

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

In the Matter of)
)
Process Reform for Executive Branch Review of) MB Docket No. 16-155
Certain FCC Applications and Petitions Involving)
Foreign Ownership)
)
)

**COMMENTS OF THE
NATIONAL ASSOCIATION OF BROADCASTERS**

I. INTRODUCTION AND SUMMARY

The National Association of Broadcasters (NAB)¹ hereby responds to a recent Public Notice in the Commission’s pending proceeding regarding executive branch review of some FCC applications involving foreign ownership. This Notice incorporated a recent Executive Order establishing the Committee for the Assessment of Foreign Participation in the United States Telecommunications Services Sector (Committee) into the record in this proceeding, sought comment on the Executive Order and asked parties to refresh the record.²

In 2016, the Commission requested comment on ways to improve the process for executive branch review of certain applications and petitions for declaratory ruling involving reportable levels of foreign investment (together, applications).³ The Commission also

¹ NAB is a nonprofit trade association that advocates on behalf of free local radio and television stations and broadcast networks before Congress, the Federal Communications Commission and other federal agencies, and the courts.

² See International Bureau Refreshes Record in Executive Branch Review Process Proceeding (IB Docket 16-155); Adds Executive Order 13913 into Record and Seeks Comment, Public Notice, DA No. 20-452 (Apr. 27, 2020) (Public Notice or Notice).

³ *Process Reform for Executive Branch Review of Certain FCC Applications and Petitions Involving Foreign Ownership*, Notice of Proposed Rulemaking, IB Docket No. 16-155, 31 FCC Rcd 7456 (2016) (NPRM).

sought comment on a letter from the National Telecommunications and Information Administration (NTIA), which, on behalf of the Executive Branch, urged the Commission to require applicants to include certain information and certifications as part of their applications to help ensure that the relevant departments and agencies have the material needed to promptly review their filings.⁴ NAB, both independently and together with some of its members, supported the Commission's proposals to make executive branch review more streamlined, time-limited and transparent, and proposed additional improvements to the process.⁵ Specifically, NAB proposed: (i) modifying the sample questions for broadcast applicants to eliminate questions that are irrelevant to broadcast operations or would result in the filing of duplicative material; (ii) taking certain steps to protect applicants' confidential information; and (iii) affording more time for applicants to respond to FCC or Executive Branch requests for additional information.

In these comments, NAB reiterates its support for a process more streamlined, time-limited and transparent than the current one, objectives NAB believes the Executive Order, coupled with Commission action in this proceeding, can foster. While NAB supports the use of standardized questions to gather information for the Committee's review, NAB also renews its suggestion that the Commission avoid inclusion of questions irrelevant to

⁴ See NPRM at ¶¶ 17-24 (citing Letter from the Honorable Lawrence E. Strickling, Assistant Secretary for Communications & Information, U.S. Department of Commerce, to Marlene H. Dortch, Secretary, FCC, Information and Certification from Applicants and Petitioners for Certain International Licenses and Other Applications, May 10, 2016 ("NTIA Letter")).

⁵ See Letter from Mace Rosenstein, Counsel to CBS Corporation, 21st Century Fox, Inc. and Univision Communications Inc., and Erin L. Dozier, NAB, to Marlene H. Dortch, FCC Secretary, IB Docket No. 16-155 (May 23, 2016) (Broadcaster Representatives Ex Parte); Comments of CBS Corporation, 21st Century Fox, Inc., Univision Communications Inc. and NAB, IB Docket No. 16-155 (Aug. 18, 2016) (Broadcaster Representatives Comments); Letter from Erin L. Dozier, NAB, to Marlene H. Dortch, FCC Secretary, IB Docket No. 16-155 (Nov. 7, 2016) (NAB Ex Parte).

broadcast applicants or likely to yield duplicative material, and again urges the FCC to take steps to protect confidentiality of applicants' submissions.

II. NAB SUPPORTS A TIME-LIMITED, TRANSPARENT AND STREAMLINED REVIEW PROCESS

NAB believes that the Executive Order can bring increased transparency and improved timeliness to the Executive Branch review process. Although the Commission proposed a more expeditious review process than the Executive Order (i.e., an initial review period of 90, rather than 120, days), the process outlined in the Executive Order is a clear improvement over both the current process and previous timelines proposed by the Executive Branch.⁶

Establishing standardized questions relevant to the industry segment at issue also will streamline the Executive Branch review process and improve its certainty and predictability. If applicants know the questions they will be asked during the review process, they can complete a significant amount of due diligence in advance of filing their applications, rather than learning what information is expected after their applications have been filed and referred to the Committee for review. Moreover, if the questions are standardized, applicants will gain expertise in responding to the questions, reducing the regulatory burdens of securing the approvals needed for foreign investment.

