

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In re Applications of)	
)	
Alpha Media Licensee LLC Debtor in)	Lead File No. 0000138519
Possession for Assignment of Authorization)	Lead Call Sign: KAAN
to Alpha Media Licensee LLC)	Lead File No: 0000138678
)	Lead Call Sign: KHAR
)	
)	
)	
)	
Alpha 3E Licensee LLC Debtor in)	Lead File No. 0000138727
Possession for Assignment of Authorization)	Lead Call Sign: KATE
to Alpha 3E Licensee LLC)	Lead File No: 0000138774
)	Lead Call Sign: KFOR

To: Office of the Secretary
Attn: Audio Division, Media Bureau

PETITION TO DENY

Paul Stone (“Stone”), a minority member of Alpha Media Holdings LLC, petitions to deny the above captioned assignment applications (the “Assignment Applications”) of Alpha Media Licensee LLC Debtor in Possession and Alpha 3E Licensee LLC Debtor in Possession (collectively, “Alpha”).¹ Alpha is asking the Media Bureau to circumvent the Commission’s statutory responsibility to evaluate foreign investment in radio station licensees so that it can quickly emerge from bankruptcy. While it is certainly the Media Bureau’s prerogative to accommodate federal bankruptcy law, it owes absolutely no deference to a quick, prepacked bankruptcy. Stone respectfully submits that the public interest in knowing, understanding and

¹ Stone has standing to file this Petition because, as disclosed in the Assignment Applications, his economic interests in Alpha will be wiped out once the Assignment Applications are granted and consummated. *See, e.g., Paxon Management Corp.*, 22 FCC Rcd 22224, n. 2 (2007) (corporate shareholders’ allegations of economic injury entitled them to party-in-interest standing). The declaration of Paul Stone attesting to the information contained in this Petition is attached hereto as Exhibit 1.

evaluating Alpha's proposed foreign ownership pursuant to established Commission process, significantly outweighs any benefit of a quick emergence from bankruptcy.² For this reason, Stone respectfully requests that the Media Bureau deny Alpha's request for a waiver of Section 1.5001(a)(1) of the Commission's rules.

The Commission has a statutory responsibility under Section 310(b)(4) of the Communications Act to evaluate whether foreign interests presented for approval by a licensee are in the public interest.³ The Commission's public interest analysis considers national security, law enforcement, foreign policy, and trade policy issues that may be raised by the foreign ownership. The Commission coordinates as necessary and appropriate with the relevant executive branch agencies and accords deference to their expertise in identifying and interpreting issues of concern related to these matters. The Commission then makes an independent decision on whether the foreign interests presented for approval by the licensee are in the public interest.⁴

A little over four years ago, the Commission adopted a process whereby broadcast licensees could petition the Commission to exceed 25 percent foreign ownership benchmark in Section 310(b)(4).⁵ As part of this process, licensees are required to file a petition for declaratory ruling with detailed information demonstrating why the proposed foreign ownership

² The Assignment Applications provide limited substantive information on the proposed foreign investors. Based on the proposed structure charts attached to the Assignment Applications, the following foreign entities will have an interest in Alpha: MetLife Insurance K.K. (Japan); ICG North America; Holdings Ltd. (Cayman Islands); Intermediate Capital Group PLC (UK); MetLife, Inc. (US and undisclosed foreign ownership); Hamilton Lane Incorporated (US and undisclosed foreign ownership); Insulated Limited Partners (US and undisclosed foreign ownership); ICG FMC Limited (UK); ICG Global Investment UK Limited (UK); ICG Global Investment Jersey Limited (Jersey). In addition, the "Description of Transaction and Request for Waiver" exhibit at footnote 5 notes that warrants will also be issued to "foreign accounts managed by Brigade Capital Management, LP."

³ 47 U.S.C. § 310(b)(4).

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*, 31 FCC Rcd 11272, 11278 (2016) ("2016 Foreign Ownership Report and Order").

