



SIDLEY AUSTIN LLP
1501 K STREET, N.W.
WASHINGTON, D.C. 20005
+1 202 736 8000
+1 202 736 8711 FAX

AMERICA • ASIA PACIFIC • EUROPE

May 16, 2018

Michelle M. Carey
Media Bureau
Federal Communications Commission
445 12th Street SW
Washington, DC 20554

Re: Petition for Declaratory Ruling by Spanish
Broadcasting System, Inc. Pursuant to 47 C.F.R. § 1.5004(f)(3)

Dear Bureau Chief Carey:

We are writing on behalf of certain Series B Preferred Shareholders who hold Series B Preferred shares in Spanish Broadcasting System, Inc. (“SBS”) in response to SBS’s letter to you dated May 1, 2018.¹ In the SBS Letter, SBS reports that it has attempted to treat the Series B Preferred shares held by these certain shareholders as “void and non-existent.”² As part of this approach, the controlling common shareholder of SBS attempts to use a self-serving approach to SBS’s corporate organizational documents in an effort to deny these same Series B Preferred Shareholders, and others, their rights as investors in SBS. SBS then questions whether the Commission needs to continue processing SBS’s Petition for Declaratory Ruling.³

The Bureau is aware of the Series B Preferred Shareholders’ view of the background history in this matter from the Series B Preferred Shareholders’ prior filings,⁴ and we will not

¹ Letter from Meredith S. Senter, Jr. to Michelle M. Carey, Chief, Media Bureau, *Spanish Broadcasting System, Inc., Petition for Declaratory Ruling Pursuant to 47 C.F.R. § 1.5004(f)(3)* (May 1, 2018) (“SBS Letter”) (attached).

² These shares are held by West Face Long Term Opportunities Global Master L.P., Stornoway Recovery Fund LP, Stonehill Master Fund Ltd., and Ravensource Fund.

³ Spanish Broadcasting System, Inc., *Petition for Declaratory Ruling* (filed Dec. 4, 2017).

⁴ See *Spanish Broadcasting Systems, Inc., Petition for Declaratory Ruling Under Section 310(b)(4) of the Communications Act of 1934, as Amended, Supplement to Petition for*

repeat all of those recitations here. In summary, the Series B Preferred Shareholders do not believe that the FCC need conclude that the Series B Preferred Shareholders' collective interests in SBS cause SBS to violate Section 310(b), and if such collective interests are deemed to cause SBS to exceed the benchmark in Section 310(b)(4), there is ample FCC precedent for the Commission to find that such ownership is in the public interest. The chief purpose of the SBS Letter appears to be to inform the Commission that after months of litigation in Delaware Chancery Court and effort before the FCC to support a process the Commission established to provide approval of foreign ownership in broadcast licenses, SBS now unilaterally has attempted to declare the Series B Preferred Shares independently held by four investment funds void. The Series B Preferred Shareholders unequivocally have contested this unilateral action by SBS.

The SBS Letter states that SBS took the unilateral action to attempt to void the holdings because the acquisition of shares by the four funds "violated the Charter and Section 310(b) of the Communications Act of 1934, as amended."⁵ In fact, however, the letter sent to the affected funds references only the Charter provision as the cause for SBS's action.⁶ The Series B Preferred Shareholders have repeatedly challenged SBS's interpretation of Article X of the Charter in the Chancery Court in Delaware.⁷ The Delaware proceeding is currently the proper forum to resolve that issue, and SBS should not be permitted to use the FCC's processes or Section 310(b) to imply that the self-serving actions of its common shareholders are necessary to avoid a violation of the Act or the FCC's rules. As the Bureau has stated on several occasions, the Commission should remain neutral regarding the state litigation between the parties over the interpretation of an SBS Charter provision.⁸

SBS's explicit reference to the foreign ownership provisions of the Communications Act in the SBS Letter, however, does raise a concern. SBS is attempting to use the foreign ownership rules not for their actual purpose — to ensure the Commission is aware of any foreign ownership and that such ownership is in the public interest — but to disadvantage certain of the Series B Preferred Shareholders, as well as at least one prior owner of the Series B Preferred

Declaratory Ruling (filed March 23, 2018); Letter from Mark D. Schneider to Michelle M. Carey, Chief, Media Bureau, *Spanish Broadcasting System, Inc., Petition for Declaratory Ruling Pursuant to 47 C.F.R. § 1.5004(f)(3)* (April 27, 2018) ("Supplement to Petition").

⁵ SBS Letter at 2.

⁶ See SBS Letter, Ex. A.

⁷ See *Cedarview Opportunities Master Fund, L.P., et al v. Spanish Broadcasting System, Inc.*, C.A. No. 2017-0786-AGB.

⁸ See, e.g., Letter from Michelle M. Carey, Chief, Media Bureau to Meredith S. Senter, Jr., *Petition for Declaratory Ruling Pursuant to 47 C.F.R. § 1.5004(f)(3)*, DA 18-73, at 3, n.17 (Jan. 25, 2018).

