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November 6, 2019

Christopher J. Sova, Deputy Chief, Enforcement Bureau
Michelle M. Carey, Chief, Media Bureau
Federal Communications Commission
445 12th Street SW
Washington, DC 20554

Re: Petition for Declaratory Ruling
Spanish Broadcasting System, Inc.

Dear Deputy Bureau Chief Sova and Bureau Chief Carey:

Ravensource Fund, Stornoway Recovery Fund L.P. and West Face Long Term Opportunities Global Master L.P. (the "Targeted Preferred Shareholders") submit for the record in the above-referenced matter the attached Counterclaim Defendants' Motion to Stay the Targeted Preferred Shareholders have filed in the Court of Chancery in the State of Delaware (Attachment 1).

The issue in dispute remains whether the Targeted Preferred Shareholders caused Spanish Broadcasting System, Inc. ("SBS") to be in violation of any foreign ownership limitation under Section 310(b)(4) and, if so, what is the appropriate recourse. SBS has made clear in its counterclaim that it is relying on Article 10.5 of its Charter to assert that it is in violation of the foreign ownership rules.[1] Based on their own interpretation of the FCC's foreign ownership rules, SBS then claims that it should be permitted to ignore Lehman Brothers' sale of its Series B Preferred Shareholders to the Targeted Preferred Shareholders and negate their ownership.[2] The

[1] Article X of SBS's Charter, including Article 10.5, is included as an attachment to this letter (Attachment 2).

[2] SBS now ignores Article 10.4 of its Charter, entitled "Limitation on Foreign Ownership." Article 10.4 explains that the limit on foreign ownership is "twenty-five percent of the aggregate number of shares of Capital Stock of the Corporation outstanding." That is a simple "count-the-shares" approach to questions of foreign ownership and under that methodology, the Targeted Preferred Shareholders do not exceed the Charter limit. Indeed, the Series B Preferred Shares in total constitute less than two percent of SBS's shares. *See* Letter from M. Schneider (Counsel

Targeted Preferred Shareholders, however, have maintained in this proceeding initiated before the FCC by SBS that they have not caused SBS to be in violation of the foreign ownership limitations of the Commission's rules. Moreover, even if the level of foreign ownership somehow exceeds the 25% limit, the Commission has the authority to approve that level of foreign ownership in the very declaratory ruling at issue here.

SBS's citation of Article 10.5 of its Charter to the Court in its counterclaim specifically invokes the FCC's jurisdiction on these issues. That is particularly relevant where, as here, SBS used a novel interpretation of the FCC's rules and precedents, rather than the "count-the-shares" or "paid-in capital" approaches previously applied by the FCC. SBS specifically advocates a "market value" calculation to determine the foreign ownership of a licensee, an approach never before applied by the FCC in the foreign ownership context. The Targeted Preferred Shareholders have sought the stay of the counterclaim in the Delaware Court because it is most appropriate for the FCC to consider SBS's novel interpretation of its rules under Section 310(b).[3]

Moreover, to the extent that the Commission still identifies a foreign ownership issue or would like to resolve the matter, the Targeted Preferred Shareholders have submitted substantial and detailed information that would allow the FCC to approve the foreign ownership under Section 1.5000 of its rules.[4] Should the FCC decide that is the appropriate path to follow, we believe that SBS should be required to cooperate with the Targeted Preferred Shareholders in

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for Targeted Preferred Shareholders) to M. Carey and C. Sova (FCC), at 9-10 (July 9, 2019) (*July Filing*).

[3] As the Targeted Preferred Shareholders have noted, the market value test would be a completely impractical approach to the issue because it would be impossible for a third party investor to be able to tell if their investment would comply and compliance could fluctuate widely with the value of the business. *See July Filing* at 13-15. For these reasons, among others, the FCC has employed two more straight forward tests to determine the level of foreign ownership. First, the FCC has used a "count-the-shares" approach. *See, e.g., Fox Television Stations, Inc.*, 10 FCC Rcd. 8452, ¶ 35 (1995); *July Filing* at 9-10. Second, at times the FCC has used a paid-in capital approach to calculating foreign ownership. *Id.*, *Fox* ¶¶ 46-48; *Applications of NextWave Personal Communications, Inc. for Various C-Block Broadband PCS Licenses*, 12 FCC Rcd. 2030, ¶ 36 (Wir. Tel. Bur. 1997); *July Filing* at 10-13.

