



PUBLIC NOTICE

Federal Communications Commission
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DA 19-446
May 21, 2019

**CUMULUS MEDIA INC. SEEKS FOREIGN OWNERSHIP RULING PURSUANT TO SECTION
310(b)(4) OF THE COMMUNICATIONS ACT OF 1934, AS AMENDED**

PLEADING CYCLE ESTABLISHED

MB Docket No. 19-143

Comments Due: June 20, 2019
Replies Due: July 8, 2019

I. INTRODUCTION

Cumulus Media Inc. (Cumulus or Petitioner) has filed a petition for declaratory ruling (Petition) with the Commission requesting that the Commission find, pursuant to Section 310(b)(4) of the Communications Act of 1934, as amended,¹ and Section 1.5000(a)(1) of the Commission's rules,² that it would serve the public interest to permit up to a 100 percent aggregate foreign investment (voting and equity) in Cumulus Media Inc., a Delaware corporation. Cumulus filed the Petition on behalf of itself and each of its direct and indirect subsidiaries which hold Commission broadcast licenses.³

The Petition was filed in connection with the recent joint reorganization of Cumulus, a publicly traded company, and its debtor affiliates pursuant to Chapter 11 of the Bankruptcy Code.⁴ Pursuant to the reorganization plan, holders of secured and unsecured debt of Cumulus would receive equity and other

¹ 47 U.S.C. § 310(b)(4); *see also Commission Policies and Procedures Under Section 310(b)(4) of the Communications Act, Foreign Investment in Broadcast Licensees*, Declaratory Ruling, 28 FCC Rcd 16244 (2013).

² 47 CFR § 1.5000(a)(1); *see also 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).

³ *See* Petition for Declaratory Ruling of Cumulus Media Inc., dated July 19, 2018, at Exhibit A, Information Regarding Applicant and Licensees. Cumulus owns and operates nearly 450 full power radio broadcast stations, together with translator and booster stations and other ancillary facilities licensed by the Commission, in 90 markets. Cumulus also owns Westwood One, LLC, a producer and syndicator of radio content.

⁴ In November 2017, Cumulus and its direct and indirect subsidiaries filed voluntary petitions for relief under Chapter 11 of the Bankruptcy Code, 11 U.S.C. §§ 101 *et seq.*, with the U.S. Bankruptcy Court for the Southern District of New York. *In re Cumulus Media, Inc., et. al.*, Case No. 17-13381 (SCC) (Bankr. SDNY) (Docket No. 446).

securities of Cumulus (Units), as reorganized, in exchange for certain of their claims.⁵ The Bankruptcy Court entered an order confirming the reorganization plan on May 10, 2018, and the Commission subsequently granted the Petitioner's applications for the transfer of control of Cumulus as a result of the reorganization.⁶ In order to emerge from Chapter 11 bankruptcy at the earliest practicable time, the reorganization plan provided for a mechanism under which special warrants were issued to holders of claims which did not certify that they were 100 percent U.S. owned and controlled entities.⁷

Cumulus now requests approval to permit up to a 100 percent aggregate foreign investment to enable holders of warrants and non-voting stock to convert or exercise these instruments in exchange for voting stock *and* allow non-U.S. persons or entities to hold up to 100 percent of its voting stock and capital stock generally in the future.⁸ Specifically, Cumulus explains that upon grant of the Petition, the special warrants would be automatically exchanged, and foreign ownership of Cumulus immediately following such exchanges would then be approximately 34 percent on a voting basis and 31 percent on an equity basis.⁹ Notwithstanding that the foreign ownership which would result from exercise of the special warrants is expected to be much less than 100 percent, Cumulus states that it is requesting a ruling that would permit non-U.S. persons or entities to hold up to and including 100 percent of its voting stock and 100 percent of its capital stock generally. Cumulus believes that elimination of the overall limitation on foreign ownership of its shares will, *inter alia*, enhance the market liquidity of its stock and "provide the Company with the greatest degree of flexibility in accessing foreign investment capital."¹⁰ Cumulus asserts that grant of the Petition is entirely consistent with the public interest.