Shares, who disposed of its shares in a public sale to repay its innocent unsecured creditors. SBS's majority common shareholder's attempt to use the foreign ownership rules as a self-serving weapon so it can strip these shareholders of their rights and avoid being held accountable by the Series B Preferred Shareholders for their stewardship of SBS should not be supported by the Commission.⁹

The Series B Preferred Shareholders also contest several of SBS's statements. The SBS Letter claims that the Series B Preferred shares are foreign held and equate to more than 25% of the total equity of SBS.¹⁰ The Series B Preferred Shareholders have previously demonstrated that they hold no voting power over SBS, much less voting power that exceeds the limits in Section 310(b)(4) of the Act.¹¹ Furthermore, even if the Series B Preferred Shares are treated as equity, the Series B Preferred Shareholders have explained why there is no foreign ownership issue if equity is counted through multiple, more straight-forward methodologies.¹² Even if a foreign ownership issue did arise, it can be addressed through a Petition for Declaratory Ruling at the Commission, consistent with several recent decisions that granted approval for foreign ownership and *control* of FCC licensees.¹³ There is no need to strip certain SBS shareholders of

⁹ SBS's unilateral action to strip four fund holders of Series B Preferred Shares of their rights and assets also runs counter to the Media Bureau's January 25, 2018 letter, wherein SBS was informed that it would "not be required to redeem the non-compliant foreign interest or to remedy the non-compliance while its [Petition for Declaratory Ruling] is pending." Letter from Michelle M. Carey, Chief, Media Bureau to Meredith S. Senter, Jr., *Petition for Declaratory Ruling Pursuant to 47 C.F.R. § 1.5004(f)(3)*, DA 18-73, at 4 (Jan. 25, 2018). To the extent SBS is claiming in the letter that its actions were necessary to comply with the foreign ownership rules — which we dispute — the action contradicts the Commission's instruction that nothing needed to be done until the Commission issued a decision on the pending Petition for Declaratory Ruling.

¹⁰ SBS Letter at 2. SBS is apparently calculating the equity holdings of certain Series B Preferred Shareholders by using the current enterprise value of SBS, a complicated calculation that requires intimate factual knowledge of the company, legal conclusions concerning the application of these facts, and, moreover, is constantly changing.

¹¹ As the Series B Preferred Shareholders have previously explained, the Series B shares function more like debt than equity, as the investments' key features call only for fixed quarterly payments based on the face value of the security, and a fixed redemption value with no participation over and above the face value. *See* Supplement to Petition at 6-10.

¹² *See id* at 10-12.

¹³ *See, e.g., Grupo Multimedia LLC and Deportes y Music Comunicaciones LLC*, MB Docket 17-360, *Declaratory Ruling and Memorandum Opinion and Order* (May 1, 2018).

their rights without first engaging in the Commission's process for addressing foreign ownership issues.

The SBS Letter also states that "West Face, Stornoway and Ravensource entered into this transaction for the purpose of attempting to effectuate a restructuring and change in control of SBS, when they knew or should have known that it would result in foreign companies owning more than 25% of the Series B Preferred and more than 25% of the equity of the Company." SBS Letter at 2. As explained above and in other filings, the Series B Preferred Shareholders dispute that any violation has occurred, and cannot be held to have known or should have known that any violation has occurred. Each of these Series B Preferred Shareholders entered into their transactions believing that the transactions were lawful and without the knowledge of all other SBS shareholders' citizenship, much less how SBS would seek to use their Charter and the FCC's rules to the advantage of SBS's controlling common shareholder.¹⁴

SBS also claims that the Series B Preferred Shareholders have not provided certain information or been "fully responsive."¹⁵ The voluminous filings already in the Commission's record demonstrate that SBS is mistaken. The Series B Preferred Shareholders have made an extensive effort necessary to provide to SBS and the Commission the information the FCC's rules might require given SBS's broad reading of those rules. The Series B Preferred Shareholders continue to be willing to respond to all questions and requests from the FCC and SBS and have provided to both SBS and the Commission detailed information about the structure and ownership of the funds that hold the Series B Preferred shares. The Series B Preferred Shareholders have reserved the right, however, to contest whether or not information requests beyond the scope of what the FCC's rules require are appropriate and whether a response should be provided.

For all of these reasons, we ask that the Commission refrain from providing any form of approval of the unilateral actions of SBS's controlling common shareholder based on its statement that it "questions" whether the Commission now needs to "process the SBS petition for declaratory ruling."¹⁶ The Series B Preferred Shareholders understand, however, that the Commission may reasonably desire to hold the matter in abeyance until such time as the courts address the interpretive questions surrounding the SBS Charter provision or other issues that may

¹⁴ The Series B Preferred Shareholders always have recognized that if a restructuring were ever to occur, based upon some future change to SBS's structure mandated by a court or a consensual agreement, FCC approval might need to be sought *at that time* based upon the proposed changes to SBS's structure.

¹⁵ SBS Letter at 1.

¹⁶ SBS Letter at 2.

be raised concerning SBS's actions and current condition. At that time, issues related to the FCC's foreign ownership rules may well be ripe for Commission consideration either because the Court refuses to treat the shares as "void and non-existent" or because the Series B Preferred Shareholders will seek FCC approval of transactions that serve the public interest. SBS's attempt to avoid FCC review of these issues at that time in order to secure the private commercial advantage of its common shareholders would constitute an abuse of the Commission's processes.

Please do not hesitate to contact us with any questions regarding this matter.

Sincerely,

A handwritten signature in black ink, appearing to read "Mark D. Schneider". The signature is written in a cursive, slightly slanted style.

Mark D. Schneider

cc: David Brown
Dana Leavitt
David Roberts
Meredith Senter