[4] *See* Letter from Mark D. Schneider to Michelle M. Carey, March 23, 2018; Letter from Mark D. Schneider to Michelle M. Carey and Meredith S. Senter, Jr., Petition for Declaratory Ruling by Spanish Broadcasting System, Inc. Pursuant to 47 C.F.R. § 1.5004(f)(3) (April 27, 2018).

that process, just as the Media Bureau requested the Targeted Preferred Shareholders to cooperate with SBS at earlier phases of this proceeding.[5]

We are available to meet anytime to discuss this matter, or to address any further questions you may have. Please feel free to contact me (mschneider@sidley.com).

Sincerely,

/s/
Mark D. Schneider
Marc A. Korman

cc: Megan Henry
David Roberts
Holly Saurer
Meredith Senter

[5] Letter from Michelle M. Carey to Meredith S. Senter, Jr., DA 18-73, at 4 (Jan. 25, 2018) ("We expect the [Targeted Preferred Shareholders] to cooperate with SBS in providing the necessary information to the Commission").

ATTACHMENT 1

IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

CEDARVIEW OPPORTUNITIES MASTER FUND, L.P., CETUS CAPITAL III, L.P., CORRIB CAPITAL MANAGEMENT, L.P., LITTLEJOHN OPPORTUNITIES MASTER FUND L.P., RAVENSOURCE FUND, STONEHILL INSTITUTIONAL PARTNERS, L.P., STONEHILL MASTER FUND LTD., STORNOWAY RECOVERY FUND L.P., VSS FUND, L.P., WEST FACE LONG TERM OPPORTUNITIES GLOBAL MASTER L.P., and WOLVERINE FLAGSHIP FUND TRADING LIMITED, Plaintiffs, v. SPANISH BROADCASTING SYSTEM, INC., Defendant	)	C.A. No. 2017-0785-AGB
SPANISH BROADCASTING SYSTEM, INC., Counterclaim Plaintiff, v. RAVENSOURCE FUND, STORNOWAY RECOVERY FUND L.P., and WEST FACE LONG TERM OPPORTUNITIES GLOBAL MASTER L.P., Counterclaim Defendants.	)	

COUNTERCLAIM DEFENDANTS' MOTION TO STAY

1. This Court should stay Spanish Broadcasting System, Inc.'s ("SBS") counterclaim because Congress charged the Federal Communications Commission ("FCC") with deciding the predicate regulatory issues. SBS originally petitioned the FCC for that very reason, and the matter is still pending at the agency.

2. SBS's counterclaim seeks a declaration that Plaintiffs' July 2017 acquisition of Series B Preferred Stock violated Section 310 of the Communications Act of 1934, 47 U.S.C. § 151, *et. seq.* ("Act"), which in turn violated SBS's Charter. SBS's theory depends on a novel application of federal regulatory law and policy. Indeed, it involves matters of first impression at the FCC.

3. The statute's plain language shows the trouble of SBS's proposed approach. Section 310(b)(4) provides that no broadcast or radio license may be held by a "corporation directly or indirectly controlled by any other corporation of which more than one-fourth of the capital stock is owned of record . . . by aliens . . . if the Commission [FCC] finds that the public interest will be served by the refusal or revocation of such license." 47 U.S.C. § 310(b)(4). Thus, to grant SBS relief on its counterclaim, this Court must first predict how the FCC would calculate foreign ownership and assess foreign investment. Second, this Court must then apply that method to Canadian and Cayman holders of non-voting

preferred stock. Third, if the court determined the 25% threshold were exceeded, it must then decide whether the FCC would find it in the public interest to allow the foreign ownership. As SBS concedes, that analysis is a "***predicate question***" of the counterclaim. Ex. 1, Sept. 24, 2019 Hr'g Tr. at 16:3-14.