⁵ *Id.*

is in the public interest.⁶ As then Chairman Pai stated when the *2016 Foreign Ownership Report and Order* was adopted, “at the end of the day, the Commission’s rules in this area need to strike a balance. On the one hand, we should promote investment in the United States and make it easier for communications companies to access capital. But on the other hand, we must ensure that any specific foreign investment in this sector of our economy is in the public interest.”⁷ Alpha is asking the Media Bureau to essentially undercut the balance and sanctity of this new process by granting it a “temporary” waiver of the requirement to demonstrate that its proposed foreign ownership is in the public interest. Its stated reason is to accommodate federal bankruptcy law. However, why does bankruptcy law outweigh national security, law enforcement, foreign policy, and trade policy issues? Alpha may be able to demonstrate that these public interest factors are not implicated by its proposed foreign ownership. However, the key point is that the Commission and the public cannot make this determination because Alpha has not yet made its case. What Alpha is essentially asking the Commission to do is to forego its authority under the Communications Act and to “trust” Alpha that its proposed foreign ownership is in the public interest. This cannot be the result envisioned by the Commission when it adopted the *2016 Foreign Ownership Report and Order*. Since that time, the Commission has become more concerned about the increasing role of foreign actors and foreign governments in the ownership and programming of broadcast stations.⁸ The Commission has a statutory duty to evaluate foreign ownership of licensees and bankruptcy law should not outweigh this duty.

⁶ 47 CFR § 1.5001.

⁷ *2016 Foreign Ownership Report and Order* 11350.

⁸ See, e.g., *Sponsorship Identification Requirements for Foreign Government-Provided Programming*, Notice of Proposed Rule Making, 35 FCC Rcd 12099 (2020).

Alpha will no doubt argue that the Commission will have the opportunity to evaluate Alpha's foreign ownership when it files its petition for declaratory ruling. Alpha classified its request as a "temporary" waiver and submitted that the Commission will be able to fully evaluate its proposed foreign ownership when it files its petition for declaratory ruling *after* it has consummated the Assignment Applications. This framing of the waiver as "temporary" is misleading as there may be no easy path to "unring the bell" once the transaction is consummated. For example, what happens if the Commission determines that the proposed foreign ownership is not in the public interest? It can certainly order Alpha to come into compliance within a certain time period. However, the Bankruptcy Court has already approved the Plan and the Effective Date of the Plan is not contingent on a grant of the petition for declaratory ruling.⁹ Thus, Alpha presumably will have consummated the Assignment Applications and the bankruptcy process will be complete. How does Alpha then restructure to come into compliance with any Commission order? Additionally, what happens to the third parties (the creditors and listeners) that have relied and acted on the plan? Stone submits that an adverse ruling to Alpha's petition for declaratory ruling would harm innocent creditors and Alpha station listeners and impose significant additional administrative costs on the Alpha Debtors. This result would be contrary to Alpha's rationale for its waiver request.¹⁰ These are all questions that Alpha conveniently has not addressed in its waiver request.

⁹ The definition of "Effective Date" in the Confirmation Order attached to the Assignment Applications only conditions the Effective Date on FCC Interim Long Form Approval and not on a Petition for Declaratory Ruling. Article V.O also states that "The Debtors may file a Petition for Declaratory Ruling and FCC Second Long Form Application after the Effective Date and, if such filings are made prior to the Effective Date, their grant shall not be a condition to Consummation."

¹⁰ See p. 8 of the "Description of Transaction and Request for Waiver" exhibit.

Regarding the Liberman case cited by Alpha,¹¹ Stone submits that the Commission has not fully considered the implications of this and similar decisions. The Video Division, in its Conclusion in *Liberman* does two curious things. First, it conditions the grant of the assignment applications on the “filing” of a petition for declaratory ruling and not on the grant of such a petition.¹² Once the petition for declaratory ruling is filed the condition is met. Does this mean that, once the parties consummate the assignment and the 40 days for Commission reconsideration has passed, the assignment is final (presumably before the petition for declaratory ruling has been decided)? Second, the Video Division found that “the applicants are fully qualified.”¹³ How can it make a determination that the applicants are fully qualified if it has not reviewed and evaluated the proposed foreign ownership? Based on these conclusions, the result of the petition for declaratory ruling proceeding is seemingly preordained.

Stone recognizes that Section 1.5001(a)(1) of the Commission’s rules directs parties to file its petition for declaratory ruling at the same time it files its application.¹⁴ However, this is a prepackaged bankruptcy and Alpha has generally known its ownership structure since filing the bankruptcy.¹⁵ Thus, it has known that it would need to file a petition for declaratory ruling for

¹¹ See Description of the Transaction and Request for Waivers at note 11 (citing *Liberman Television of Dallas License LLC, Debtor-in-Possession et. al.*, 34 FCC Rcd 8543 (Med. Bur. 2019) (“*Liberman*”).

¹² *Id.* at 8551.

¹³ *Id.*

¹⁴ 47 CFR § 1.5001(a)(1).

