

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of)
Frontier Media, LLC) KGTW(FM), Ketchikan, AK
Applications for Consent to Transfer Control of) Facility ID No. 789
Licenses) File Nos. BTCH-20160603ABQ et seq.
and) KINY(AM), Juneau, AK
Petition for Declaratory Ruling Under Section) Facility ID No. 823
310(b)(4) of the Communications Act of 1934, as) File Nos. BTC-20160603ACC et seq.
Amended) KCMC(AM), Texarkana, TX
) Facility ID No. 33542
) File Nos. BTC-20160603ACO et seq.
) KTOY(FM), Texarkana, AR
) Facility ID No. 31348
) File Nos. BTC-20160603ACX
) MB Docket 16-212

MEMORANDUM OPINION AND ORDER AND DECLARATORY RULING

Adopted: February 23, 2017

Released: February 23, 2017

By the Chief, Media Bureau:

I. INTRODUCTION

1. In this Memorandum Opinion and Order and Declaratory Ruling, the Media Bureau (Bureau) addresses a petition for declaratory ruling (Petition) filed by Frontier Media, LLC (Frontier) on June 3, 2016. The Petition is filed in connection with the four above-captioned applications to transfer to Frontier control of 29 licenses (7 AMs, 8 FM, 13 FM translators, and 1 UHF translator) currently held by broadcast licensees Alaska Broadcast Communications, Inc. (Alaska Broadcast), Juneau Alaska Communications, LLC (Juneau Alaska), Texarkana Radio Center Licenses, LLC (Texarkana), and Jo-Al

1 Hereinafter referred to as Declaratory Ruling.

2 File No. BTCH-20160603ABQ proposes the transfer of control of ten licenses held by Alaska Broadcast, specifically: KGTW(FM), Ketchikan, AK; KTKN(AM), Ketchikan, AK; KJNO(AM), Juneau, AK; KTKU(FM), Juneau, AK; KIFW(AM), Sitka, AK; KSBZ(FM), Sitka, AK; K248AI, Craig, AK; K258AD, Craig, AK; K257CN, Juneau, AK; and K252EJ, Wrangell, AK. File No. BTC-20160603ACC proposes the transfer of control of ten licenses held by Juneau Alaska, specifically: KINY(AM), Juneau, AK; KSUP(FM), Juneau, AK; KCBJ-LP, Juneau, AK; KXXJ(AM), Juneau, AK; K278CO, Juneau, AK; K280DX, Angoon, AK; K300AB, Juneau, AK; K278AC, Kake, AK; K279AF, Haines & Skagway, AK; and K284AM, Skagway, AK. File No. BTC-20160603ACO proposes the transfer of control of eight licenses held by Texarkana, specifically: KCMC(AM), Texarkana, TX; KTFS(AM), Texarkana, TX; KTFS-FM, Texarkana, AR; KBYB(FM), Hope, AR; KTTY(FM), New Boston, TX; K288FI, Texarkana, TX; K255CU, Texarkana, TX; and K257FY, Texarkana, TX. File No. BTCH-20160603ACX proposes the transfer of control of one license held by Jo-Al, specifically, KTOY(FM), Texarkana, AK (collectively, Applications).

Broadcasting, Inc. (Jo-AI) (collectively, Licensees).³ The Petition asks the Commission to exercise its discretion to permit Frontier, as the prospective parent company of the Licensees, to exceed the 25 percent foreign indirect ownership benchmark set out in Section 310(b)(4) of the Communications Act of 1934, as amended, (the Act),⁴ pursuant to Section 310(b)(4) and the Commission's decision in its *2013 Broadcast Clarification Ruling*.⁵ The Petition is unopposed. As discussed below, we find that it will serve the public interest to grant the Petition and Applications, subject to the conditions specified below.