4. Because this Court cannot predict how the FCC would apply the foreign equity limits in Section 310 or how the FCC would weigh the public interest—and because there is no need to invest judicial and party resources on dual tracks—this Court should stay SBS's counterclaim pending a resolution by the expert regulator.

BACKGROUND

A. SBS Initiated The FCC Action.

5. After Plaintiffs filed their complaint on November 2, 2017, SBS raised concerns with Plaintiffs' ownership of SBS stock. SBS took those concerns to the FCC, not this Court. In an initial letter to the FCC, SBS stated that its equity ownership may be non-compliant with Section 310(b)(4) of the Act. *See* Ex. 2, Nov. 13, 2017 M. Senter Letter to M. Carey at 1. Several weeks later, SBS filed a Petition for Declaratory Ruling, asking the FCC to declare that SBS is compliant with that provision. Ex. 3, Dec. 4, 2017 SBS Petition at 12. In response to that petition, Plaintiffs made several filings with the FCC, providing information and requesting a resolution of the foreign ownership dispute.

6. SBS's FCC petition is pending. The FCC twice told SBS that nothing needed to be done before the agency issued its ruling. *See* Ex. 4, Jan. 25, 2018 M. Carey Letter to M. Senter at 4 ("As provided in the Commission's rules, SBS will not be required to redeem the non-compliant foreign interest or to remedy the non-compliance while its PDR is pending."); Ex. 5, Mar. 9, 2018 M. Carey Letter to M. Senter at 3 (similar).

7. On December 6, 2018, the FCC's Enforcement Bureau formally requested documents from SBS. Ex. 6, Dec. 6, 2018 C. Sova Letter to M. Senter. More recently, Plaintiffs again asked the FCC to adjudicate SBS's petition on the detailed papers submitted by both parties; Plaintiffs also requested a meeting with the FCC, if necessary, to address the issues. Ex. 7, July 9, 2019 M. Schneider Letter to C. Sova and M. Carey; Ex. 8, Aug. 26, 2019 M. Schneider Letter to C. Sova and M. Carey.[1]

B. <u>SBS Pivots To Its Counterclaim.</u>

8. In its counterclaim, SBS alleges that Article 10.5 of its Charter operated automatically—and retroactively—to void the Targeted Preferred Shareholders' purchase of 35,130 shares of Series B Preferred Stock from Lehman

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[1] On October 9, 2019, SBS provided the complete transcript of the September 24, 2019 hearing to the FCC. *See* Ex. 9, Oct. 9, 2019 M. Senter Letter to C. Sova and M. Carey.

Brothers Holdings, Inc. in July 2017. Countercl. ¶¶ 9-10. Although Lehman is not a party to this proceeding, SBS asks this Court to declare that the liquidating estate for Lehman—not the Targeted Preferred Holders—owns the shares. *Id.* ¶ 14. SBS leaves to the collective imagination how the parties and various intermediaries would effectuate that rewind—and who would be paid what and when. Pressed for details by the Court, SBS said it was "outside the scope of the counterclaims" and "might be the subject of a different action." Ex. 1, Sept. 24, 2019 Hr'g Tr. at 18:7-23. In other words, even if the Court entered the declaration that SBS seeks, it would not clear up the ownership issues.

9. The very provision on which SBS now relies—Article 10.5 of its Charter—invokes the FCC's jurisdiction. It applies to transfers that "(i) violate (or would result in violation of) the Communications Act or any of the rules or regulations promulgated thereunder or (ii) require the prior approval of the FCC, unless such approval has been obtained." Ex. 10, SBS Charter at Art. 10.5. Thus, by the Charter's plain language, to adjudicate the counterclaim, this Court must determine whether the purchase violated the Act or whether the FCC would require prior approval. SBS already put those questions to the FCC, right where they belong.

