

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

In the Matter of)
America-CV Station Group, Debtor-in-Possession)
(Transferor))
And)
America-CV Station Group, Inc.)
(Transferee))
Applications for Consent to Transfer Control of) File Nos. BTCCDT-20200821AAH, AAJ,
Licenses of Stations WJWN-TV, San Sebastian,) AAK, AAL; BTC-20200821AAI
Puerto, Rico; WJAN-CD, Miami, Florida; WIRS,) Fac. ID Nos. 58342, 60165, 39887, 58340,
Yauco, Puerto Rico; WJPX, San Juan, Puerto Rico;) 58341
and WKPV, Ponce, Puerto Rico.)

ORDER

Adopted: April 14, 2021

Released: April 14, 2021

By the Chief, Video Division:

I. INTRODUCTION

1. The Video Division conditionally grants the above-captioned applications (Applications) seeking Commission consent to the transfer of control of broadcast licenses held by America-CV Station Group, Inc., Debtor-in-Possession, to America-CV Station Group, Inc. (collectively with America-CV Station Group, Inc., Debtor-in-Possession, ACV), which will be the reorganized licensee following exit from bankruptcy. ACV has also requested a temporary and limited waiver of section 1.5000(a)(1) of the Commission's rules to permit it to emerge from bankruptcy before filing any petition for declaratory ruling, which would allow ACV to aggregate foreign ownership in excess of the 25% benchmark set forth in section 310(b)(4) of the Communications Act of 1934, as amended (Act). The applications and the

1 47 CFR § 1.5000(a)(1) (providing that an applicant for a broadcast station license shall file a petition for declaratory ruling to exceed the aggregate foreign ownership benchmark set forth in section 310(b)(4) of the Act "at the same time that it files its application").

2 47 U.S.C. § 310(b)(4).

waiver request are unopposed. We grant the temporary waiver but condition grant of the Applications on the filing of a petition for declaratory ruling within 30 days of the closing of the transaction.

II. BACKGROUND

2. *Bankruptcy and Description of Transaction.* ACV is currently operating under protection of Chapter 11 of the United States Bankruptcy Code before the United States Bankruptcy Court for the Southern District of Florida (Bankruptcy Court).³ On June 3, 2020, the Bankruptcy Court issued its Order Confirming Debtors' Plan of Reorganization as Modified (Confirmation Order),⁴ approving ACV's Chapter 11 Plan of Reorganization (Plan), and permitting ACV to complete its restructuring and emerge from bankruptcy subject to, among other things, Commission consent to the Applications.⁵ Under the terms of the Plan and the related modification, all pre-bankruptcy equity interests in ACV as debtor-in-possession shall be cancelled and extinguished.⁶ Simultaneously, ACV will issue 100% of its New Equity Interests⁷ to Vasallo TV Group, LLC (Vasallo TV), making Vasallo TV the sole shareholder of ACV. Vasallo TV is a wholly-owned subsidiary of Top Products Investments, Inc. (Top Products), a corporation organized under the laws of Panama.⁸ Top Product's sole owner will be Carlos Vasallo, a citizen of Spain. Additionally, all New Equity Interests distributed at emergence from bankruptcy will be voting interests.

3. *Waiver Request.* With the instant Applications, Applicants seek "a temporary and limited waiver of Section 1.5000(a)(1) of the Commission's rules to permit ACV's emergence from bankruptcy before the Commission considers its Petition for Declaratory Ruling to increase ACV's indirect foreign ownership interests in excess of the 25% benchmark set forth in Section 310(b)(4) of the [Act]."⁹ Specifically, ACV requests that it be allowed to file a petition for declaratory ruling for approval to exceed the foreign ownership benchmark no later than 30 days after closing on the ACV reorganization following grant of the Applications by the Commission.¹⁰ ACV contends that grant of the waiver would serve the public interest by facilitating the emergence of ACV from the bankruptcy process in a manner

³ The Commission consented to the debtor-in-possession status of ACV on July 17, 2019. File No. 20190618AAK.

⁴ The Bankruptcy Court initially approved ACV's reorganization plan on February 2, 2020; however, ACV later moved to modify the original reorganization plan and, thereafter, the Bankruptcy Court granted ACV's requested modification and issued the June 3, 2020 Confirmation Order.

⁵ See Applications, Attach. 6, Ex. C.

⁶ The pre-bankruptcy equity interests in ACV that are subject to cancellation and extinguishment by the Plan are held by: (1) America Teve Holdings, Inc.; (2) Okeechobee Television Corp.; and (3) Promisa, Inc. See Applications, Attach. 6, at 1.

⁷ "New Equity Interests" refers to the new equity interests in ACV that will be issued upon its emergence from bankruptcy. See Applications, Attach. 6, Ex. C.

