

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

In the Matter of)	
)	
Border Media Licenses LLC)	WRGR(FM), Tupper Lake, NY
)	Facility ID No. 56078
Application for Consent to Assignment of License)	File No. BALH-20180209ABO
)	
and)	MB Docket 18-66
)	
Petition for Declaratory Ruling Under Section)	
310(b)(4) of the Communications Act of 1934, as)	
Amended)	
)	

DECLARATORY RULING AND MEMORANDUM OPINION AND ORDER

Adopted: August 28, 2018

Released: August 28, 2018

By the Chief, Audio Division, Media Bureau:

I. INTRODUCTION

1. In this *Declaratory Ruling and Memorandum Opinion and Order*,¹ the Media Bureau (Bureau) addresses a petition for declaratory ruling (Petition) filed by Border Media Licenses LLC (BML or Petitioner) on February 9, 2018. The Petition was filed in connection with the above-captioned application (Application), seeking Commission consent to the assignment of license of FM radio station WRGR(FM), Tupper Lake, New York, from Radio Lake Placid, Inc. to BML. The Petition asks the Commission to exercise its discretion to permit Border Media LLC, the parent company of BML, to exceed the 25 percent foreign ownership benchmark set out in Section 310(b)(4) of the Communications Act of 1934, as amended, (the Act),² pursuant to Section 310(b)(4), Sections 1.5000 *et seq.* of the Commission's rules,³ and the Commission's recent *Foreign Ownership Order*.⁴ In addition to the Petition, we address the above-captioned application seeking Commission consent to the assignment of license of WRGR(FM). The Petition and the Application are unopposed. As discussed below, we find that it will serve the public interest to grant the Petition, subject to the conditions specified below, and the Application.

II. BACKGROUND

2. *Foreign Ownership of BML.* In this case, the Petition seeks authority for Border Media

¹ Hereinafter referred to as *Declaratory Ruling*.

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

³ 47 CFR §§ 1.5000 *et seq.*

⁴ *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*), *pet. for recon. dismissed*, 32 FCC Rcd 4780 (2017); *see also 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*).

Licenses LLC (BML), a New York limited liability company, to become the proposed new licensee of WRGR(FM), Tupper Lake, New York. BML would be 100 percent owned by parent company Border Media LLC, another New York limited company, which, in turn, is owned by two members: Ricki Lee Shorthose, a citizen of the United Kingdom (50 percent voting and equity interest), and Hanna Kaleta, a citizen of Poland (50 percent voting and equity interest).⁵

3. BML asserts that grant of the Petition would advance the Commission's public interest goals of encouraging foreign investment and ownership diversity in broadcasting while also "strengthening the broadcast industry, particularly within the Tupper Lake, New York, community where broadcasting service is desperately needed."⁶ In support of the Petition, BML details the extensive broadcasting experience of Managing Member Ricki Lee Shorthose, including his work as co-founder of Aiir, an audio tech company that provides "radio stations with digital tools to manage content on their websites, mobile apps and social media with studio interaction."⁷ The Petitioner explains that Mr. Shorthose and his wife, Hanna Kaleta, moved to New York in 2015 to grow the company's North American business.⁸ In December 2017, Mr. Shorthose and Ms. Kaleta co-founded Border Media LLC for the "purpose of investing in one or more U.S. broadcast stations."⁹ The Petitioner maintains that ownership by citizens of the United Kingdom and Poland, "who have been model residents of the United States for the past three years,"¹⁰ would not implicate any national security or other threat to the United States, given that "these countries are among our most steadfast allies and share many of our cultural traditions."¹¹

4. *Section 310(b)(4) Standard.* We review the foreign ownership of BML 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."¹²

5. 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.¹³ Subsequently, in the *2016 Foreign Ownership Order*, the Commission 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.¹⁴ Further, in evaluating petitions relating to foreign ownership, the Commission affords appropriate deference to the expertise of the

⁵ Ricki Lee Shorthose and Hanna Kaleta are husband and wife. See Petition at 1.