ARGUMENT

I. THIS COURT SHOULD EXERCISE ITS DISCRETION TO STAY THE COUNTERCLAIM.

10. The Court has "the inherent power to manage its own docket, including the power to stay litigation on the basis of comity, efficiency, or simple common sense." *Paolino v. Mace Sec. Int'l, Inc.*, 985 A.2d 392, 397 (Del. Ch. 2009). The Court's inherent authority to grant a stay is "subject only to statutory and rule constraints and the requirement to exercise its discretion rationally." *Brudno v. Wise*, 2003 WL 1874750, at *1, 4 (Del. Ch. Apr. 1, 2003) (granting motion to stay "not based on any rigid application of the *McWane* framework").

11. Staying the counterclaim is a proper exercise of the Court's discretion for three reasons. First, the counterclaim is not ripe, as it depends on the application of federal law and an evaluation of public policy considerations that Congress left to the FCC, which is still pending. Second, Plaintiffs will be unfairly prejudiced by litigating the same questions in two forums, while SBS will not be prejudiced by waiting for an agency ruling that SBS solicited and in which the Plaintiffs engaged. Third, a stay will preserve judicial resources and eliminate the risk and confusion of inconsistent judgments.

A. Resolving The FCC Action Is Necessary To Adjudicate The Counterclaim.

12. Much like judicial discretion to impose a stay, the ripeness doctrine "requires a common sense assessment of whether the interests of the party

seeking immediate relief outweigh concern of the court in postponing review until the question arises in some more concrete and final form." *XI Specialty Ins. Co. v. WMI Liquidating Trust*, 93 A.3d 1208, 1217 (Del. 2014).[2]

13. Disputes are not ripe where, as here, "the claim is based on uncertain and contingent events that may not occur, or where future events may obviate the need for judicial intervention." *Id.* at 1217-18; *see also Brudno*, 2003 WL 1874750, at *4 ("[I]t is difficult to fault the idea that the primary liability case should go forward before the [dependent case], when the [dependent] case's outcome necessarily depends on the outcome of the primary case.").

14. Here, without first resolving the predicate application of federal law and evaluation of public policy, this Court could not determine whether the July 2017 purchase from Lehman violated the Act. If the FCC finds no violation—either because the 25% threshold was not tripped or because the ownership is nonetheless in the public interest—then there is nothing to decide under the Charter.

15. Although SBS concedes that a violation of the Act is a condition precedent to violating Article 10.5, *see supra* ¶ 3, SBS now asks this Court, not the FCC, to make that determination. Setting aside the obvious

[2] Unless otherwise noted, internal quotations and quotation marks are omitted.

inefficiencies and difficulties with that approach, SBS is wrong as a legal matter. As the statute and case law makes clear, the FCC is the only appropriate forum to apply the federal law and policy that SBS interjected here.

16. Congress granted the FCC "exclusive jurisdiction . . . not only to the granting of licenses, but to the conditions that may be placed on their use." *In re NextWave Pers. Commc'ns, Inc.*, 200 F.3d 43, 54 (2d Cir. 1999). Where Congress calls for an implementation of a statutory restriction and a public interest determination, the FCC makes it: "[T]he weighing of policies under the public interest standard is a task that Congress has delegated to the Commission in the first instance." *F.C.C. v. WNCN Listeners Guild*, 450 U.S. 582, 596 (1981).

17. Subject only to deferential judicial review, the public-interest standard is "a supple instrument for the exercise of discretion by the expert body which Congress has charged to carry out its legislative policy." *Id.* at 593. Indeed, as the Supreme Court recognized, "a forecast of the direction in which future public interest lies necessarily involves deductions based on the expert knowledge of the agency." *F.C.C. v. Nat'l Citizens Comm. for Broad.*, 436 U.S. 775, 814 (1978).