⁸ ACV initially filed a petition for declaratory ruling but, on advice of Commission staff, withdrew the petition for declaratory ruling for filing at a later date in order to cure defects.

⁹ Waiver Request at 1.

¹⁰ According to the Applicants, upon ACV's emergence from bankruptcy, its indirect foreign ownership interests for certain individuals and entities will increase from a combined pre-bankruptcy 21.9% to a post-bankruptcy 100.0%. *Id.* at 2.

consistent with the Commission's practice of accommodating federal bankruptcy law when doing so will not unduly interfere with the Commission's public interest obligations under the Act.¹¹

III. DISCUSSION

4. *Transfer of Control.* For the reasons discussed below, we find that grant of the unopposed Applications, conditioned upon the filing of a petition for declaratory ruling within 30 days of closing, is in the public interest. Section 310(d) of the Act provides that no station license shall be transferred or assigned until the Commission, upon application, determines that the public interest, convenience, and necessity will be served thereby.¹² In making this assessment, the Commission must first determine whether the proposed transaction would comply with the specific provisions of the Act, other applicable statutes, and the Commission's rules.¹³ If the transaction would not violate a statute or rule, the Commission considers whether it could result in public interest harms by substantially frustrating or impairing the objectives or implementation of the Act or related statutes.¹⁴ If the Commission is unable to find that the proposed transaction serves the public interest, or if the record presents a substantial and material question of fact as to whether the transaction serves the public interest, Section 309(e) of the Act requires that the applications be designated for hearing.¹⁵

5. Upon review of the record, we find that, with the waiver discussed below, grant of the proposed assignment would be in the public interest. Specifically, it is the Commission's longstanding practice to "support the bankruptcy laws, and where possible to accommodate them in a manner that is consistent with the Act."¹⁶ The Bankruptcy Court found that the Plan is "in the best interests of [interested parties]," and that the Plan "is the result of good faith, arms-length negotiations" and "was proposed by [ACV] in good faith and not by any means forbidden by law."¹⁷ The public interest is further served because prompt emergence from bankruptcy is critical to the continued operation of the Stations, and facilitating prompt emergence "advances the public interest by providing economic and social benefits, especially including the compensation of innocent creditors."¹⁸ For these reasons, we find that the assignment of the broadcast licenses held by America-CV Station Group, Inc., Debtor-in-

¹¹ *Id.* at 3.

¹² 47 U.S.C. § 310(d).

¹³ *See, e.g., SBC Communications Inc. and AT&T Corp. Applications for Approval of Transfer of Control*, WC Docket No. 05-65, Memorandum Opinion and Order, 20 FCC Rcd 18290, 18300 para. 16 (2005).

¹⁴ *Id.*

¹⁵ 47 U.S.C. § 309(e); *see also General Motors Corporation and Hughes Electronics Corporation, Transferors, and the News Corporation Limited, Transferee*, 19 FCC Rcd 473, 483, para. 15 n.49 (2004); *Application of EchoStar Communications Corporation, General Motors Corporation, and Hughes Electronics Corporation and EchoStar Communications Corporation*, Hearing Designation Order, 17 FCC Rcd 20559, 20574, para. 211 (2002).

¹⁶ *Stanford Springel As Chapter 11 Trustee for the Bankruptcy Estate of Innovative Communication Corporation, Transferor and Assignor, and National Rural Utilities Cooperative Finance Corporation and Its Subsidiaries, Transferees and Assignees*, 24 FCC Rcd 14360, 14369, para. 19 (WCB/MB/WTB/IB 2009); *see also LaRose*, 494 F.2d at 1146 n.2 (in applying its policies where an application arises from bankruptcy, the Commission should consider "the public interest in the protection of innocent creditors").

¹⁷ *See Applications*, Attach. 6, Ex. C.

¹⁸ *Worldcom, Inc.*, 18 FCC Rcd at 26503, para. 29.

Possession, from the licensee, as debtor in possession, to the same licensee, as non-debtor in possession, is in the public interest, and we therefore conditionally grant the Applications.

