

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

Applications of)	
)	
Six Indirect, Wholly-Owned Subsidiaries of)	File Nos.
Liberman Broadcasting, Inc., as Debtors-in-)	BALCDT-20190605ABA <i>et al.</i>
Possession of FCC Licensees,)	
)	
And)	
)	
Those Same Licensees as Non-Debtors-in-)	
Possession)	
)	
For Assignment of Licenses)	

PETITION FOR TEMPORARY AND LIMITED WAIVER

Six indirect, wholly-owned subsidiaries of Liberman Broadcasting, Inc., Debtor-in-Possession (“LBI”), are currently operating as debtors-in-possession of FCC licenses (the “LBI Licensees”), under the supervision of the Bankruptcy Court for the District of Delaware (“Bankruptcy Court”), and have sought FCC consent the assignment of the licenses held by the LBI Licensees to those same licensees as non-debtors in possession on FCC Form 314 applications filed on June 5, 2019 (the “Applications”).¹ As described further in the Applications and below, it is contemplated that, following the emergence of LBI and the LBI Licensees (collectively, the “LBI Debtors”) from bankruptcy, LBI will be wholly owned by two limited liability companies organized under the laws of Delaware (the “SLF Parties”). Pursuant to Section 1.3 of the Commission’s rules, the SLF Parties respectfully seek a temporary and limited

¹ The LBI Licensees, along with the file numbers for the applications, are set forth in Appendix 1.

waiver of Section 1.5000(a)(1) of the Commission's rules to the extent necessary. Grant of this waiver will permit the LBI Debtors to emerge from bankruptcy *before* filing any petition for declaratory ruling that may be required with respect to foreign ownership exceeding the cap contained in section 310(b)(4) of the Act.² Specifically, the SLF Parties request that they be allowed to file such a petition no later than 30 days following closing on the LBI reorganization plan that has been approved by the Bankruptcy Court and that has been submitted for approval to the Commission.³

BACKGROUND

As set forth more fully in the transaction description, the Applications collectively request Commission consent to the assignment of various broadcast licenses held by the LBI Licensees which, together with LBI are currently being operated under the protection of Chapter 11 of the U.S. Bankruptcy Code in consolidated cases before the Bankruptcy Court,⁴ from the LBI Licensees, as debtors in possession, to those same licensees as non-debtors in possession following their emergence from bankruptcy. On April 17, 2019, the LBI Debtors received approval of the *Third Amended Joint Chapter Plan of Reorganization of LBI Media, Inc. and Its Affiliated Debtors* [D.I. 839] (the "Plan") from the Bankruptcy Court.⁵

² 47 U.S.C. § 310(b)(4).

³ In the alternative, to the extent that a petition for declaratory ruling is not necessary once the post-bankruptcy structure is final, the licensee will submit a showing demonstrating compliance with the Commission's foreign ownership rules. Likewise, should the Commission or the Media Bureau state in the interim that it will not treat prepaid warrants as equity, the licensee will not submit a petition for declaratory ruling.

⁴ See *In re LBI Media, Inc. et al.*, Case No. 1:18-bk-12655 (Chapter 11) (Bankr. D. Del.) (Jointly Administered).

⁵ See *id.*

In order to comply with the Commission's rules, the first lien holder HPS Investment Partners, LLC ("HPS") and its affiliates and funds (collectively, the "HPS Parties") will internally reorganize to separate their primarily foreign-owned investment vehicles from primarily U.S.-owned investment vehicles. Following the completion of these transactions, upon emergence from bankruptcy, 100-percent of the voting stock in LBI ("New Equity Interests") will be held as follows:

- SLF LBI US Holdings I, LLC ("SLF LBI I") (a Delaware limited liability company), will hold 41.9 percent of the New Equity Interests;
- SLF LBI US Holdings II, LLC ("SLF LBI II," and together with SLF LBI I, the "SLF Parties") (a Delaware limited liability company), will hold 41.5 percent of the New Equity Interests; and
- The remaining New Equity Interests will be distributed to other HPS Parties, none of which will individually hold an attributable interest in LBI.