18. Even if federal law left room for courts to apply Section 310 in the first instance, the counterclaim still puts the Court in a near-impossible position of determining, as an initial matter, whether to utilize the "count the share" method

or "paid-in capital" method. The FCC has not adopted clear standards for calculating equity interests under Section 310(b)(4) in all circumstances. The FCC has used only two approaches: (1) "count the shares," *see, e.g., Fox Television Stations, Inc.*, 10 FCC Rcd. 8452, ¶ 35 (1995) ("in some contexts, counting the number of shares of outstanding stock owned of record by aliens. . . . is an appropriate method for determining compliance with the Section 310(b)(4) ownership benchmark"); and (2) "paid-in capital," *see, e.g.*, *Fox*, ¶¶ 46-48 (analyzing the "relative amounts of shareholder capital contributions").

19. Even if the Series B Preferred Shares are considered equity (which Plaintiffs dispute), the Series B Preferred holdings do not exceed 25 percent under either method. SBS does not dispute that fact. Instead, SBS asks this Court to adopt and then employ a third method—a "market-value" calculation—never before considered by the FCC in the foreign ownership context. The Court should decline to do so. The FCC is best positioned to select a method—and account for the broader implications of selecting that method for the telecommunications industry—because that is "exactly the kind of difficult judgment call for which expert agencies have been created." *Nat'l Ass'n of Regulatory Util. Comm'rs v. F.C.C.*, 737 F.2d 1095, 1139 (D.C. Cir. 1984). Also, if this Court endorsed the "market-value" test, it would open a Pandora's box filled with unintended consequences. Licensees would have to constantly re-evaluate their foreign

ownership on a daily or hourly basis—burdening them and creating uncertainty in the capital markets. In addition, existing licensees who are compliant using existing FCC approved methodologies may find themselves offside if the court adopts this "market-value approach" that hasn't been properly scrutinized and accepted by the FCC. It is untenable.

20. Next, even in circumstances where foreign ownership exceeds the 25% threshold, the FCC has *post hoc* procedures for determining whether foreign ownership interests are nonetheless in the public interest. *See Review of Foreign Ownership Policies for Licensees under Section 310(b)(4)*, 31 FCC Rcd. 11272 (2016).

21. Specifically, parties may seek approval "of particular foreign equity and/or voting interests that are non-compliant with the licensee's foreign ownership ruling or the Commission's rules relating to foreign ownership." 47 C.F.R. § 1.5004(f)(3). The FCC—in this very case—stated that "petitions filed pursuant to § 1.5004(f)(3) are intended ***to correct an ongoing violation***." Ex. 4, Jan. 25, 2018 M. Carey Letter to M. Senter at 5 (emphasis added). The FCC's detailed rules and procedures require the filing of a petition for declaratory ruling and the provision of information relevant to assessing the public interest. That has all been done here in submissions that SBS and Plaintiffs already made to the FCC.

22. Indeed, the FCC has repeatedly approved petitions to exceed 25% foreign ownership of broadcast licensees since it adopted its new rules and policies in September 2016. *See, e.g.*, Ex. 11, *Univision Holdings, Inc.*, MB Docket No. 16-217 (Jan. 3, 2017) (granting petition and allowing 49 percent of equity and vote to be foreign owned); Ex. 12, *Frontier Media, LLC*, MB Docket No. 16-212 (Feb. 23, 2017) (granting petition and allowing 100% foreign ownership of parent of licensee); Ex. 13, *Leading Media Group Corp.*, MB Docket No. 19-167 (Oct. 11, 2019) (authorizing Mexican company primarily owned by Mexican shareholders to own 100% of licensee).

23. Finally, SBS has not cited a single instance where any other court has substituted itself for the FCC in applying Section 310(b)(4). Nor can SBS credibly insist that this Court, not the FCC, is better suited to make these regulatory decisions. Indeed, the Company's Charter exists "to maintain compliance with these [federal Foreign Ownership] laws and regulations." Countercl. ¶ 4; Ex. 14, Apr. 12, 2018 Hr'g Tr. at 58 (SBS Counsel: "But what I do know is that Article X of the charter is designed . . . with multiple protective provisions in order to try to account for the various ways in which the FCC's rules can be applied.").

