



March 28, 2016

Marlene H. Dortch, Esq.  
Secretary  
Federal Communications Commission  
445 12th Street SW  
Washington DC 20554

Re: Notice of Ex Parte Communication in GN Docket No. 15-236

Dear Ms. Dortch:

On March 24, 2016, Emmy Parsons and the undersigned of the National Association of Broadcasters (NAB) met with Benjamin Arden, Christine Goepp, Jamila Bess Johnson, David Roberts, Holly Saurer, and Lisa Scanlan of the Media Bureau, and Francis Gutierrez, Gabrielle Kim, David Krech and Susan O'Connell of the International Bureau.

At the meeting, NAB outlined positions discussed in detail in our comments<sup>1</sup> and reply comments<sup>2</sup> in the above-referenced proceeding. We stated that NAB supports the Commission's proposals to simplify the broadcast foreign ownership approval process by "extending the streamlined rules and procedures" that apply to wireless licensees to broadcast licensees.<sup>3</sup> NAB also supports the Commission's proposal to improve the methodology broadcasters use to assess compliance with the foreign ownership benchmarks. In our filings, NAB proposes some modifications to the Commission's foreign ownership rules and processes that we believe will further reduce burdens for both licensees and the Commission, and will better enable licensees to comply with the foreign ownership limits. We discussed the following points from our comments:

- Pursuant to a Section 310(b)(4) petition for declaratory ruling ("petition"), the Commission should allow aggregate foreign ownership of broadcasters of up to 100 percent.<sup>4</sup>

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<sup>1</sup> Comments of NAB in GN Docket No. 15-236 (Dec. 21, 2015) (NAB Comments).

<sup>2</sup> Reply Comments of NAB in GN Docket No. 15-236 (Jan. 20, 2015).

<sup>3</sup> *Review of Foreign Ownership Policies for Broadcast, Common Carrier and Aeronautical Radio Licensees under Section 310(b)(4) of the Communications Act of 1934, as Amended*, Notice of Proposed Rulemaking, 30 FCC Rcd 11830 ¶ 1 (2015) (*Notice*).

<sup>4</sup> NAB Comments at 2, 8-9.

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- The Commission should adopt a presumption permitting nonattributable foreign ownership in broadcasters of up to 49.99 percent without prior commission approval.<sup>5</sup> During this discussion, NAB clarified that we are proposing that the Commission continue to allow attributable foreign ownership of up to 25 percent, provided that the total foreign ownership of the company is less than 50 percent.
- The Commission should extend to broadcasters the declaratory ruling petition procedures applicable to wireless licensees.<sup>6</sup> NAB’s comments contain several proposals designed to improve the petition process.<sup>7</sup> During this discussion, NAB clarified that it would not object to the application of our proposed modifications to both wireless and broadcast licensees. We also discussed NAB’s proposal to permit broadcasters to file petitions that seek retroactive Commission approval of the interests of new foreign shareholders within 30 days of learning of these new interests.<sup>8</sup> Under that proposal, if the petition is denied, the broadcaster would have 30 days to “cure” the problem by, for example, redeeming the shareholder’s interest as necessary to comply with 310(b).<sup>9</sup>
- We also discussed methodologies for determining the citizenship of both known and unknown shareholders.<sup>10</sup> We reiterated that broadcasters should be permitted to use reasonable measures to determine citizenship, rather than “best efforts” as referenced in the *Notice*.<sup>11</sup> We mentioned several methods broadcasters should be permitted to use for purposes of determining the citizenship of identifiable shareholders (including direct communications with registered shareholders; data from SEC Schedules 13D and 13G; and publicly available resources for non-objecting beneficial owners). We also stated that, if these methods are unsuccessful, broadcasters should be permitted to use other reasonable proxies for citizenship,

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<sup>5</sup> *Id.* at 2, 9-12.

<sup>6</sup> *Id.* at 3, 12-14.

<sup>7</sup> *Id.* at 12-25.

<sup>8</sup> *Id.* at 17-18.

<sup>9</sup> During this discussion, NAB clarified that a broadcaster should be permitted to retroactively file a petition with respect to both newly discovered attributable foreign ownership (such as foreign ownership detected through a Securities and Exchange Commission (SEC) filing), as well as newly discovered nonattributable foreign ownership, to the extent that either causes the broadcaster to no longer be in compliance with Section 310(b)(4) under the Commission’s Section 310(b)(4) policies in effect at the time. Also, our comments state that broadcasters should be provided with a 30-day period to “bring their foreign ownership into compliance with Section 310(b)(4)” if the Commission denies a retroactive petition filed by the broadcaster. NAB Comments at 17. NAB acknowledges that, depending on the circumstances, a broadcaster may not be able to bring itself into compliance with Section 310(b)(4) merely by rendering a newly discovered foreign shareholder’s interest nonattributable, such as, for example, by eliminating the shareholder’s voting interest. In these instances, the broadcaster may be required to take other action to achieve compliance, such as redeeming the stock of the foreign shareholder.