II. BACKGROUND

2. Frontier is a limited liability company organized in Alaska, with two 50 percent members: Richard Burns (managing member) and Sharon Burns (collectively, the Burnses). According to the Petition, the Burnses are Australian citizens who have lived and worked in the United States under an E-3 specialty occupation visa since 2006. As private individuals, the Burnses each currently own 10 percent direct interests in the Licensees, for a total of 20 percent foreign ownership.⁶ By the proposed transaction, the Burnses, as the owners of transferee Frontier, would acquire the remaining 80 percent of the ownership interests in the Licensees, which are currently held by E. Roy Paschal and Jason Paschal. Therefore, after the proposed transaction, the Burnses, would hold 100 percent of the ownership interests in Frontier, the parent of all four Licensees, and, through Frontier, would indirectly own 100 percent of the interests in the Licensees. Specifically, Frontier would hold 100 percent of the voting and equity interests in licensees Alaska Broadcast and Juneau Alaska and would be the sole member of Texarkana Radio Center, LLC, which is the sole member of Texarkana, which in turn holds 100 percent of the equity and voting interests in Jo-AI. After the proposed transaction, the Burnses would not hold any direct interest in the Licensees.

3. Frontier asserts that grant of the Petition would further the public interest goals set out in the *2013 Broadcast Clarification Ruling*, namely, strengthening investment in broadcasting (in Alaska in particular) and ensuring continued service in the affected communities.⁷ In addition, the Petition sets out the Burnses' personal *bona fides*, including their long involvement in civic and commercial activities in the city of Juneau, Alaska, and Richard Burns' management of the Alaska stations as CEO since 2006 and the Texarkana stations since 2013. Frontier states that no national security concerns are implicated by the

³ On November 30, 2016, Juneau Alaska filed an application to assign the license of Station KCBJ-LP to Gray Television Licensee, LLC. File No. BALTT-20161130ADC.

⁴ 47 U.S.C. § 310(b)(4) (Section 310(b)(4)).

⁵ *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) (*2013 Broadcast Clarification Ruling*).

⁶ These interests are subject to the 20 percent limitation on foreign ownership established in Section 310(b)(3), 47 U.S.C. § 310(b)(3) (prohibiting grant of a broadcast, common carrier, aeronautical en route and aeronautical fixed radio license to "[A]ny corporation of which more than one-fifth of the capital stock is owned of record or voted by aliens or their representatives or by a foreign government or representative thereof or by any corporation organized under the laws of a foreign country..."). Unlike Section 310(b)(4), Section 310(b)(3) does not afford the Commission discretion to approve foreign investment in broadcast licensees in excess of the limitations contained therein. See also *2013 Broadcast Clarification Order*, 28 FCC Rcd at 5752, para. 15, n.49 (stating that the Commission will not entertain petitions to exceed the foreign ownership limits of Section 310(b)(3) for foreign investment in broadcast licensees.). Because the Burnses are divesting their direct interest in the Licensees, and the Licensees will be wholly owned by Frontier, we are not presented with the question of whether the proposed foreign ownership structure implicates Section 310(b)(3).

⁷ Petition at 2 ("[T]here are no other potential buyers reasonably identifiable"); *id.* at 5 ("[T]here is no more logical person or persons to buy [the stations] than the Burns, since Richard Burns is the CEO of these stations and since Richard and Sharon Burns are both current part owners of the station. . . . [F]inding any other *bona fide* purchasers for these stations would be difficult at best."); *id.* at 8-9 (Frontier "is the only feasible party who would likely be interested in acquiring the existing owner's interests in the Licensees").

Petition.

III. DISCUSSION

4. *Section 310(b)(4) standard.* We review the foreign ownership of Frontier under Section 310(b)(4) of the Act, which states that “[n]o broadcast ... license shall be granted to or held by ... any corporation directly or indirectly controlled by any other corporation of which more than one-fourth of the capital stock is owned of record or voted by aliens, their representatives, or by a foreign government or representative thereof, or by any corporation organized under the laws of a foreign country, if the Commission finds that the public interest will be served by the refusal or revocation of such license.”⁸ In the *2013 Broadcast Clarification Ruling*, the Commission clarified the policies and procedures for evaluating potential foreign investment in broadcast licensees under Section 310(b)(4) of the Act to remove apparent uncertainty. The Commission reiterated its position that, in the context of Section 310(b)(4) review for broadcast licensees, the 25 percent benchmark “is only a trigger for the exercise of our discretion, which we then exercise based upon a more searching analysis of the circumstances of each case.”⁹ The Commission recognized that “changes have occurred in the media landscape and marketplace since the foreign ownership restriction was enacted and that limited access to capital is a concern in the broadcast industry, especially for small business entities and new entrants, including minorities and women.”¹⁰ To exercise in a meaningful way the discretion conferred by statute, the Commission must receive from the applicant detailed information sufficient for the agency to make the public interest finding the statute requires.¹¹