In support of the Petition, Cumulus asserts that grant of the Petition is consistent with the reorganization plan, which has enabled Cumulus to emerge from bankruptcy in a stronger financial condition, and which, in turn, will enable Cumulus to raise capital, enhance its programming, better serve the public, and compete with non-FCC regulated entities on a more level playing field.¹¹ Cumulus also maintains that grant of the Petition aligns with U.S. foreign trade policy and the U.S. government's desire to "promote inbound foreign investment" and encourage reciprocity with U.S. trading partners.¹² Cumulus further emphasizes that grant of the Petition fosters the purposes of the U.S. bankruptcy laws.¹³ Specifically, Cumulus explains that because its Petition is the first petition for declaratory ruling under Section 310(b)(4)

⁵ Petition at 2-3.

⁶ See FCC File Nos. BTC-20180322ABI, BTCH-20180322AKR, BTC-20180322ALP, BTCH-20180322AMO, BTC-20180322AMU, BTC-20180322AMW, and BTCH-20180322AMV. The Commission granted the applications on June 1, 2018; the transfer was consummated on June 4, 2018.

⁷ Cumulus states that upon emergence from bankruptcy, foreign ownership of its stock was no greater than 22.5 percent on a voting and equity basis, due to the equity allocation mechanism in the reorganization plan, and no more than five percent of its voting stock, upon emergence, was held, directly or indirectly, by any single foreign holder (or commonly controlled group thereof) on either a voting or equity basis. See Petition at 13.

⁸ See Petition at 13-14.

⁹ *Id.* at 13. Cumulus explains that the "numbers were calculated based on information provided by holders of debt claims which were entitled to receive Units in the Reorganization." Supplement to Petition for Declaratory Ruling (Supplement), dated April 17, 2019, at 2. In Attachment A to the Supplement, Cumulus lists each non-U.S. holder of Units constituting one percent more of the total outstanding Units, the percentage of all outstanding Units held by non-U.S. funds, and the nationality of such funds.

¹⁰ *Id.* at 14.

¹¹ *Id.* at 3-4, 11, 18-19.

¹² *Id.* at 17-18.

¹³ *Id.* at 14-17, 20.

filed by a broadcaster after a bankruptcy proceeding, a grant would potentially permit other foreign claim holders to obtain stock in companies post-emergence from bankruptcy, and therefore enable financially troubled broadcasters to exit bankruptcy earlier and “emerge as stronger and more viable entities.”¹⁴ Finally, Cumulus states that wide-ranging benefits would accrue from grant of the Petition without any countervailing harm because the Petition presents no national security, law enforcement, foreign policy, or trade policy concerns.¹⁵

II. *EX PARTE* STATUS OF THIS PROCEEDING

Pursuant to Section 1.1200(a) of the Commission’s rules,¹⁶ the Commission may adopt modified or more stringent *ex parte* procedures in particular proceedings if the public interest so requires. We announce that this proceeding will be governed by permit-but-disclose *ex parte* procedures that are applicable to non-restricted proceedings under Section 1.1206 of the Commission’s rules.¹⁷

Parties making oral *ex parte* presentations are directed to the Commission’s *ex parte* rules. Parties are reminded that memoranda summarizing the presentation must contain the presentation’s substance and not merely list the subjects discussed.¹⁸ More than a one- or two-sentence description of the views and arguments presented is generally required.¹⁹ Other rules pertaining to oral and written presentations are set forth in Section 1.1206(b) as well.²⁰

III. GENERAL INFORMATION

The Petition has been found, upon initial review, to be acceptable for filing. The Commission may require Cumulus to submit additional documents or statements of fact that in its judgment may be necessary so as to make it “more definite and certain.”²¹ The Commission also reserves the right to return the Petition if, upon further examination, it is determined to be defective and not in conformance with the Commission’s rules or policies.

Interested parties must file comments no later than June 20, 2019. Persons and entities that file comments become parties to the proceeding. They may participate fully in the proceeding, including seeking access to any confidential information that may be filed under a protective order, seeking reconsideration of decisions, and filing appeals of a final decision to the courts. Replies to such pleadings must be filed no later than July 8, 2019. All filings concerning matters referenced in this Public Notice should refer to MB Docket No. 19-143.