24. In sum, the FCC has the Congressional mandate and specialized regulatory expertise to calculate the foreign ownership and, if necessary, conduct

the public interest assessment. Because the FCC has a process in place—one that SBS started—this Court should stay the counterclaim pending the FCC's application of Section 310.

B. Dual Proceedings Would Unfairly Prejudice Plaintiffs.

25. Requiring Plaintiffs to litigate the counterclaim while the FCC proceeding is pending would needlessly burden them and the Court. *Brudno*, 2003 WL 1874750, at *5 ("At this early stage, however, it seems sensible [for the parties] that [defendant's] resources be devoted for some time exclusively to the Federal Securities Action"). The Court cannot meaningfully predict how the FCC will exercise its discretion in this context. Thus, absent a stay, Plaintiffs will incur duplicative and unnecessary costs. *See* Ex. 15, *Laborers' Dist. Council & Contractors' Pension Fund v. Musk*, C.A. No. 2019-0187-JRS, at 39 (Del. Ch. Mar. 18, 2019) (Transcript) ("[P]roceeding in parallel, or even ahead of these actions, would be inefficient and could prejudice [the company].").

26. On the other hand, a stay will not prejudice SBS. It has alleged no harm pending the FCC's resolution, other than unsubstantiated claims that Plaintiffs "put SBS's broadcasting licenses—and, consequently, nearly all of SBS's business—at risk." Countercl. ¶ 12. SBS's argument is not supported by the record. In fact, the FCC told SBS its licenses are *not* at risk and—twice—said it need not take any action pending the FCC's resolution. Ex. 4, Jan. 25, 2018 M.

Carey Letter to M. Senter at 4; Ex. 5, Mar. 9, 2018 M. Carey Letter to M. Senter at 3. On the contrary, there is a real risk of irreparable harm to the company's stakeholders if SBS is permitted to retroactively unwind a two-year-old securities transaction and stick tens of thousands of shares with Lehman, an entity winding up its Court-supervised liquidation and who SBS declined to make a party to its counterclaim.

C. Dual-Tracking Risks Inconsistent Judgments.

27. Next, dueling conclusions by the Court (that the Charter was breached) and the FCC (that the Act was not violated) would be irreconcilable and may lead to thornier jurisdictional questions. This potential for inconsistent judgments is an unnecessary risk, and it justifies imposition of a stay. *See Brenner v. Albrecht*, 2012 WL 252286, at *6 (Del. Ch. Jan. 27, 2012) ("[T]here would remain a risk of inconsistent rulings between this Court and the District Court. . . . staying this action for the immediate future would minimize these risks of prejudice.").

D. *McWane* Favors A Stay.

28. Though the court need not apply *McWane* here, its guiding principles show why a stay is appropriate: "considerations of comity," "the necessities of an orderly and efficient administration of justice," and avoiding inconsistent and conflicting rulings and judgment. *McWane Cast Iron Pipe Corp.*

v. McDowell-Wellman Eng'g, 263 A.2d 281, 283 (Del. 1970); *see also Brenner*, 2012 WL 252286, at *4 & n.19 ("Additionally, I note that a rational exercise of discretion for purposes of a stay may include consideration of the practical consequences that would arise were two actions to proceed concurrently even without needing to apply the first-filed rule under [*McWane*] and its progeny.").

29. Although this case does not fit within the standard paradigm for applying *McWane*—because the FCC determination is a necessary condition to resolving the counterclaim—*McWane* and the comity-based factors that accompany its analysis weigh in Plaintiffs' favor. *See McWane*, 263 A.2d at 283; *see also USX Corp. v. U.S. Denro Steels, Inc.*, 2001 WL 1269329, at *2 (Del. Ch. June 29, 2001) (partially granting stay and stating that "[i]n short, if [the Delaware] action is stayed and the Texas court resolves [the] principal defenses to this action . . . the ultimate issues here will either be determined in substance or their resolution will be significantly advanced"). As SBS recognized nearly two years before it filed the counterclaim, the FCC is the right forum for these federal issues. This Court should decline SBS's invitation to now get ahead of the agency in a potentially precedent-making setting.