5. In the *2013 Broadcast Clarification Ruling*, the Commission declined to adopt a standardized review process and clarified that it would continue to follow a case-by-case approach to reviewing petitions for declaratory ruling to exceed the 310(b)(4) benchmark, stating that “[b]y their nature, these case-by-case reviews will lead to distinct, factually driven results.”¹² The Commission also established that in evaluating petitions relating to foreign ownership, it would afford appropriate deference to the expertise of the Executive Branch agencies on issues related to national security, law enforcement, foreign policy, and trade policy.¹³ Following the issuance of the *2013 Broadcast Clarification Ruling*, the Commission granted a petition for declaratory ruling filed by Pandora Radio LLC (Pandora), a publicly traded company, to exceed the 25 percent foreign ownership benchmark set out in Section 310(b)(4), in connection with an application for consent to assignment of license of KXMZ(FM), Box Elder, South Dakota.¹⁴ Based on the facts specific to that case and in view of existing broadcast foreign ownership policies, the Commission approved the request to exceed the 25 percent benchmark under Section 310(b)(4) provided that Pandora obtain prior Commission approval for (1) aggregate foreign equity and/or foreign voting interests in Pandora Media exceeding 49.99 percent; (2) any change in the Pandora Media Board of Directors that would result in a majority of foreign members; or (3) any individual foreign investor or “group” acquiring a greater than 5 percent voting or equity interest (or greater than 10 percent for certain institutional investors) in Pandora Media.¹⁵ Subsequently, the Media Bureau granted

⁸ 47 U.S.C. § 310(b)(4).

⁹ *2013 Broadcast Clarification Order*, 28 FCC Rcd at 16249-50, para. 11.

¹⁰ *Id.* at 16249, para. 10.

¹¹ *Id.* at 16250.

¹² *2013 Broadcast Clarification Ruling*, 28 FCC Rcd at 16252.

¹³ *Id.* at 16251.

¹⁴ *Pandora Radio LLC Petition for Declaratory Ruling Under Section 310(b)(4) of the Communications Act of 1934, as Amended*, MB Docket No. 14-109, Declaratory Ruling, 30 FCC Rcd 5094, 5095-96, para. 4 (2015) (*2015 Pandora Declaratory Ruling*), *recon denied*, 30 FCC Rcd 10570 (2015).

¹⁵ *Id.* at 5101, para. 19. The Commission required Pandora Media to modify its organizational documents to ensure that its Board of Directors has all necessary powers to maintain compliance with Section 310(b)(4), including the

two petitions for declaratory ruling allowing aggregate foreign investment in broadcast licensees of 49 percent in one case and 49.99 percent in the other case, and granting specific approval for named investors to acquire interests of 40 percent, 49 percent, and 49.99 percent.¹⁶ In this case, the petitioner seeks authority for 100 percent foreign ownership of the parent of the licensee as well as specific approval for named individuals to each own 50 percent of the parent of the licensee. Following the procedure outlined in the *2013 Broadcast Clarification Ruling* and applied in the *Pandora, Univision, and Hemisphere Declaratory Rulings*, we have consulted with the relevant Executive Branch agencies with expertise on issues related to national security, law enforcement, foreign policy, and trade policy.¹⁷ These Executive Branch agencies have not raised any objections to the Burns's proposed ownership of the Stations, and the Applications are unopposed.

