmin/Comunicaciones/LFTR_english.pdf, Article Two, at pdf p. 86).

interest would not be served by prohibiting foreign ownership of Hemisphere Media Group, Inc. in excess of the 25 percent benchmark in Section 310(b) of the Act because this increased level of foreign investment in HMTV will facilitate investment from new sources of capital in HMTV that would not otherwise be available and encourage reciprocity by foreign governments. Specifically, this ruling permits aggregate foreign equity and voting interest in Hemisphere Media Group, Inc. to exceed 25 percent and to increase up to and including 49.99 percent.

20. *Specific Approval.* Furthermore, this declaratory ruling grants specific approval for the following individuals and entities to hold up to 49.99 percent of the voting interests and 49.99 percent of the equity of Hemisphere Media Group, Inc:

- Cinéma Aeropuerto,
- Grupo Frecuencia Modulada Televisión, S.A. de C.V.,
- Grupo MVS, S.A. de C.V.,
- HSBC 61549,
- HSBC México S.A.,
- HSBC Holdings plc,
- Joaquín Vargas Guajardo,
- Elsa Gabriela Vargas Guajardo,
- Ernesto Vargas Guajardo,
- Andrea Matilde Vargas Guajardo,
- Francisco Vargas Guajardo and
- Alejandro Vargas Guajardo.

In granting these specific approvals, we have coordinated with the relevant Executive Branch agencies and given them the opportunity to review the petitioner's filings and the requests for specific approval in light of interests related to national security, law enforcement, foreign policy, trade policy, and other public policy goals. The Executive Branch agencies have filed a letter with the Commission stating that they have no objections. We also find no grounds to object to the specific approvals and we conclude that grant of them will facilitate the foreign investment sought by the petitioner.

21. *Aggregate and Individual Ownership Limits.* HMTV must obtain (1) prior Commission approval for foreign equity and/or foreign voting interests exceeding 49.99 percent in the aggregate or for any such interest held by any individual or entity listed above that exceeds 49.99 percent, which are the limits requested in the Petition; and (2) prior specific Commission approval for any individual foreign investor or "group" other than those listed above acquiring a greater than five percent voting or equity interest (or ten percent for certain institutional investors) in HMTV.⁶⁴ While these conditions do not bar HMTV from seeking additional future foreign investment opportunities, they accommodate the relief requested in the Petition while providing continued protection to important interests related to national security, law enforcement, foreign policy, trade policy, and other public policy goals.

⁶⁴ See *Pandora Declaratory Ruling*, 30 FCC Rcd at 5101. A "group" is two or more individuals or entities that have agreed to act together for the purpose of acquiring, holding, voting, or disposing of their equity and/or voting interests in the licensee and/or controlling U.S. parent of the licensee or in any intermediate company(ies) through which any of the individuals or entities holds its interests in the licensee and/or controlling U.S. parent of the licensee. 17 C.F.R. § 240.13d-5(b).

22. *Compliance Monitoring.* HMTV shall monitor its compliance on an ongoing basis.⁶⁵ If, at any time, HMTV knows, or has reason to know, that it is no longer in compliance with this declaratory ruling, Section 310(b)(4) of the Act, or the Commission's rules and policies on foreign ownership, it 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 and how it intends to correct the overage, either by filing a new petition for declaratory ruling or by reducing the foreign interest.⁶⁶ Ongoing monitoring will allow the licensee to stay ahead of changes in its foreign ownership levels to ensure that it obtains Commission approval before it goes out of compliance with this declaratory ruling. The required remedial action will provide the licensee with the opportunity and the incentive to correct an inadvertent error prior to enforcement action by the Commission.

23. *Organizational Changes.* This ruling shall apply to all of HMTV's subsidiaries and affiliates, whether existing or formed or acquired subsequently, that are wholly owned and controlled by, or under 100 percent common ownership and control with HMTV. In addition, any foreign owned entity that has received specific approval may insert a new, foreign-organized company that is under 100 percent common ownership and control in its vertical ownership chain above the controlling U.S. parent.⁶⁷ The flexibility granted here reflects the reality that it is not uncommon for publicly traded companies to make changes within their corporate structure that in no way affect the operation, management, or control of those companies. This flexibility does not detract in any way from the requirement under the Act and our Rules to apply for and receive prior Commission consent to a voluntary assignment of license or transfer of control before such a transaction may be consummated⁶⁸ or to seek a new declaratory ruling before its foreign ownership exceeds the terms or conditions of this declaratory ruling.⁶⁹

V. PROCEDURAL MATTERS

24. This declaratory ruling is issued pursuant to section 310(b)(4) of the Communications Act of 1934, 47 U.S.C. § 310(b)(4), and sections 0.61 and 0.283 of the Commission's rules, 47 C.F.R. §§ 0.61 and 0.283.

25. Issuance of this declaratory ruling is without prejudice to the Commission's action on any other matter.

26. Pursuant to section 1.103 of the Commission's rules, 47 C.F.R. § 1.103, the consent granted herein is effective upon release of this declaratory ruling.

⁶⁵ As discussed above, fn. 59, HMTV has demonstrated that it already has in place methods for monitoring and ensuring compliance with 310(b) benchmarks and we require it to keep these safeguards in place. It has also shown that it is currently in compliance with 310(b). Therefore, the special biennial certification requirement imposed in the *Pandora Declaratory Ruling* is not warranted in this instance. See *Pandora Declaratory Ruling*, 30 FCC Rcd at 5101-5102. Nothing in this declaratory ruling excuses the petitioner or its subsidiary licensees from the requirements associated with 310(b) certification at the time of filing a Commission application that requires such certification.

⁶⁶ See *Pandora Declaratory Ruling*, 30 FCC Rcd at 5102.

⁶⁷ Although this condition was not in the *Pandora Declaratory Ruling*, we find that it is consistent with that decision's condition allowing the creation of new, wholly owned subsidiaries of the licensee's parent company to be inserted in the ownership chain.

⁶⁸ See *Pandora Declaratory Ruling*, 30 FCC Rcd at 5102.

⁶⁹ Some of the conditions we adopt here are similar to the terms of the rules adopted in the *2016 Foreign Ownership Order*. See, e.g. 47 C.F.R. § 1.5001(i); 47 C.F.R. § 1.5004 (b), (d) and (f) However, we adopt these conditions here not to apply those rules, which are not yet effective, but because we conclude that these conditions are appropriate under the facts and circumstances of this case.

FEDERAL COMMUNICATIONS COMMISSION

William T. Lake
Chief
Media Bureau