CONCLUSION

30. This Court should stay proceedings on SBS's counterclaim pending resolution of the FCC Action.

MORRIS, NICHOLS, ARSHT & TUNNELL LLP

<u>/s/ Jon E. Abramczyk</u>

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November 5, 2019

CERTIFICATE OF SERVICE

I hereby certify that on November 5, 2019, the foregoing document was served by File & Serve*Xpress* on the following attorneys of record:

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/s/ Alexandra M. Cumings
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EXHIBIT 1

Exhibit 1 is the Sept. 24, 2019 Hearing
Transcript filed with the FCC on October 9, 2019

IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

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<tr><td>CEDARVIEW OPPORTUNITIES MASTER FUND, L.P., CETUS CAPITAL III, L.P., CORRIB CAPITAL MANAGEMENT, L.P., LITTLEJOHN OPPORTUNITIES MASTER FUND L.P., RAVENSOURCE FUND, STONEHILL INSTITUTIONAL PARTNERS, L.P., STONEHILL MASTER FUND LTD., STORNOWAY RECOVERY FUND L.P., VSS FUND, L.P., WEST FACE LONG TERM OPPORTUNITIES GLOBAL MASTER L.P., and WOLVERINE FLAGSHIP FUND TRADING LIMITED,

Plaintiffs,

v.

SPANISH BROADCASTING SYSTEM, INC.,

Defendant
____

SPANISH BROADCASTING SYSTEM, INC.,

Counterclaim Plaintiff,
v.

RAVENSOURCE FUND, STORNOWAY RECOVERY FUND L.P., and WEST FACE LONG TERM OPPORTUNITIES GLOBAL MASTER L.P.,

Counterclaim Defendants.</td><td>)
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CONFIDENTIAL FILING</td></tr>
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EXHIBIT 2 TO COUNTERCLAIM DEFENDANTS' MOTION TO STAY

THIS DOCUMENT IS A CONFIDENTIAL FILING.
ACCESS IS PROHIBITED EXCEPT AS AUTHORIZED BY COURT ORDER.

Exhibit 2 is the Nov. 13, 2017 Letter sent by Counsel for Spanish Broadcasting, M. Senter, to the Media Bureau

EXHIBIT 3

Exhibit 3 is the Dec. 4, 2017 Petition for Declaratory Ruling Submitted by Spanish Broadcasting to the Media Bureau

ATTACHMENT 2

contained in this ARTICLE IX in entering into or continuing such service. The rights to indemnification and to the advance of expenses conferred in this ARTICLE IX shall apply to claims made against an indemnitee arising out of acts or omissions which occurred or occur both prior and subsequent to the adoption hereof.

Section 9.7. Non-Exclusivity of Rights. The rights to indemnification and to the advance of expenses conferred in this ARTICLE IX shall not be exclusive of any other right which any person may have or hereafter acquire under this Third Amended and Restated Certificate of Incorporation or under any statute, Bylaw, agreement, vote of stockholders or disinterested directors or otherwise.

Section 9.8. Merger or Consolidation. For purposes of this ARTICLE IX, references to "the Corporation" shall include any constituent corporation (including any constituent of a constituent) absorbed into the Corporation in a consolidation or merger which, if its separate existence had continued, would have had power and authority to indemnify its directors, officers, and employees or agents, so that any person who is or was a director, officer, employee or agent of such constituent corporation, or is or was serving at the request of such constituent corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise, shall stand in the same position under this ARTICLE IX with respect to the resulting or surviving corporation as he or she would have with respect to such constituent corporation if its separate existence had continued.

ARTICLE X - ALIEN OWNERSHIP OF STOCK

Section 10.1. Applicability. This ARTICLE X shall be applicable to the Corporation so long as the provisions of Section 310 of the Communications Act of 1934, as the same may be amended from time to time (the "Communications Act") (or any successor, provisions thereto) are applicable to the Corporation. As used herein, the term "alien" shall have the meaning ascribed thereto by the Federal Communications Commission ("FCC") on the date hereof and in the future as Congress or the FCC may change such meaning from time to time. If the provisions of Section 310 of the Communications Act (or any successor provisions thereto) are amended, the restrictions in this ARTICLE X shall be amended in the same way, and as so amended, shall apply to the Corporation. The Board of Directors of the Corporation may make such rules and regulations as it shall deem necessary or appropriate to enforce the provisions of this ARTICLE X.