¹⁵ See, e.g., JOINT PLAN OF REORGANIZATION OF ALPHA MEDIA HOLDINGS LLC AND ITS DEBTOR AFFILIATES UNDER CHAPTER 11 OF THE BANKRUPTCY CODE dated January 24, 2021. The Joint Plan includes the defined term “FCC Petition for Declaratory Ruling” which means “a filing that shall be submitted to the FCC by the Debtors or the Reorganized Debtors and, to the extent applicable, the appropriate Supporting Second Lien Noteholders, pursuant to 47 C.F.R. §§ 1.5000 et seq. for Reorganized Alpha Media Holdings LLC to exceed the 25 percent indirect foreign ownership benchmark contained in 47 U.S.C. § 310(b)(4).” Thus, Alpha was aware two months before it filed the Assignment Applications that it would be filing a Petition For Declaratory Ruling regarding its foreign ownership.

months.¹⁶ Yet, it waited until it filed the assignment applications to ask for the waiver of the requirement to file a petition for declaratory ruling. Why didn't Alpha file a petition for declaratory ruling earlier and ask for a waiver of the filing requirement and for expedited action? The pleading cycle for petitions for declaratory ruling is generally 45 days, which would be shorter than the pleading cycle for an opposed assignment application. Proceeding in this manner would have allowed the Media Bureau to consider a waiver of a filing date requirement to an earlier time rather than a waiver of the date to provide substantive information to the Commission.

Since the Assignment Applications were filed, the Media Bureau released a decision in another case involving foreign ownership of radio licenses.¹⁷ iHM Licenses, LLC ("iHM") had assignment applications pending for a number of radio stations when it learned of an investment that rendered it non-compliant with the Commission's foreign ownership rules. It then immediately filed a remedial petition for declaratory ruling. The Media Bureau, in granting the assignments before it ruled on the petition for declaratory ruling, held that iHM "did not solicit the non-compliant foreign investment and was not even aware of it ..."¹⁸ Neither of these factors are present in the instant case. Presumably, Alpha did solicit the foreign investment and it was certainly aware of it. In addition, Media Bureau in the *iHM Order* imposed significant conditions on the foreign interests. For example, the Media Bureau ordered that no foreign investor could attend any meetings of the board of directors, receive any non-public materials, or

¹⁶ *Id.*

¹⁷ *Mortenson Broadcasting Co. of Texas, Inc. and iHM Licenses, LLC For Consent to Assignment of Licenses, et. al.*, DA 21-360 (Med. Bur. 2021) ("*iHM Order*").

¹⁸ *Id.* at para 10.

have any role in or communication regarding day-to-day operations.¹⁹ Alpha has not in its waiver request agreed to these or any other conditions regarding the involvement of its foreign investors in Alpha.

For the reasons stated herein, Stone respectfully requests that the Media Bureau deny Alpha's request for a waiver of Section 1.5001(a)(1) of the Commission's rules. The Commission's public interest obligations significantly outweigh any benefit under bankruptcy law and the Commission has a statutory obligation under the Communications Act to determine if the proposed foreign ownership is in the public interest.

Respectfully submitted,

PAUL STONE

By: _____/s/_____
Scott Woodworth
Edinger Associates PLLC
1725 I Street NW, Suite 300
Washington, DC 20006

April 15, 2021

His Attorney

¹⁹ *Id.*

Exhibit 1
Declaration of Paul Stone

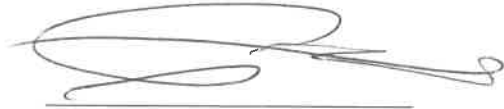
AFFIDAVIT OF PAUL STONE

I, Paul Stone, hereby declare as follows:

1. I am a minority member of Alpha Media Holdings LLC. I make this declaration in support of a Petition to Deny the assignment applications filed by Alpha Media Licensee LLC Debtor in Possession and Alpha 3E Licensee LLC Debtor in Possession.
2. I have read Petition to Deny and the facts recited there in are true and correct to the best of my knowledge, information and belief.

I certify under penalty of perjury that the following is true and correct.

April 14, 2021

A handwritten signature in black ink, appearing to be 'Paul Stone', written over a horizontal line.

Paul Stone

CERTIFICATE OF SERVICE

I hereby certify that on this 15th day April, 2021, I caused copies of the foregoing “**Petition to Deny**” to be mailed via first-class postage prepaid mail to the following:

Kathleen Kirby
Wiley Rein LLP
1776 K Street, NW
Washington, D.C. 20006

/s/
Scott Woodworth