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VIA ECFS

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

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

Dear Ms. Carey:

On behalf of Spanish Broadcasting System, Inc. (“SBS”), this letter responds to the May 16, 2018 letter to you from counsel for the “Dissident Shareholders”—certain holders or purported holders of SBS’s 10¾% Series B Cumulative Exchangeable Redeemable Preferred Stock (“Series B Preferred”).¹ For the reasons discussed below, SBS has no objection to the suggestion in the Dissident Shareholders’ May 16 Letter that the Commission hold SBS’s petition for declaratory ruling in abeyance.²

In their letter, the Dissident Shareholders state that SBS is treating Series B Preferred purportedly acquired by four of the Dissident Shareholders—West Face, Stornoway, Stonehill and Ravensource—as “void and non-existent.”³ This is incorrect. As previously explained by SBS, the attempted *acquisition* of those shares by the four foreign entities is void, not the

¹ Letter from Mark D. Schneider to Michelle M. Carey, Chief, Media Bureau, dated May 16, 2018 (the “Dissident Shareholders’ May 16 Letter”).

² *Id.* at 4-5.

³ *Id.* at 1 & 2 (SBS “has attempted to treat the Series B Preferred shares held by these certain shareholders as ‘void and non-existent’” and “SBS now unilaterally has attempted to declare the Series B Preferred Shares independently held by four investment funds void”).



underlying shares themselves. This treatment is necessary because the attempted acquisitions, if given effect, would violate SBS's Third Amended and Restated Certificate of Incorporation (the "Charter") and would also cause SBS to be in violation of Section 310(b) of the Communications Act of 1934, as amended (the "Act"). The affected Series B Preferred therefore continues to be owned by the previous lawful owners, the identities of which SBS is working to ascertain.⁴

As of this writing, the four affected foreign entities have not initiated any litigation challenging SBS's interpretation of and actions pursuant to its Charter. Unless SBS's action is ruled invalid by a court, it stands, and by virtue of that action, SBS is in full compliance with Section 310(b) of the Act, and a declaratory ruling under Section 310(b) is unnecessary.

The Dissident Shareholders suggest that SBS's remedial actions are dilatory or that they are inconsistent with SBS's or the Commission's prior positions on this matter.⁵ This is untrue. From the beginning, SBS informed the Commission that SBS intended to take remedial action. SBS's notification to the Commission on November 13, 2017 concluded (at p. 3) with the statement that "SBS will take this [suspension of rights] or other remedial action ..." In its petition for declaratory ruling, SBS said that it "is remediating," and requested a declaratory ruling permitting it to exceed the 25% foreign ownership threshold "until such temporary violation is fully remediated."⁶ Although the Bureau subsequently observed that the "Commission's foreign ownership rules do not provide for the Commission to grant a 'temporary' waiver," and that "SBS will not be *required* to redeem the non-compliant foreign interest or to remedy the non-compliance while its [petition for declaratory ruling] is pending,"⁷ the Bureau did not preclude SBS from doing so. And SBS reminded all parties in the supplement filed on April 27, 2018, that "SBS continues to take steps to enforce these protective Charter provisions."⁸ SBS, not the Dissident Shareholders, has the option to pursue a declaratory ruling or, as SBS has done, remedy the non-compliance on its own.

⁴ Letter from Meredith S. Senter Jr. to Michelle M. Carey, Chief, Media Bureau, dated May 1, 2018 (the "SBS May 1 Letter") at 2 ("The Series B Preferred that is the subject of the notices remains outstanding. It is owned by the prior U.S. owners, who SBS is in the process of definitively identifying.")

⁵ Dissident Shareholders' May 16 Letter at 2 ("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") & 3 n.9 (SBS's action "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'").

⁶ SBS Petition for Declaratory Ruling at 1 & 12 (filed Dec. 4, 2017).

⁷ Letter from Michelle M. Carey, Chief, Media Bureau, to Meredith S. Senter, Jr. dated January 25, 2018 at n. 16 & 4 (emphasis added).

⁸ SBS Supplement to Petition for Declaratory Ruling at 7 (filed April 27, 2018).



Any delay by SBS in taking such actions stems from the Dissident Shareholders' failure to cooperate with SBS. SBS's corporate counsel has repeatedly requested the Dissident Shareholders to provide information about the specific dates that they purportedly acquired Series B Preferred for the purpose of determining which transactions violated the Charter. The Dissident Shareholders never provided this information. In light of the lack of cooperation, it took time for SBS to obtain independently sufficient information to send the notices to the affected Dissident Shareholders. In the Dissident Shareholders' May 16 Letter, however, they imply that they did supply the requested information, citing to information that they have provided to SBS and the Commission in response to requests from undersigned counsel, which relate to certain disclosures required under the Commission's rules.⁹ But, by their own admission, the Dissident Shareholders have refused to respond to SBS's questions about when and from whom they purportedly acquired Series B Preferred.¹⁰

The Dissident Shareholders also contend that the attempted acquisition of Series B Preferred by certain foreign investors did not create an issue under Section 310(b) of the Act, referencing previous arguments that the Series B Preferred should be characterized as debt, and even if it is not debt, that it represents less than 25% of SBS's equity.¹¹ The problem with this argument is that it is contrary to Commission precedent. Moreover, the Dissident Shareholders continue to take a completely contrary position—namely, that the Series B Preferred represents the vast majority of SBS's equity—in other fora (such as in civil proceedings filed by the Dissident Shareholders).

Lastly, the Dissident Shareholders suggest that SBS has taken actions authorized by its Charter in order to benefit its common shareholders.¹² SBS's board of directors, not its common shareholders, made the decision. These actions have had no effect on the rights and obligations of the lawful holders of Series B Preferred generally and do not result in an economic advantage to the company.

Although SBS disagrees with most of the assertions in the Dissident Shareholders' May 16 Letter, SBS does agree with their suggestion that the Commission hold the petition for declaratory ruling in abeyance. The affected Dissident Shareholders may accept SBS's

⁹ Dissident Shareholders' May 16 Letter at 4.

¹⁰ *Id.* ("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.")

¹¹ *Id.* at 3.

¹² *Id.* at 1 ("the controlling common shareholder of SBS attempts to use a self-serving approach"), 2 ("the self-serving actions of its common shareholders"), 3 ("SBS's majority common shareholder's attempt to use the foreign ownership rules as a self-serving weapon so it can ... avoid being held accountable by the Series B Preferred Shareholders"), 4 ("the unilateral actions of SBS's controlling common shareholder").



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interpretation and its actions under its Charter, in which case the petition will be moot. Or they may decide to litigate the issue, in which case the courts will decide whether the affected Dissident Shareholders' attempted acquisitions of Series B Preferred were void and ineffective. Accordingly, SBS requests the Commission to hold the petition for declaratory ruling in abeyance pending notice from SBS either that the petition is moot or that a court decision has made a Commission ruling necessary.

Respectfully submitted,

/s/

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cc: David Brown
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