Section 10.2. Voting. Except as otherwise provided by law, not more than twenty-five percent of the aggregate number of shares of Capital Stock of the Corporation outstanding in any class or series entitled to vote on any matter before a meeting of stockholders of the Corporation shall at any time be held for the account of aliens or their representatives or for the account of a foreign government or representative thereof, or for the account of any corporation organized under the laws of a foreign country.

Section 10.3. Stock Certificates. Shares of Capital Stock issued to or held by or for the account of aliens and their representatives, foreign governments and representatives thereof, and corporations organized under the laws of foreign countries shall be represented by

Foreign Share Certificates. All other shares of Capital Stock shall be represented by Domestic Share Certificates. All of such certificates shall be in such form not inconsistent with this Amended and Restated Certificate of Incorporation as shall be prepared or approved by the Board of Directors of the Corporation.

Section 10.4. Limitation on Foreign Ownership. Except as otherwise provided by law, not more than twenty-five percent of the aggregate number of shares of Capital Stock of the Corporation outstanding shall at any time be owned of record by or for the account of aliens or their representatives or by or for the account of a foreign government or representatives thereof, or by or for the account of any corporation organized under the laws of a foreign country. Shares of Capital Stock shall not be transferable on the books of the Corporation to aliens or their representatives, foreign governments or representatives thereof, or corporations organized under the laws of foreign countries if, as a result of such transfer, the aggregate number of shares of Capital Stock owned by or for the account of aliens and their representatives, foreign governments and representatives thereof, and corporation organized under the laws of foreign countries shall be more then twenty-five percent of the number of shares of Capital Stock then outstanding. If it shall be found by the Corporation that Capital Stock represented by a Domestic Share Certificate is, in fact, held by or for the account of aliens or their representative, foreign governments or representatives thereof, or corporations organized under the laws of foreign countries, then such Domestic Share Certificate shall be canceled and a new certificate representing such Capital Stock marked "Foreign Share Certificate" shall be issued in lieu thereof, but only to the extent that after such issuance the Corporation shall be in compliance with this ARTICLE X; provided, however, that if, and to the extent, such issuance would violate this ARTICLE X, then, the holder of such Capital Stock shall not be entitled to vote, to receive dividends, or to have any other rights with regard to such Capital Stock to such extent, except the right to transfer such Capital Stock to a citizen of the United States.

Section 10.5. Transfer of Foreign Share Certificates. Any Capital Stock represented by Foreign Share Certificates may be transferred either to aliens or non-aliens. In the event that any Capital Stock represented by a certificate marked "Foreign Share Certificate" is sold or transferred to a non-alien, then such non-alien shall be required to exchange such certificate for a certificate marked "Domestic Share Certificate." If the Board of Directors of the Corporation reasonably determines that a Domestic Share Certificate has been or is to be transferred to or for the account of aliens or their representatives, foreign governments or representatives thereof, or corporations organized under the laws of foreign countries, the Corporation shall issue a new certificate for the shares of Capital Stock transferred to the transferee marked "Foreign Shares Certificate", cancel the old Domestic Share Certificate, and record the transaction upon its books, but only to the extent that after such transfer is complete, the Corporation shall be in compliance with this ARTICLE X.

Notwithstanding any other provision of this Amended and Restated Certificate of Incorporation, the transfer or conversion of the Corporation's Capital Stock, whether voluntary or involuntary, shall not be permitted, and shall be ineffective, if such transfer or conversion would (i) violate (or would result in violation of) the Communications Act or any of the rules or regulations promulgated thereunder or (ii) require the prior approval of the FCC, unless such prior approval has been obtained.