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SHANGHAI SILICON VALLEY WASHINGTON

Mace Rosenstein

Covington & Burling LLP  
One CityCenter  
850 Tenth Street, NW  
Washington, DC 20001-4956  
T +1 202 662 5460  
mrosenstein@cov.com

May 23, 2016

## By ECFS

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

**Re: IB Docket No. 16-155  
NTIA Letter Regarding Information and Certifications from  
Applicants and Petitioners for Certain International  
Authorizations**

Dear Ms. Dortch:

CBS Corporation, 21st Century Fox, Inc., Univision Communications Inc. and the National Association of Broadcasters (the “Broadcaster Representatives”) write jointly in response to the Commission’s Public Notice, DA 16-531, released on May 12, 2016, in the referenced proceeding.

The Public Notice seeks comment on the letter from the Honorable Lawrence E. Strickling, Assistant Secretary for Communications & Information, U.S. Department of Commerce, to Marlene H. Dortch, Secretary, FCC, dated May 10, 2016 (the “NTIA Letter”), asking the Commission to expand certain disclosure obligations applicable to persons “seeking international 214 authorizations (and transfers thereof), Section 310 rulings, submarine cable landing licenses, and satellite earth station authorizations (together, ‘applications’).” NTIA Letter at 1. For the reasons discussed below, the Broadcaster Representatives urge the Commission to ensure that any changes made in response to the NTIA Letter do not inadvertently -- and inappropriately -- affect the disclosure obligations of broadcast licensees or applicants, including with respect to broadcaster petitions for declaratory ruling under Section 310(b)(4) of the Communications Act of 1934, as amended.

In 2013, the Commission clarified that it would exercise its discretion to evaluate requests by broadcast companies to accept foreign-sourced investment in excess of the Commission’s historical *de facto* 25 percent limitation under Section 310(b)(4). *See Commission Policies and Procedures Under Section 310(b)(4) of the Communications Act, Foreign Investment in Broadcast Licensees, Declaratory Ruling, 28 FCC Rcd 16244 (2013) (“Broadcast Clarification Order”)*. There the Commission stated that, in evaluating broadcast applications and petitions for relief under Section 310(b)(4), it would “coordinate *as necessary and appropriate* with Executive Branch agencies,” while continuing “to afford appropriate deference to the expertise of the Executive Branch agencies on issues related to national

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security, law enforcement, foreign policy, and trade policy.” *See id.* at 16251 (emphasis added, footnote omitted). More recently, in furtherance of the *Broadcast Clarification Order*, the Commission has proposed to harmonize the review procedures applicable to all services, including broadcasters, subject to Section 310(b)(4). *See 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 (2015) (“*Broadcast Foreign Ownership NPRM*”). The Commission has proposed to, among other things, “simplify the methodology a [broadcast] licensee should use to assess its compliance with the 25 percent foreign ownership benchmark in section 310(b)(4) *in order to reduce regulatory burdens on applicants and licensees.*” *Id.* at 11831 (emphasis added). Significantly, the Commission stated that its streamlining proposals would continue “to protect important interests related to national security, law enforcement, foreign policy, and trade policy and other public policy goals.” *Id.*

The Broadcaster Representatives are concerned that the new information collection requirements requested by NTIA, if applied indiscriminately to broadcast applicants and petitioners, would threaten to undo the benefits the Commission envisioned in proposing to extend to broadcasters the “streamlined” review procedures under consideration in the *Broadcast Foreign Ownership NPRM*. Moreover, they are unnecessary and irrelevant in the broadcast context.

*First*, NTIA has asked the Commission to expand its information collection requirements only with respect to applications and petitions involving international Section 214 authorizations (47 C.F.R. § 63.18), submarine cable landing licenses (47 C.F.R. § 1.767), and common carrier, aeronautical en route and aeronautical fixed radio station licenses (47 C.F.R. § 1.990–1.994). *See* NTIA Letter at 3 and fns 4–7. The NTIA Letter does not request changes to the disclosure obligations of broadcast applicants or licensees. Indeed, in seeking comment on the NTIA Letter, the Public Notice states that NTIA has asked the Commission to “obtain information and certifications from applicants and petitioners . . . for certain *international* authorizations.” Public Notice at 1 (emphasis added).

