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November 22, 2019

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:

The November 6, 2019 letter submitted by three foreign investment funds (the “Foreign Hedge Funds”) invites the Commission to intervene in a state law matter, the counterclaims filed by Spanish Broadcasting System (“SBS”) in the Delaware Court of Chancery against the Foreign Hedge Funds.¹ SBS’s counterclaims seek a declaration affirming that a purported transaction in SBS’s Series B Preferred stock (the “Lehman Block Trade”) was void *ab initio* by operation of a protective provision in SBS’s charter. SBS is a Delaware corporation, and its charter is a contract between the company and its shareholders. Thus, the Delaware action is fundamentally a dispute regarding the proper interpretation and application of a private contract governed by state law.

Nonetheless, in the November 6 letter, the Foreign Hedge Funds suggest that the Commission should inject itself into the Delaware proceeding, based on the assertion that a Commission ruling could be forthcoming, a claim they had asserted in a motion to stay filed in the Delaware court the preceding day. In case there is any doubt, SBS has no pending request before the FCC, and no FCC action is expected or necessary. SBS’s Delaware counterclaims involve the interpretation and application of a private contract governed by state law, and as a matter of black letter Commission law, the Commission does not rule on such issues.

From the moment that SBS discovered that foreign investors had attempted to buy a significant portion of SBS’s equity, SBS has been clear that its charter afforded it multiple

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. to Christopher J. Sova, Deputy Chief, Investigations and Hearings Division, Enforcement Bureau and Michelle M. Carey, Chief, Media Bureau (dated November 6, 2019) (the “November 6 letter”).



protections. Although SBS filed a prophylactic petition for declaratory ruling (on advice of Commission staff) regarding its initial suspension of stockholder rights (the “Petition”), it did so to ensure compliance with the Commission’s rules while it was determining the precise impact of the remedies provided under its charter. As SBS has explained previously, its charter contains a self-executing protective provision that invalidates any purported stock transaction that would result in a violation of the Communications Act or require the prior approval of the FCC (if such approval is not obtained in advance). That provision is not relevant to the Petition, but rather is the subject of SBS’s counterclaims in the Delaware proceeding.

SBS ultimately determined that on July 31, 2017 the Foreign Hedge Funds attempted to acquire more than 25% of SBS's total outstanding equity in the Lehman Block Trade, a transaction that was invalidated *ab initio* by operation of the self-executing protective provision in SBS's charter. As a matter of law, the transaction never occurred. SBS's Delaware counterclaim seeks a declaratory judgment confirming that fact, and thus involves the interpretation and application of a private contract governed by state law.

The motion to stay filed in the Delaware Court and the November 6 letter filed with the Commission are but the Foreign Hedge Funds’ latest effort to introduce uncertainty and delay a resolution of these serious issues by attempting to play the Delaware court and the Commission against each other. The Commission has repeatedly emphasized that federal and state courts are charged with resolving matters of private contract. That principle governs here. Because its charter operated as designed to preclude any potential violation of the Communications Act, SBS was not at any time in violation of applicable foreign ownership restrictions. Moreover, because the Lehman Block Trade never occurred, there is nothing for the Commission to consider or approve.

No action or ruling from the Commission is necessary or appropriate at this time. Accordingly, the Commission should continue to hold SBS’s Petition in abeyance pending the Delaware court’s final decision on SBS’s counterclaims. When the Court confirms that the Lehman Block Trade was invalid *ab initio*, SBS intends to withdraw the Petition.

While SBS would be amenable to meeting with Commission staff at their discretion to discuss the foregoing issues, as the Foreign Hedge Funds have suggested, it also understands that the Commission may appropriately conclude that there is no need for such a meeting pending further developments in the Delaware litigation.

Respectfully submitted,

s/ Meredith S. Senter, Jr.

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cc: Mark D. Schneider
Marc Korman