In order to isolate alien shareholders and to facilitate the emergence from bankruptcy, other HPS parties will receive pre-paid warrants, rather than stock. These warrants carry no voting rights and cannot be exercised without securing any necessary Commission consent. The HPS Parties, in their capacities as first lien holders, each voted on whether to approve or reject the Plan. As explained above, however, because the HPS parties will receive pre-paid warrants rather than stock, they are not identified in the applications as attributable parties.

REQUEST FOR WAIVER

The SLF Parties believe that the structure described in the applications fully complies with the Commission's rules, including its limitations on foreign ownership. We understand however, that the Commission may decide to treat pre-paid warrants as equity in the foreign

ownership context, which could place the LBI Licensees over the relevant foreign ownership limits specified in 47 U.S.C. § 310(b)(4). In the event of such a ruling, a petition for declaratory ruling under 47 C.F.R. § 1.5000(a)(1) would be required with respect to the foreign ownership of SLF LBI I, SLF LBI II, and other HPS Parties that will receive warrants that, if exercised, would give them a current interest in the LBI Licensees.⁶ Yet submitting such a petition *concurrently* with the applications would delay the LBI Debtors' emergence from bankruptcy for months at a minimum—and possibly longer. Accordingly, the SLF Parties seek a temporary waiver that would permit them to file any petition for declaratory ruling that may be required *after* approval of the Applications and the LBI Debtors' emergence from bankruptcy.

The Commission may waive its rules for good cause shown.⁷ Here, the good cause consists of “facilitating the successful resolution of a bankruptcy proceeding,”⁸ which raises very

⁶ 47 C.F.R. § 1.5000(a)(1) (“A broadcast, common carrier, aeronautical en route or aeronautical fixed radio station licensee or common carrier spectrum lessee shall file a petition for declaratory ruling to obtain Commission approval under section 310(b)(4) of the Act, and obtain such approval, before the aggregate foreign ownership of any controlling, U.S.-organized parent company exceeds, directly and/or indirectly, 25 percent of the U.S. parent's equity interests and/or 25 percent of its voting interests. An applicant for a broadcast, common carrier, aeronautical en route or aeronautical fixed radio station license or common carrier spectrum leasing arrangement shall file the petition for declaratory ruling required by this paragraph at the same time that it files its application.”).

⁷ 47 C.F.R. § 1.3 (“Any provision of the rules may be waived by the Commission on its own motion . . . if good cause therefor is shown”); *Northeast Cellular Tel. Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990) (“The FCC may exercise its discretion to waive a rule where particular facts would make strict compliance inconsistent with the public interest.”); *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969) (The Commission may take into account considerations of hardship, equity, or more effective implementation of overall policy on an individual basis).

⁸ *Stanford Springel As Chapter 11 Tr. for the Bankr. Estate of Innovative Commc'n Corp., Transferor & Assignor, & Nat'l Rural Utilities Coop. Fin. Corp. & Its Subsidiaries, Transferees & Assignees*, 24 FCC Rcd. 14360, 14369 ¶ 19 (2009) (“*Innovative Order*”); *Applications for Consent to the Assignment and/or Transfer of Control of Licenses; Adelphia Commc'ns Corp., (& Subsidiaries, Debtors-in-Possession), Assignors, to Time Warner Cable Inc. (Subsidiaries), Assignees; Adelphia Commc'ns Corp., (& Subsidiaries, Debtors-in-*

different public interest considerations than an ordinary-course license transfer or assignment.

Here, and as noted above, the LBI successor entities will emerge from the bankruptcy proceeding pursuant to a process supervised and administered by the Bankruptcy Court, and in accordance with applicable federal and state bankruptcy and insolvency laws. The Bankruptcy Court's equitable powers and role in overseeing the process and approving the Plan represents a significant and substantive difference from the situation in which warrants are issued in the context of a privately-negotiated license acquisition.