*Second*, to the extent NTIA asks the Commission to collect additional information regarding applicants’ and petitioners’ ownership and compliance with laws, broadcast applicants already are subject to disclosure concerning these matters – arguably more extensive than that requested by NTIA – pursuant to the information collection requirements of the pertinent FCC application forms. Thus, for example, applicants for assignment or transfer of control of broadcast licenses are required to disclose information including the name, address, corporate form and citizenship of direct or indirect (i) 5 percent or greater voting stockholders of C and S corporations, (ii) general partners and non-insulated limited partners of limited partnerships, and (iii) managers and non-insulated members of limited liability companies, and all of their respective officers and directors; their financial and technical qualifications; and their (and their attributable owners’ and principals’) compliance with laws. *See, e.g.*, FCC Form 301 (Application for Construction Permit for Commercial Broadcast Station), FCC Form 314 (Application for Consent to Assignment of Broadcast Station Construction Permit or License), Form 315 (Application for Consent to Transfer Control of Corporation Holding Broadcast Station Construction Permit or License). By way of comparison, applicants for international Section 214 authority and for aeronautical en route and aeronautical fixed radio station licenses

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need disclose only direct or indirect ownership interests of 10 percent or more (*see* 47 C.F.R. § 63.18(h)).

*Third*, the categories of information broadly identified in the NTIA Letter, and the specific “trriage” questions typically submitted to common carrier applicants by Team Telecom in its evaluation of foreign investment, *see* NTIA Letter at 3, relate to matters that have nothing to do with broadcasting. For example, broadcasters do not own or control telecommunications networks (*id.* at 2), do not provide services to any sectors of critical U.S. infrastructure (*id.* at 3), do not have telecommunications intercept capabilities (*id.* at 4), and do not have compliance obligations under the Communications Assistance for Law Enforcement Act (*id.* at 5). Simply stated, the Executive Branch concerns identified in the NTIA Letter relate entirely to espionage and the integrity of U.S. telecommunications infrastructure – matters which do not implicate broadcasters.

It is not surprising, then, that in reviewing the first broadcast petition for foreign ownership declaratory ruling following the adoption of the *Broadcast Clarification Order* – in the Pandora Radio proceeding -- the Executive Branch agencies did not seek any information of the sort specified in the NTIA Letter. In the Pandora matter, “following the procedure outlined in the [*Broadcast*] *Clarification Order*, various Executive Branch agencies were . . . notified of the proceedings.” *Pandora Radio LLC*, Order on Reconsideration, 30 FCC Rcd 10570, 10571 (2015). Significantly, Team Telecom did not ask the Commission to defer action pending a national security review, as it typically does in evaluating non-broadcast petitions; indeed, “[n]o Executive Branch agency filed a comment or objection.” *Id.* The reason is clear: broadcast transactions do not implicate “national security, law enforcement, foreign policy, or trade concerns” -- precisely the concerns sought to be addressed by the measures requested in the NTIA Letter. *See id.* at 2, 4.

Broadcast applicants already are required to provide the information regarding their ownership and compliance with laws that NTIA has asked the Commission to collect of other applicants. The other matters of which NTIA has asked the Commission to require disclosure, and the stated concerns prompting NTIA’s request, are not relevant in the broadcast context. Ultimately, therefore, there is no basis or need to collect the types of information set out in the NTIA Letter from broadcast applicants seeking authority to accept foreign investment in excess of the 25 percent benchmark of Section 310(b)(4).

Indeed, the NTIA Letter does not contemplate a “one size fits all” disclosure obligation. To the contrary, NTIA “urge[s] the Commission to adopt requirements that focus on the [NTIA Letter’s enumerated] categories of information to be collected, while also providing sufficient flexibility for the Commission to prescribe and, as necessary, modify the specific questions posed to applicants.” NTIA Letter at 3. *Cf. Broadcast Clarification Order*, 28 FCC Rcd at 16251 (in evaluating broadcast foreign ownership petitions the Commission will coordinate with Executive Branch agencies “as necessary and appropriate”).

The Broadcaster Representatives therefore urge the Commission, in responding to the request in the NTIA Letter, to differentiate in any new rules or application requirements between the information required for an effective review of broadcast applications and applications for common carrier and “international” authorizations. Further, the Commission

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should promptly issue an order adopting the proposals set forth in the *Broadcast Foreign Ownership NPRM*, which, as reflected in the record of that proceeding, have broad support by broadcast and common carrier licensees alike.

Respectfully submitted,

**CBS Corporation**  
**21st Century Fox, Inc.**  
**Univision Communications Inc.**

By: \_\_\_\_\_/s/  
Mace Rosenstein

COVINGTON & BURLING LLP  
One CityCenter  
850 10th Street NW  
Washington, DC 20001  
(202) 662-6000  
mrostein@cov.com

**National Association of Broadcasters**

By: \_\_\_\_\_/s/  
Erin Dozier

Senior Vice President and Deputy General  
Counsel, Legal and Regulatory Affairs  
1771 N Street NW  
Washington, DC 20036  
(202) 429 5300  
edozier@nab.org

cc: David Krech  
Kathleen Collins