The Public Notice invites the Executive Branch to comment on "the effect of the Executive Order in this proceeding" and several other important issues, such as whether the Committee will make publicly available a standard set of questions and requests to applicants, and, if so, how applicants will be able to access them, and whether applicants

⁶ See Supplemental Comments of NTIA, IB Docket No. 16-155 (Nov. 7, 2016) (stating that the initial review period should be 180 days, with an initial extension period of 120-days and the possibility of a second extension).

would be expected to address the questions in their applications.⁷ NAB looks forward to learning the views of Executive Branch on these issues. NAB believes that the use of standardized, publicly available questions, developed with input from the record in this proceeding and FCC staff, will result in a more effective review process. These standardized questions should, of course, be relevant to the industry segment at issue. In its 2016 filings, NAB and other broadcasters urged the Commission not to require broadcasters to respond to certain proposed application questions that were either irrelevant to broadcast operations⁸ or duplicative of other material broadcasters must file.⁹ At the very least, questions and certifications relating to the operation of telecommunications networks should not be part of broadcaster applications or submissions to the Executive Branch.

The need to streamline the Executive Branch review process has become more pressing in light of the unprecedented economic challenges brought on by the COVID-19 pandemic, as a substantial portion of broadcasters' advertising revenue has declined as a

⁷ Public Notice at 2.

⁸ Broadcaster Representatives Ex Parte at 2 (certain categories of information sought in the NTIA letter “relate to matters that have nothing to do with broadcasting” because broadcasters do not own or control telecommunications networks, do not provide services to any sectors of critical U.S. infrastructure, do not have telecommunications intercept capabilities, and do not have compliance obligations under the Communications Assistance for Law Enforcement Act (CALEA)); Broadcaster Representatives Comments at 2-5.

⁹ Broadcaster Representatives Ex Parte at 2-3 (observing that broadcasters must already disclose extensive ownership information in their assignment/transfer of control applications and other applications, *citing* FCC Form 301 (Application for Construction Permit for Commercial Broadcast Station), FCC Form 314 (Application for Consent to Assignment of Broadcast Station Construction Permit or License), Form 315 (Application for Consent to Transfer Control of Corporation Holding Broadcast Station Construction Permit or License)); Broadcaster Representatives Comments at 2-5; see *also* 47 C.F.R. § 1.5001 (setting forth categories of information, including ownership disclosures, that must be included in petitions for declaratory ruling to exceed the foreign ownership limits).

result.¹⁰ Many of the local businesses who generally partner with broadcasters have ceased operations (at least temporarily) and have lost significant business due to COVID-19. Facing financial straits, they have been forced to slash their advertising budgets.¹¹ As a result, even while many Americans are tuning in to local stations in record numbers to stay informed and entertained,¹² stations are experiencing record lows in terms of advertising revenues, forcing stations to lay off or furlough employees, reduce salaries or even go silent.¹³ In this environment, some broadcasters have found themselves needing to convert debt securities,

¹⁰ NAB Comments, GN Docket No. 20-60 (Apr. 27, 2020) at 4, 17, 23-25, 39-41 (NAB Communications Marketplace Comments); NAB Reply Comments, GN Docket No. 20-60 (May 27, 2020) at 3-5, 30-31 (NAB Communications Marketplace Replies).

¹¹ *Id.* See also Interactive Advertising Bureau (IAB), *Coronavirus Ad Spend Impact: Brands, Agencies & Other Buyers* (Apr. 29, 2020) (IAB's April survey found that 37 percent of ad buyers said they had paused their advertising entirely, up from 24 percent of ad buyers in its March survey); Joe Mandese, *U.S. Ad Market Plummets 35% In April, Second Consecutive Month Of Faltering Demand*, MediaPost (May 21, 2020); Radio Ink, *Just How Bad Is The Ad Revenue Decline?* (May 7, 2020) (radio CEOs reporting revenue drops of 40-70 percent); Harry Jessell, *Magid: Local TV To Feel 'Devastating' Ad Impact*, TVNewsCheck (May 4, 2020) (research firm reports local TV ad revenue declines of 40-60 percent in the month of April; traditional sources of advertising for local TV are in financial straits, with 61 percent of them shut down and only 44 percent confident that they will reopen; full recovery likely to take much longer than 2008 recession); Wayne Friedman, *TV Station Groups See Massive Early Q2 Ad Declines Of 35% To 40%*, TVNewsDaily (May 15, 2020) (local TV executives observe that this advertising drop was "more severe and more rapid than the financial recession in 2008" and analysts anticipate that a full recovery may take even longer than the 2008 recession); Lillian Rizzo, *Local TV Sees Spike in Viewers, Drop in Ads in Coronavirus Crisis*, The Wall Street Journal (Apr. 3, 2020) ("We have more viewers than ever, but advertisers are unfortunately stuck in the same economic boat as many of us," said Patrick McCreery, president of the local media group of Meredith Corp., which owns 17 TV stations."); Gray Television observes that although some advertisers are taking advantage of the rising viewership, there is a net decline, with "more cancellations than new orders").