6. In considering the Petition, we are cognizant of the Commission's recent decision in the *2016 Foreign Ownership Order*, which modified the broadcast licensee foreign ownership review process by extending the streamlined rules and procedures developed for review of foreign ownership of common carrier and certain aeronautical licensees under Section 310(b)(4) to the broadcast context, with certain limited exceptions.¹⁸ Because the rules adopted in the *2016 Foreign Ownership Order* have not yet taken effect, our foreign ownership review process is still governed by the *2013 Broadcast Clarification Ruling*.¹⁹ However, we note that our action taken herein is consistent with the policies and procedures set out in both the *2016 Foreign Ownership Order* and the *2013 Broadcast Clarification Ruling*. In particular, we note that although the *2016 Foreign Ownership Order* expressly provides for processing of petitions involving 100 percent foreign ownership of a broadcast licensee's parent,²⁰ as here, such petitions are also consistent with the guidance set out in the *2013 Clarification Ruling*, which did not set

right to request and obtain information regarding citizenship of Pandora Media's interest holders, and the necessary powers to cure noncompliance, specifically: (1) the right to restrict the transfer of shares to aliens; (2) the right to require disclosure when an alien acquires an equity and/or voting interest; and (3) the right to compel the redemption of shares held by aliens. *Id.* at 5101, para. 20.

¹⁶ *Univision Holdings, Inc.*, Declaratory Ruling, DA 17-4, 2017 WL 29414 (MB Jan. 3, 2017) (*Univision Declaratory Ruling*) (permitting aggregate foreign ownership of 49 percent voting and equity and granting specific approval for named entities to hold 40 percent of the voting shares and 49 percent equity); *Hemisphere Media Group, Inc.*, Declaratory Ruling, DA 17-79, 2017 WL 239074 (MB Jan. 18, 2017) (*Hemisphere Declaratory Ruling*) (permitting up to 49.99 percent aggregate foreign ownership and granting specific approval to named entities and individuals to hold interests up to that level). The Commission conditioned these rulings on additional requirements, including monitoring, reporting, and compliance requirements.

¹⁷ See *Pandora Declaratory Ruling*, 30 FCC Rcd at 5096, para. 5; *Univision Declaratory Ruling* at 8, para. 21; *Hemisphere Declaratory Ruling* at 8, para. 20.

¹⁸ *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*, Report and Order, 31 FCC Rcd 11272 (2016) (*2016 Foreign Ownership Order*). The Commission also reformed the methodology used by both common carrier and broadcast licensees to assess compliance with the foreign ownership limits in Sections 310(b)(3), 47 U.S.C. § 310(b)(3) and 310(b)(4) of the Act, as appropriate, in recognition of the difficulty that U.S. publicly traded companies face in attempting to ascertain their level of foreign ownership. *2016 Foreign Ownership Order*, 31 FCC Rcd at 11289-11307.

¹⁹ A summary of the *2016 Foreign Ownership Order* was published in the Federal Register on December 1, 2016. *Review of Foreign Ownership for Broadcast, Common Carrier and Aeronautical Radio Licensees*, 81 Fed. Reg. 86568 (Dec. 1, 2016). The order became effective on January 30, 2017, except for those sections requiring approval by the Office of Management and Budget (OMB) under the Paperwork Reduction Act (PRA). All of the revised rules appearing in Appendix B of the order were submitted to OMB for approval, and notice of that submission was published on December 29, 2016. 81 Fed. Reg. 95993 (Dec. 29, 2016) (establishing a due date of February 27, 2017 for PRA comments). They will become effective after the Commission publishes a notice in the Federal Register announcing such approval and the relevant effective date.

²⁰ See, e.g., *2016 Foreign Ownership Order*, 31 FCC Rcd at 11282.

an upper limit on petitions for declaratory ruling but committed to a case-by-case review of “proposals for foreign investment exceeding the 25 percent benchmark . . .”²¹

7. *Public interest analysis.* In both the *2013 Broadcast Clarification Ruling* and the *2016 Foreign Ownership Order*, the Commission emphasized the need to encourage new sources of investment in the broadcast industry, including foreign investment.²² The Commission also affirmed the need to protect important interests related to national security, law enforcement, foreign policy, trade policy, and other public policy goals while maintaining compliance with Section 310(b).²³ In this case, we have given the relevant Executive Branch agencies the opportunity to review the requests for approval. The Executive Branch agencies have filed a letter with the Commission stating that they have no objection to grant of the requests and have not requested that we impose any conditions on grant.²⁴ We also find no grounds, on the facts presented, to object to the approvals requested. Moreover, we find that grant of the Petition would: (1) increase the likelihood of continued service to small communities by authorizing investment by individuals who are ready, willing, and able to operate the stations based on their extensive experience operating them to date; (2) facilitate foreign investment in the U.S. broadcast radio market; and (3) potentially encourage reciprocal investment opportunities for U.S. companies in foreign markets. For these reasons, we find that grant of the Petition will serve the public interest.