<sup>10</sup> NAB Comments at 25-27.

<sup>11</sup> *Id.* at 30.

such as: (1) street addresses or (2) the five-factor “principal place of business” (“PPB”) test previously utilized by the Commission to determine the “home market” of foreign entities seeking to invest in common carrier licensees.<sup>12</sup>

- In our comments, NAB stated that broadcasters should be permitted to determine the citizenship of stockholders that are not reasonably identifiable, including objecting beneficial owners, through extrapolation (*i.e.*, by assigning these shareholders the same relative domestic and foreign equity and voting ownership as the foreign ownership determined by the broadcaster for its reasonably identifiable shareholders).<sup>13</sup> During the meeting, we stated that another alternative would be for the Commission to reverse its current presumption that these shareholders are foreign and instead use a presumption that they all are U.S. shareholders. The Commission has the authority to create a presumption that unknown shareholders are domestic entities<sup>14</sup> and doing so is consistent with the policy rationale underlying the Commission’s implementation of Section 310(b)(4). As NAB explained in its comments, Section 310(b) was intended to safeguard U.S. broadcasters from foreign influence.<sup>15</sup> Unidentified shareholders cannot hold an ownership interest in a broadcaster that is sufficiently significant to enable the entity to have any influence over the day-to-day operations or programming choices of a broadcaster.<sup>16</sup> Consequently, the Commission would not increase the likelihood that a broadcaster will face undue foreign influence if the Commission treats all unidentified shareholders as U.S. citizens, even though some such unidentified shareholders may, in fact, be foreign. Further, adopting such a presumption will further the

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<sup>12</sup> *Id.* at 30-32. Section 310(b)(4) provides the Commission with adequate authority to permit the use of proxies for citizenship, such as street addresses or a PPB test. The statute permits the Commission to use an inherently flexible “public interest” evaluation to determine whether “the refusal or revocation of [a covered] license” is required due to foreign ownership considerations. As a result, the Commission may determine that no such revocation or refusal is required even if a broadcaster cannot demonstrate with certainty that no “more than one-fourth of [its] capital stock is owned of record or voted by aliens,” but instead must use a citizenship proxy to evaluate the citizenship of certain shareholders.

<sup>13</sup> NAB Comments at 32-33.

<sup>14</sup> As set forth in note 12, *supra*, the statute permits the Commission to use an inherently flexible “public interest” evaluation to determine whether “the refusal or revocation of [a covered] license” is required due to foreign ownership considerations. This statutory standard permits the Commission to adopt policies for the purposes of calculating foreign ownership that the Commission determines are consistent with the public interest.

<sup>15</sup> NAB Comments at 10-11, 15-16, 32-33.

<sup>16</sup> Broadcasters are required by the Commission’s attribution rules to identify all attributable interest holders. Therefore, all unidentified shareholders necessarily are nonattributable. Further, the Commission’s attribution rules were intended to identify interest holders that may have the capability to influence a broadcaster’s operations. See NAB Comments at 11 & n. 34. Accordingly, under Commission policy, all nonattributable shareholders should be treated as lacking influence over the broadcaster in which they hold an interest.

Commission's stated goal to reduce burdens on broadcaster licensees and streamline the foreign ownership approval process.

- NAB representatives also observed that additional guidance regarding how often to evaluate compliance with the foreign ownership limits would be helpful to licensees. NAB proposes that the Commission require broadcasters to conduct an evaluation of their foreign ownership at least once every four years, but that broadcasters that participate in DTC's SEG-100 program should not be required to separately undertake periodic evaluations of their foreign ownership.<sup>17</sup>

Finally, NAB emphasized that the Commission has proposed important steps to modernize its rules and policies governing broadcast foreign ownership. Adoption of these proposals, with the modifications suggested in our comments, will allow broadcasters to better compete in the communications marketplace and will promote diversity of services and ownership, while still effectuating Section 310(b) of the Act.

Please direct any inquiries regarding this matter to the undersigned.

Respectfully submitted,



Erin L. Dozier  
Senior Vice President and Deputy General Counsel  
Legal and Regulatory Affairs

cc: Benjamin Arden, Christine Goepp, Francis Gutierrez, Jamila Bess Johnson, Gabrielle Kim, David Krech, Susan O'Connell, David Roberts, Holly Saurer, Lisa Scanlan

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<sup>17</sup> NAB Comments at 33-35.