⁶ *Id.* at 4.

⁷ Petition at 3. According to the Petitioner, Mr. Shorthose, who holds a Bachelor's degree in radio and television broadcasting technology, has worked in radio broadcasting for almost 18 years and held the following positions: Senior Producer for Bauer Media in Sheffield; Deputy Programme Controller for a radio station owned by Canwest in Bristol, England; and Programme Director for JACK FM and Star Radio for Tomahawk Radio and later Celador Radio in Bristol. *Id.*

⁸ Mr. Shorthose and Ms. Kaleta have been living in the United States since 2015 on E-2 investor visas. See Petition at 2.

⁹ *Id.*

¹⁰ *Id.* at 4.

¹¹ *Id.* at 2.

¹² 47 U.S.C. § 310(b)(4).

¹³ See *2013 Broadcast Clarification Ruling*, *supra* note 4.

¹⁴ *2016 Foreign Ownership Order*, *supra* note 4.

Executive Branch agencies on issues related to national security, law enforcement, foreign policy, and trade policy.¹⁵

6. The Commission has explained that in the context of the 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.”¹⁶ Moreover, the *2016 Foreign Ownership Order* expressly provides for processing of petitions involving 100 percent foreign ownership of a broadcast licensee’s parent,¹⁷ such as here. To exercise in a meaningful way the discretion conferred by statute, the Commission must receive detailed information from the applicant sufficient for the Commission to make the public interest finding the statute requires.¹⁸

III. DISCUSSION

7. *Foreign Ownership Declaratory Ruling.* We find that grant of this unopposed Petition is in the public interest. Specifically, we find that grant of the Petition is likely to: (1) increase the likelihood of continued service to the Station’s community by authorizing the assignment of the Station’s license to a company owned by individuals who are ready, willing, and able to operate the Station based on their extensive broadcasting experience; (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.

8. As stated above, the Petitioner proposes 100 percent foreign ownership of Border Media, LLC, which would be the sole owner of BML, the proposed new licensee of WRGR(FM). Following the procedures outlined in the *2013 Broadcast Clarification Ruling* and *2016 Foreign Ownership Order*, we have consulted with the relevant Executive Branch agencies with expertise on issues related to national security, law enforcement, foreign policy, and trade policy.¹⁹ The Executive Branch agencies have filed a letter with the Commission stating that they have no objection to grant of the

¹⁵ See *2013 Broadcast Clarification Order*, 28 FCC Rcd at 16251, para. 14; *2016 Foreign Ownership Order*, 31 FCC Rcd at 11277, para. 6.

¹⁶ *2013 Broadcast Clarification Order*, 28 FCC Rcd at 16249-50, para. 11. 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.” *Id.* at 10.

¹⁷ *2016 Foreign Ownership Order*, 31 FCC Rcd at 11282, para. 15.

¹⁸ *2013 Broadcast Clarification Order*, 28 FCC Rcd at 16250, para. 11. Following the issuance of the *2013 Broadcast Clarification Ruling*, the Commission granted a petition for declaratory ruling filed by Pandora Radio LLC, a publicly traded company, to exceed the 25 percent foreign ownership benchmark set out in Section 310(b)(4). *Pandora Radio LLC Petition for Declaratory Ruling Under Section 310(b)(4) of the Communications Act of 1934, as Amended*, Declaratory Ruling, 30 FCC Rcd 5094, 5095-96, para. 4 (2015) (*Pandora Declaratory Ruling*), *recon denied*, 30 FCC Rcd 10570 (2015). Subsequently, the Bureau granted two petitions for declaratory ruling allowing aggregate foreign investment of 49 percent in the controlling U.S. parent companies of two broadcast licensees, and a petition for declaratory ruling permitting 100 percent foreign ownership of the controlling U.S. parent company of a broadcast licensee. See *Univision Holdings, Inc.*, Declaratory Ruling, 32 FCC Rcd 6 (2017) (*Univision Declaratory Ruling*) (permitting aggregate foreign ownership of 49 percent voting and equity interests); *Hemisphere Media Group, Inc.*, Declaratory Ruling, 32 FCC Rcd 718 (2017) (*Hemisphere Declaratory Ruling*) (permitting up to 49.99 percent aggregate foreign ownership); *Frontier Media*, Memorandum Opinion and Order and Declaratory Ruling, 32 FCC Rcd 1427 (2017) (*Frontier Declaratory Ruling*) (permitting 100 percent foreign ownership of the licensee’s parent company). See also *Corvex Master Fund LP*, Declaratory Ruling, 32 FCC Rcd 1352 (2017) (*Corvex Declaratory Ruling*) (permitting Corvex to increase its non-controlling voting and equity interest in Pandora up to 14.99 percent); *Grupo Multimedia LLC*, Declaratory Ruling and Memorandum Opinion and Order, 2018 WL 2040290 (2018) (permitting 100 percent foreign ownership in the licensee’s parent company) (*Grupo Multimedia Declaratory Ruling*).