IV. DECLARATORY RULING

8. *Declaratory ruling.* Upon review of the facts and circumstances set out in the Petition, and pursuant to the policy established by the *2013 Broadcast Clarification Ruling*, we find that the public interest would not be served by prohibiting the foreign ownership of Frontier, as the ultimate controlling U.S. parent of Alaska Broadcast, Juneau Alaska, Texarkana, and Jo-Al, in excess of the 25 percent benchmark in Section 310(b)(4) of the Act. Specifically, this declaratory ruling permits up to 100 percent of the equity and voting interests in Frontier to be held by Richard and Sharon Burns (50 percent each).

9. *Scope of the ruling.* This *Declaratory Ruling* covers Frontier’s U.S.-organized subsidiaries and affiliates, whether existing or formed or acquired subsequently, that are wholly owned and controlled by, or under 100 percent common ownership and control with, Frontier, provided that Frontier and the subsidiary and/or affiliate remain in compliance with the terms and conditions of this *Declaratory Ruling* and the Commission’s rules.²⁵ The flexibility granted herein reflects the reality that it is not uncommon for companies to make changes within their corporate structure that in no way affect the operation, management, or control of those companies. This flexibility does not detract in any way from the requirement under the Act and our Rules to apply for and receive prior Commission consent to a voluntary assignment of license or transfer of control or to seek a new declaratory ruling before its foreign ownership exceeds the terms or conditions of this *Declaratory Ruling*.

10. *Terms and conditions.* The terms and conditions of this *Declaratory Ruling* are case-specific and based on the facts on record, the policies set out in the *2013 Broadcast Clarification Ruling* and the *2016 Foreign Ownership Order*, and the precedent established by the *Pandora*, *Univision*, and

²¹ *2013 Broadcast Clarification Ruling*, 28 FCC Rcd at 16249; *see also id.*, Statement of Commissioner Michael O’Rielly (“...U.S. broadcasters and foreign investors should know that this Commission is now open to considering foreign entities holding capital stock of companies that control broadcast licenses exceeding 25 percent, perhaps up to a high of 100 percent.”).

²² *2013 Broadcast Clarification Ruling*, 28 FCC Rcd at 16249; *2016 Foreign Ownership Order*, 31 FCC Rcd at 11273.

²³ *2013 Broadcast Clarification Ruling*, 28 FCC Rcd at 16251; *2016 Foreign Ownership Order*, 31 FCC Rcd at 11273.

²⁴ Letter from Richard C. Sofield, Director, Foreign Investment Review Staff, National Security Division, U.S. Department of Justice, to Marlene H. Dortch, Secretary, FCC (Sep. 8, 2016) (on file in MB Docket No. 16-212).

²⁵ *See generally, Pandora Radio LLC*, Declaratory Ruling, 30 FCC Rcd 5094 (2015) (*Pandora Declaratory Ruling*).

Hemisphere Declaratory Rulings.²⁶ Specifically, we require Frontier to obtain prior Commission approval for any change in its ownership before any individual foreign investor or “group” that is not specifically approved by this *Declaratory Ruling* acquires a direct or indirect voting or equity interest in Frontier, whether or not the interest is insulated.²⁷ Because Frontier is not a publicly held company, we find that there is no need to require changes to its organizational documents to provide greater control over and information regarding the transfer of shares to aliens. Likewise, because Frontier is a limited liability company with only two members, it faces no difficulty in calculating its foreign ownership (in contrast with publicly held companies), and we therefore find it unnecessary to require periodic certification of compliance.²⁸ If, at any time, Frontier knows, or has reason to know, that it is no longer in compliance with this *Declaratory Ruling*, Section 310(b) of the Act, or the Commission’s foreign ownership rules then in effect, it shall file a statement with the Commission explaining the circumstances within 30 days of the date that it knew or had reason to know that it was no longer in compliance and how it intends to correct the overage, either by filing a new petition for declaratory ruling or by reducing the foreign interest.²⁹