6. *Waiver.* For the reasons discussed below, we grant the unopposed waiver requested by ACV. The Commission's rules may be waived for good cause shown.¹⁹ Waiver of the Commission's rules is appropriate only if special circumstances warrant a deviation from the rule and such deviation will serve the public interest.²⁰ The Commission may exercise its discretion to waive a rule where the particular facts make strict compliance inconsistent with the public interest.²¹ It may also take into account considerations of hardship, equity, or effective implementation of overall policy on an individual basis.²²

7. As noted above, ACV has requested a temporary and limited waiver of section 1.5000(a)(1) of the Commission's rules, which requires an applicant for a broadcast station license to file a petition for declaratory ruling to exceed the aggregate foreign ownership benchmark set forth in section 310(b)(4) of the Act "at the same time that it files its application" for transfer of control.²³ We find that the request is well supported. It is the Commission's longstanding practice to accommodate federal bankruptcy law when doing so will not unduly interfere with its public interest obligations under the Act.²⁴ Likewise, 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."²⁵ Given the aforementioned findings of the Bankruptcy Court, prompt emergence from bankruptcy is critical to the continued operation of the Stations, and facilitating prompt emergence "advances the public interest by providing economic and social benefits, especially including the compensation of innocent creditors."²⁶ Moreover, grant of the waiver effectively provides interim section 310(b)(4) authority only, in order to enable the prompt emergence of ACV from bankruptcy, while preserving the Commission's ability to review and rule on ACV's foreign ownership following such emergence.²⁷ In this case, deferring emergence from bankruptcy pending that review would likely require substantial delay that would otherwise frustrate the Commission's foregoing policy

¹⁹ 47 CFR § 1.3.

²⁰ *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969) (*WAIT Radio*); *Network IP, LLC v. FCC*, 548 F.3d 116, 125-128 (D.C. Cir. 2008).

²¹ *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990).

²² *WAIT Radio*, 418 F.2d at 1157.

²³ 47 CFR § 1.5000(a)(1).

²⁴ *Maritime Communications/Land Mobile, LLC*, 31 FCC Rcd 13729, 13737-38 (2016); *see also LaRose v. FCC*, 494 F.2d 1145, 1146 n.2 (D.C. Cir. 1974).

²⁵ *Stanford Springel As Chapter 11 Trustee for the Bankruptcy Estate of Innovative Communication Corporation, Transferor and Assignor, and National Rural Utilities Cooperative Finance Corporation and Its Subsidiaries, Transferees and Assignees*, 24 FCC Rcd 14360, 14369, para. 19 (WCB/MB/WTB/IB 2009).

²⁶ *Worldcom, Inc.*, 18 FCC Rcd 26484, 26503, para. 29 (2003); *see also LaRose*, 494 F.2d at 1146 n.2.

²⁷ *Mobile Satellite Ventures Subsidiary LLC and SkyTerra Communications Inc., Petition for Declaratory Ruling Under Section 310(b)(4) of the Communications Act, as Amended*, Order and Declaratory Ruling, 23 FCC Rcd 4436, 4444, para. 18 (2008) (granting the petitioners authority to hold on an interim basis up to a non-controlling 49.99% equity and voting interest in SkyTerra Communications subject to and without prejudice to any action the Commission may take on the associated request for permanent authority).

of accommodating the policies of the federal bankruptcy laws.²⁸ Accordingly, in consideration of the specific circumstances before us, we grant the waiver request.

IV. CONCLUSION

8. For the reasons set forth above, we find that the applicants are fully qualified and conclude that the grant of the Applications, conditioned upon the filing of a petition for declaratory ruling within 30 days of closing on the transaction described therein, would serve the public interest.

V. ORDERING CLAUSES

9. Accordingly, **IT IS ORDERED** that the request for a temporary waiver of section 1.5000(a)(1) of the Commission's rules, 47 CFR § 1.5000(a)(1), **IS GRANTED**

10. **IT IS FURTHER ORDERED** that the above-captioned applications, File Nos. BTCCDT-20200821AAH, AAJ, AAK, AAL; BTC-20200821AAI, **ARE GRANTED**, conditioned upon the filing, no later than 30 days after closing of the transaction, of a petition for declaratory ruling to exceed the aggregate foreign ownership benchmark set forth in section 310(b)(4) of the Communications Act of 1934, as amended.

11. These actions are taken pursuant to section 0.61 and 0.283 of the Commission's rules, 47 CFR §§ 0.61, 0.283, and sections 4(i) and (j), and 310(d) of the Communications Act of 1934, as amended, 47 U.S.C. § 154(i), 154(j), 310(d).

FEDERAL COMMUNICATIONS COMMISSION

Barbara A. Kreisman
Chief, Video Division

²⁸ See *Fusion Connect, Inc., Debtor-In-Possession*, Public Notice, DA 20-43 (WCB 2020) (finding temporary and limited waiver of section 1.5000(a)(1) would effectively provide interim section 310(b)(4) authority only, in order to enable petitioner's prompt emergence from bankruptcy while preserving the Commission's ability to review and rule on its proposed foreign ownership upon emergence from bankruptcy); *see also id.* (stating that "facilitating successful and timely emergence from bankruptcy 'advances the public interest by providing economic and social benefits, especially including the compensation of innocent creditors'").