To allow the Commission to consider fully all substantive issues regarding the Petition in as timely and efficient a manner as possible, commenters should raise all issues in their initial filings. New issues may not be raised in responses or replies.²² A party or interested person seeking to raise a new issue after the

¹⁴ *Id.* at 16.

¹⁵ *Id.* at 4, 20.

¹⁶ 47 CFR § 1.1200(a).

¹⁷ 47 CFR § 1.1206.

¹⁸ *See* 47 CFR § 1.1206(b)(1).

¹⁹ *See id.*

²⁰ 47 CFR § 1.1206(b).

²¹ 47 CFR § 73.3514(b); *see also BBC License Subsidiary, L.P.*, Order, 10 FCC Rcd 2458, 2461 (MMB 1994).

²² *See* 47 CFR § 1.45(c).

pleading cycle has closed must show good cause why it was not possible for it to have raised the issue previously. Submissions after the pleading cycle has closed that seek to raise new issues based on new facts or newly discovered facts should be filed within 15 days after such facts are discovered. Absent such a showing of good cause, any issues not timely raised may be disregarded by the Commission.

Under the Commission's current procedures for the submission of filings and other documents,²³ submissions in this matter may be filed electronically through the Commission's Electronic Comment Filing System (ECFS) or by filing paper copies.

- **If filed by ECFS,**²⁴ comments shall be sent as an electronic file via the Internet to <http://apps.fcc.gov/ecfs>. In completing the transmittal screen, commenters should include their full name, U.S. Postal Service mailing address, and the applicable docket number.
- **If filed by paper,** the original and one copy of each filing must be filed by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission. All hand-delivered or messenger-delivered paper filings for the Commission's Secretary must be delivered to FCC Headquarters at 445 12th St., SW, Room TW-A325, Washington, DC 20554. The filing hours at this location are 8:00 a.m. to 7:00 p.m. Eastern Time (ET). All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building. Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9050 Junction Drive, Annapolis Junction, MD 20701. U.S. Postal Service first-class, Express, and Priority mail must be addressed to 445 12th Street, S.W., Washington, D.C. 20554.

One copy of each pleading must be delivered electronically, by e-mail or facsimile, or if delivered as paper copy, by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (according to the procedures set forth above for paper filings), to: (1) Albert Shuldiner, Audio Division, Media Bureau, at albert.shuldiner@fcc.gov (202) 418-1410 (facsimile); (2) Lisa Scanlan, Audio Division, Media Bureau, at lisa.scanlan@fcc.gov (202) 418-1410 (facsimile); and (3) Amy Van de Kerckhove, Audio Division, Media Bureau, at amy.vandekerckhove@fcc.gov or (202) 418-1410 (facsimile). Any submission that is e-mailed to Albert Shuldiner, Lisa Scanlan, and Amy Van de Kerckhove should include in the subject line of the e-mail: (1) MB Docket No. 19-143; (2) the name of the submitting party; and (3) a brief description or title identifying the type of document being submitted (*e.g.*, MB Docket No. 19-143, [name of submitting party], Comments).

Copies of the Petition and any subsequently-filed documents in this matter are available for public inspection and copying during normal reference room hours at the following Commission office: FCC Reference Information Center, 445 12th Street, S.W., Room CY-A257, Washington, D.C. 20554. In addition, the Petition is available electronically through the Media Bureau's Consolidated Database System (CDBS), which may be accessed on the Commission's Internet website.

To request materials in accessible formats for people with disabilities (Braille, large print, electronic files, audio format), send an email to fcc504@fcc.gov or call the Consumer and Governmental Affairs Bureau at (202) 418-0530 (voice) or (202) 418-0432 (TTY). Contact the FCC to request reasonable

²³ See *FCC Announces Change in Filing Location for Paper Documents*, Public Notice, 24 FCC Rcd 14312 (2009).

²⁴ See *Electronic Filing of Documents in Rulemaking Proceedings*, GC Docket No. 97-113, Report and Order, 13 FCC Rcd 11322 (1998).

accommodations for filing comments (accessible format documents, sign language interpreters, CART, etc.) by email: FCC504@fcc.gov; phone: (202) 418-0530 or TTY: (202) 418-0432.

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

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