11. *Grantability of the Applications*. Following our routine processing procedures, we have reviewed the subject Applications for compliance with the various statutory and regulatory requirements relating to transfer of control applications. Other than the foreign ownership issue addressed herein, the record does not raise any issues that might preclude grant, and the Applications are unopposed. With the foreign ownership issue resolved by the ruling herein, we conclude that grant of the Applications is otherwise consistent with the public interest, convenience, and necessity under Section 310(d) of the Act.³⁰

V. ORDERING CLAUSES

12. Accordingly, IT IS ORDERED that, pursuant to Section 310(b)(4) of the Communications Act of 1934, as amended, 47 U.S.C. § 310(b)(4), and pursuant to authority delegated to the Media Bureau in section 0.283 of the Commission’s rules, 47 CFR § 0.283, the Petition for Declaratory Ruling filed by Frontier IS GRANTED to the extent specified in this *Declaratory Ruling* and subject to the conditions specified herein.

²⁶ See generally, *2013 Broadcast Clarification Ruling*, 28 FCC Rcd at 16252 (“By their nature, these case-by-case reviews will lead to distinct, factually driven results. Each application or petition will be assessed on its own merits, and we will determine, given the particular circumstances presented in a particular case, whether the public interest would be served by permitting the requested foreign ownership.”). Acknowledging that some of the definitions, terms, and conditions contained herein are similar to provisions recently adopted (but not yet effective) in the *2016 Foreign Ownership Order*, 31 FCC Rcd 11272, we emphasize that this *Declaratory Ruling* is based solely on our conclusion that these conditions are appropriate under the facts and circumstances of this case and pursuant to the policies and precedent discussed above, rather than on sections 1.5001(i) and 1.5004(b) of the new rules. See 47 CFR § 1.5001(i), 1.5004(b) (not yet effective).

²⁷ See *Pandora Declaratory Ruling*, 30 FCC Rcd at 5101; *Univision Declaratory Ruling*, 2017 WL 29414 at para. 22; 47 CFR § 1.991(i)(1), Note to paragraphs (i)(1),(2) (defining the term “group”).

²⁸ In fact, Frontier could not violate the terms and conditions of this *Declaratory Ruling* without deliberate, affirmative action by the Burnses, in contrast with publicly held companies with shares traded on a public stock exchange. See *Pandora Declaratory Ruling*, 30 FCC Rcd at 5101-02. As is the case for all licensees, Frontier must exercise due diligence to remain in compliance with Commission rules and orders.

²⁹ See *Pandora Declaratory Ruling*, 30 FCC Rcd at 5103, para.23; *Univision Declaratory Ruling* at 8, para. 24; *Hemisphere Declaratory Ruling* at 7, para. 22. Subsequent actions taken by or on behalf of the Frontier or the Licensees to remedy non-compliance shall not relieve any such entity of the obligation to notify the Commission of the circumstances (including duration) of non-compliance. Any such non-compliance may result in enforcement action by the Commission for such non-compliance, including an order requiring divestiture of the investor's direct and/or indirect interests in such entities.

³⁰ 47 U.S.C. § 310(d).

13. IT IS FURTHER ORDERED that, pursuant to Section 310(d) of the Communications Act of 1934, as amended, 47 U.S.C. § 310(d), and pursuant to authority delegated to the Media Bureau in section 0.283 of the Commission's rules, 47 CFR § 0.283, the transfer of control applications filed by Frontier on June 3, 2016 (File Nos. BTCH-20160603ABQ *et seq.*; BTC-20160603ACC *et seq.*; BTC-20160603ACO *et seq.*; and BTC-20160603ACX) ARE GRANTED.

14. IT IS FURTHER ORDERED that this *Memorandum Opinion and Order and Declaratory Ruling* SHALL BE EFFECTIVE upon release.

FEDERAL COMMUNICATIONS COMMISSION

Michelle Carey
Acting Chief, Media Bureau