- Bankruptcy law and the rules of the bankruptcy process constrain the flexibility that a company and its various stakeholders would otherwise have in the privately-negotiated context to implement changes to the company's capital structure. Here, the Bankruptcy Court closely supervised the plan of reorganization process, including conducting a multi-day trial regarding approval of the Plan and requesting that the Applicants and other parties in interest enter into a bankruptcy judge-supervised mediation process in connection with the Plan.
- Unlike a privately-negotiated transaction, the bankruptcy process is open to diverse participants in a court-supervised setting, including secured and unsecured debt holders, trade creditors, vendors, stockholders, government entities, and any other parties with claims of interest. For example, in addition to parties with direct claims or interests in the Applicants, the Office of the United States Trustee (the "U.S. Trustee") and the Official

Possession), Assignors & Transferors, to Comcast Corp. (Subsidiaries), Assignees & Transferees; Comcast Corp., Transferor, to Time Warner Inc., Transferee; Time Warner Inc., Transferor, to Comcast Corp., Transferee, Memorandum Opinion & Order, 21 FCC Rcd. 8203, 8323 ¶ 282 (2006) ("Adelphia Order") (citing WorldCom, Inc. & its Subsidiaries (Debtors-in-Possession), Transferor, & MCI, Inc., Transferee, Memorandum Opinion & Order, 18 FCC Rcd. 26484, 26503 ¶ 29 (2003) ("WorldCom Order"))).

Committee of Unsecured Creditors (the “Creditors’ Committee”), appointed by the U.S. Trustee in the Applicants’ chapter 11 cases, both played active roles in the Applicants’ chapter 11 cases, including with respect to formulation of and approval of the Plan under the supervision of the Bankruptcy Court. The Creditors’ Committee maintains a publicly-accessible website in connection with the chapter 11 cases for the benefit of all unsecured creditors of the Applicants. *See*

<https://omnimgt.com/sblite/?clientId=CsgAAncz%252b6Z770Fk2FMdCmIIHpVMaHk%252b%252f0tSnjllILDto25dQZbNYvn3WqS0bFJCF%252fNEguserA%253d>.

- Bankruptcy restructurings utilize open dockets where the public has access to the pleadings and filings in real time. For example, all pleadings and filings made in connection with the Applicants’ chapter 11 cases are made accessible to the public by the Federal Judiciary at www.pacer.gov. In addition, in connection with their chapter 11 cases, the Applicants’ maintain a website where all pleadings and filings are made accessible to the public at no cost. *See* <https://dm.epiq11.com/case/LBM/info>.
- In a bankruptcy restructuring, warrants and other securities or debt instruments are typically issued to stakeholders who had a pre-existing debt or equity interest in the predecessor-in-bankruptcy entity in conversion of that debt or equity. In this case, the Plan contemplates issuance of warrants, debt instruments, and common stock to holders of the LBI Licensees’ predecessor-in-bankruptcy’s pre-existing funded indebtedness.
- Creditors receiving equity or debt instruments in bankruptcy presumably made their prior investment, financing, or contractual commitments in the licensee in transactions that complied with the Commission’s reporting and ownership rules.

Grant of this request would be in the public interest because it would expedite LBI's emergence from the bankruptcy process consistent the Commission's stated practice to accommodate federal bankruptcy law when doing so will not unduly interfere with its public interest obligations under the Act.⁹ "It is the Commission's policy to support the bankruptcy laws, and where possible to accommodate them in a manner that is consistent with the Act."¹⁰ Facilitating successful emergence from bankruptcy "advances the public interest by providing economic and social benefits, especially the compensation of innocent creditors."¹¹ In this case, grant of the requested waiver will permit LBI and its subsidiaries to emerge from bankruptcy more quickly, which in turn will enable LBI to devote its entire focus on improving service to its viewers and listeners.

