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BY EMAIL

Michelle M. Carey, Chief, Media Bureau
Christopher J. Sova, Deputy Chief, Investigations & Hearings Division
Federal Communications Commission
445 Twelfth Street, SW
Washington, DC 20554

Dear Ms. Carey and Mr. Sova:

This letter responds to the Foreign Hedge Funds' July 9 letter that was filed with the Commission in response to counterclaims that Spanish Broadcasting System, Inc. ("SBS") seeks to assert in the Delaware Court of Chancery ("Delaware Court").¹ The counterclaims arise because the Foreign Hedge Funds continue to hold themselves out as owners of SBS Series B Preferred Stock notwithstanding the fact that their attempted July 2017 purchase of shares from Lehman Brothers (the "Lehman Block Trade") was void *ab initio* under SBS's Charter.²

Previously, SBS and the Foreign Hedge Funds both maintained that the Commission should hold this proceeding in abeyance pending a decision of the Delaware Court as to the meaning and effect of SBS's Charter.³ The Foreign Hedge Funds have now changed their minds, although only one circumstance has changed: SBS seeks to file counterclaims identifying this specific issue for resolution by the court once and for all. The interpretation and application of SBS's Charter is a question of Delaware corporate law, not federal communications law. Pending resolution of SBS's counterclaims, the Commission should continue to hold any action relating to this matter in abeyance.

¹ See Letter from Mark D. Schneider, counsel for Ravensource Fund, Stornoway Recovery Fund L.P. and West Face Long Term Opportunities Global Master L.P. (the "Foreign Hedge Funds") to Christopher J. Sova, Deputy Chief, Investigations and Hearings Division, Enforcement Bureau and Michelle M. Carey, Chief, Media Bureau (dated July 9, 2019) (the "July 9 Letter").

² See Letter from Meredith S. Senter, Jr., to Michelle M. Carey (dated May 1, 2018) (the "May 1 Letter").

³ See May 1 Letter at 2; Letter from Mark D. Schneider to Michelle M. Carey at 4-5 (dated May 16, 2018) (the "May 16 Letter"); Letter from Meredith S. Senter, Jr., to Michelle M. Carey at 3-4 (dated May 25, 2018) (the "May 25 Letter"). See also July 9 Letter at 5.



This matter was triggered by a complaint filed by the Foreign Hedge Funds and others in the Delaware Court. In their complaint, which remains materially unmodified in this regard, the plaintiffs contend that SBS's "common stock is effectively out of the money with a *de minimis* market capitalization of only \$5 million," and that the Series B Preferred Stock that they claim to own has a liquidation preference over the common "worth no less than \$151,335,511."⁴ The import of these statements is that the Foreign Hedge Funds contend that, as of the date of their complaint, the Series B Preferred Stock purportedly represented almost 97 percent of SBS's equity. If that is true, the foreign plaintiffs' purported ownership would be well in excess of the statutory limit in Section 310(b) of the Communications Act and in violation of the prohibition in SBS's Charter on the acquisition by non-U.S. individuals or entities of more than 25% of any class of equity in SBS.⁵

The claims made by the Series B Preferred Shareholders in their judicial complaint compelled SBS to consider their purported stock transactions in light of its own valuation of Series B Preferred Stock as disclosed in reports filed with the Securities and Exchange Commission.⁶ It also prompted SBS to notify the Commission of this situation and subsequently to notify the Foreign Hedge Funds that their purported transaction in SBS stock was invalid pursuant to the Charter.

SBS has acted in a reasonable and responsible manner during each step in this process, including addressing the Foreign Hedge Funds' own allegations in their complaint about the relative equity interests held by SBS's common and preferred shareholders. Further, SBS's valuation of the holdings of the Foreign Hedge Funds that it provided to the Commission in its April 27, 2018 supplement to its petition for declaratory ruling⁷ was consistent with the Commission's admonishment to "examine the economic realities of the transactions under review."⁸ As the Commission recognized in an analogous context, valuations of equity may change over time.⁹ Thus, while at certain moments in time, it may be reasonable for a licensee to use "book value" (which is generally the same as capital-contributed valuation), at other times

⁴ *Cedarview Opportunities Master Fund, L.P. v. Spanish Broadcasting System, Inc.*, Verified Complaint, Case ID No. 2017-0785, at 9 (¶26) & 11 (¶32) (filed Nov. 2, 2017) ("Complaint"). See also *Cedarview Opportunities Master Fund, L.P. v. Spanish Broadcasting System, Inc.*, Verified Amended Complaint, Case ID No. 2017-0785-AGB, at 10 (¶28) (filed Dec. 22, 2017).

⁵ Not all holders of Series B Preferred Stock joined as plaintiffs. Considering the stock owned by non-participating Series B Preferred stockholders, and using the plaintiffs' assumptions, the amount of equity owned by holders of Series B Preferred Stock would be in excess of 97 percent.

⁶ See *Spanish Broadcasting System, Inc.* SEC Form 10-Q, at 16 (Note 6) (filed November 14, 2017).

⁷ See SBS's Supplement to Petition for Declaratory Ruling at 3 (filed April 27, 2018).

⁸ *Fox Television Stations, Inc.*, 11 FCC Rcd 5714, 5719 (¶ 14) (1996) ("*Fox IP*").

⁹ See *Review of Commission's Regulations Governing Attribution of Broadcast and Cable/MDS Interests*, Memorandum Opinion and Order on Reconsideration, 16 FCC Rcd 1097, 1111-12 (¶29) (2001).



Marlene H. Dortch
August 6, 2019
Page 3

“some other value, including the fair market value,” may be appropriate, “provided the valuation is reasonable.”¹⁰

Resolution of this matter is properly before the Delaware Court, which will evaluate SBS’s interpretation and application of its Charter. The Commission should defer to the Court and continue to hold SBS’s petition for declaratory ruling and any related proceeding in abeyance until the Court has made its decision.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'MS' or 'MS/'.

MS/

Meredith S. Senter, Jr.

David S. Keir

Nancy A. Ory

Counsel to Spanish Broadcasting System, Inc.

cc: Mark D. Schneider
Jacqueline Cooper
Marc Korman

¹⁰ *Id.* at 1111 (¶28). *See also* Letter from Barbara A. Kreisman to Margaret L. Tobey *et al.*, 22 FCC Rcd 6904, 6910 (Vid. Div. 2007).