¹⁹ See, e.g., *Pandora Declaratory Ruling*, 30 FCC Rcd at 5096, para. 5.

request and have not requested that we impose any conditions on grant.²⁰

9. Accordingly, upon review of the facts and circumstances set out in the Petition, and pursuant to the procedures adopted in the *2016 Foreign Ownership Order*, we find that the public interest would not be served by prohibiting foreign ownership of Border Media LLC, the controlling U.S. parent of BML, the proposed new licensee of WRGR(FM), in excess of the 25 percent benchmark in Section 310(b)(4) of the Act. Specifically, this *Declaratory Ruling* grants, pursuant to Section 1.5000(a) of the rules, the Petitioner's request for specific approval for 100 percent of the equity and voting interests in Border Media LLC to be held by two foreign citizens: Ricki Lee Shorthose (50 percent) and Hanna Kaleta (50 percent).²¹

10. This ruling is subject to the terms and conditions set forth in section 1.5004 of the Commission's rules, including the requirement to obtain Commission approval before foreign ownership of BML exceeds the terms and conditions of this ruling. If, at any time, BML 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, 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.²² BML and its controlling U.S. parent, Border Media LLC, will be subject to enforcement action by the Commission for such non-compliance, including an order requiring divestiture of the foreign investment.

11. *Assignment of License Application.* Following our routine processing procedures, we have reviewed the subject Application for compliance with the various statutory and regulatory requirements relating to assignment of license applications. Other than the foreign ownership issue addressed above, the record does not raise any issues that might preclude grant. Notably, the Application is unopposed. We conclude that Radio Lake Placid, Inc. is qualified to assign the Station's license, BML is qualified to hold the Station's license, and grant of the Application is consistent with the public interest, convenience, and necessity under Section 310(d) of the Act.²³

IV. 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 Border Media Licenses LLC IS GRANTED to the extent specified in this *Declaratory Ruling* and subject to the conditions specified herein.

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 application for the assignment of license of WRGR(FM), Tupper Lake, New York, from Radio Lake Placid, Inc. to Border Media Licenses LLC (File No. BALH-20180209ABO) IS GRANTED.

²⁰ See Letter from Sanchitha Jayaram, Chief, Foreign Investment Review Staff, National Security Division, U.S. Department of Justice, to Marlene H. Dortch, Secretary, FCC (July 24, 2018) (on file in MB Docket No. 18-66).

²¹ See 47 CFR § 1.5000(a).

²² See, e.g., *Pandora Declaratory Ruling*, 30 FCC Rcd at 5103, para. 23. Subsequent actions taken by or on behalf of BML to remedy non-compliance shall not relieve it of the obligation to notify the Commission of the circumstances (including duration) of non-compliance.

²³ 47 U.S.C. § 310(d).

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

FEDERAL COMMUNICATIONS COMMISSION

Albert Shuldiner
Chief, Audio Division
Media Bureau