At the same time, grant of this request will not interfere with the Commission's public interest obligations because: (1) the SLF Parties will file a petition for declaratory ruling within 30 days after closing on the proposed transaction and will accept as a condition of grant the filing of any such petition,¹² (2) if the Commission ultimately does not deem the warrants to be equity,

⁹ *Maritime Communications/Land Mobile, LLC*, 31 FCC Rcd 13729, 13737-38 (2016); *LaRose v. FCC*, 494 F.2d 1145, 1146-48 & n.2 (D.C. Cir. 1974).

¹⁰ *Innovative Order* at 14369 ¶ 19. *See also WorldCom Order* at 26503 ¶ 29 (citing *Mobilemedia Corp., et al.*, Memorandum Opinion & Order, 14 FCC Rcd. 8017, 8018 ¶ 4 (1999); *Space Station Sys. Licensee, Inc.*, Memorandum Opinion & Order, Order & Authorization, 17 FCC Rcd. 2271, 2286-87 ¶ 34 (Int'l Bur. 2002) ("Because this transaction permits the Iridium system to emerge from bankruptcy and continue operations, the competitive impact is likely to be beneficial."); *Orbital Commc'ns Corp.*, Order & Authorization, 17 FCC Rcd. 4496, 4504 ¶ 15 (Int'l Bur. 2002) ("Because this transaction permits the [licensee] to emerge from bankruptcy and continue operations, the competitive impact will be beneficial. . . . Successful emergence from bankruptcy is critical to the continued operation and expansion of the ORBCOMM system.").

¹¹ *Innovative Order* at 14369 ¶ 19.

¹² The timing of the filing is analogous to that set out in the process for filing remedial petitions for declaratory ruling in 47 C.F.R. § 1.5004(f)(3).

the warrant holders cannot convert the warrants to equity until such time as the Commission grants that petition, and (3) the use of pre-paid warrants in this context is solely to facilitate the LBI Debtors' emergence from bankruptcy.

* * *

For the reasons set forth above, the Commission should grant a limited and temporary waiver pursuant 47 C.F.R § 1.3, of any requirement that may apply under 47 C.F.R.

§1.5001(a)(1) to file a petition for declaratory ruling to obtain Commission approval, and to obtain such approval, prior to exceeding the cap on foreign investment specified 47 U.S.C. § 310(b)(4). The SLF Parties request that they instead be allowed to file a petition for declaratory ruling 30 days following closing on the LBI reorganization plan that has been approved by the Bankruptcy Court and that has been submitted for approval to the Commission.

Respectfully submitted,



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July 2, 2019

Appendix 1
List of Applicants and File Numbers

- LBI Radio License LLC, debtor-in-possession (BALFTB-20190605AAT; BALH-20190605AAR; BALH-20190605AAS; BALH-20190605AAU; BALH-20190605AAV; BALH-20190605AAW; BAL-20190605AAQ)
- Liberman Broadcasting of Houston License LLC, debtor-in-possession (BALH-20190605AAY; BALH-20190605AAZ; BALH-20190605ABA; BALH-20190605ABB; BAL-20190605ABC)
- KZJL License LLC, debtor-in-possession (BALCDT-20190605ABJ)
- KRCA License LLC, debtor-in-possession (BAL-20190605ABV; BAL-20190605ABW; BAL-20190605ABX; BAL-20190605ABZ; BALCDT-20190605ABM; BALCDT-20190605ABN; BALCDT-20190605ABY; BAL-20190605ABT; BALDVL-20190605ABO; BAL-20190605ABP; BAL-20190605ABQ; BAL-20190605ABR; BAL-20190605ABS; BAL-20190605ABU)
- Liberman Television of Dallas License LLC, debtor-in-possession (BALCDT-20190605ABL)
- Liberman Broadcasting of Dallas License LLC, debtor-in-possession. BALH-20190605ABD; BALH-20190605ABE; BALH-20190605ABF; BALH-20190605ABH; BAL-20190605ABG