¹² NAB Communications Marketplace Comments at 39-41.

¹³ NAB Communications Marketplace Comments at 23-24, 39-41; NAB Communications Marketplace Replies at 5. See also Inside Radio, *April Saw A Big Spike In Stations Going Silent. Many Cited Coronavirus As The Culprit* (Apr. 29, 2020) (35 radio stations went dark in April, bringing the total number of stations off the air to 369); Al Tompkins, *TEGNA furloughs local TV news staffs, managers take temporary pay cut*, Poynter (Apr. 6, 2020) ("[TEGNA CEO Dave] Lougee said while the TV stations have seen big gains in audiences on all platforms, 'many businesses have decreased or in some cases pulled their current advertising and marketing campaigns because of COVID-19.'").

which may be held by entities considered foreign under the FCC's rules, into equity in order to avoid defaulting on their loans or otherwise adjust their capital structures. A streamlined Executive Branch review process will help broadcasters obtain the necessary approvals to maintain or secure investment during these unprecedented financial challenges without the burden of unnecessary transaction costs and delays.

Finally, as NAB observed in our previous filings,¹⁴ it is important for the Executive Branch review process to be truly streamlined so that broadcasters can realize the benefits of the Commission's unanimous decision to modernize its foreign ownership rules and policies for broadcasters.¹⁵ As Commissioner O'Rielly stated in supporting that Order, significant improvements to FCC review of proposals for foreign ownership for broadcasters would have little meaning if the Executive Branch can "hold up applications in a regulatory abyss."¹⁶ While the Executive Order creates time limitations and other helpful process improvements, leaving the door open to a potential "back and forth" about what materials need to be submitted by each applicant would undermine the increased certainty that the

¹⁴ Broadcaster Representatives Ex Parte at 2.

¹⁵ The modified rules and policies were designed to foster needed investment in the broadcast industry. *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) ("We believe these changes will facilitate investment from new sources of capital at a time of growing need for investment in this important sector of our nation's economy, while continuing to satisfy the requirements of Section 310 and the policies reflected in this Report and Order. We also find that adopting a standardized filing and review process for broadcast licensees' requests to exceed the 25 percent foreign ownership benchmark in Section 310(b)(4), as we have done for common carrier licensees, will provide the broadcast sector with greater transparency and more predictability, and reduce regulatory burdens and costs. As is the case with common carrier licensees, this standardized filing and review process will provide a clearer path for foreign investment in broadcast licensees that is more consistent with the U.S. domestic investment process, while continuing to protect important interests related to national security, law enforcement, foreign policy, trade policy, and other public policy goals."). *Id.* at 11273 ¶2.

¹⁶ *Id.* at 11351.

Executive Order could otherwise promote. A uniform set of published questions/certifications that are specific to the industry at issue will go a long way to establishing an efficient review process.

III. NAB URGES THE COMMISSION TO TAKE STEPS TO PROTECT COMPETITIVELY SENSITIVE INFORMATION

In previous comments, NAB and other broadcasters addressed the Commission's requests for comment on how to limit the disclosure of competitively sensitive information in connection with Section 301(b)(4) petitions. Broadcasters urged the Commission to ensure that, at a minimum, information designated as confidential by petitioners should be presumed to be confidential by both the Commission and the Executive Branch. We also stated that, if the Commission or the Executive Branch seeks to make any designated confidential information public, it should first be required to provide notice to the petitioner so that the petitioner has the opportunity to seek a protective order.¹⁷ NAB believes these proposed protections continue to be important and reiterates our previous request concerning circumstances where a broadcast petitioner may be required to disclose information to the Executive Branch that would not otherwise be required to be made available to the Commission or be subject to review by Commission staff (for example, information regarding non-voting equity holders). In such instances, NAB proposes that broadcast petitioners be permitted to exclude any such information from their FCC Section 310(b)(4) submissions and provide it directly to the Executive Branch.¹⁸

¹⁷ Broadcaster Representatives Comments at 7.

¹⁸ *Id.* In the NPRM, the Commission additionally proposed to establish a Network Outage Reporting Systems (NORS)-type portal for foreign ownership petitions and applications. *Id.* (citing NPRM at ¶ 27). NAB and other broadcasters did not object to the creation of such a database for Section 310(b)(4) petitions, but we urged the Commission to monitor its networks carefully and to update its database protocols regularly to ensure that confidential

IV. CONCLUSION

NAB supports a transparent, time-limited Executive Branch review process and believes that such review can be fostered by the Executive Order. We urge the Commission to work with the Executive Branch to develop standardized questions (with appropriate industry distinctions) to promote transparency, certainty and prompt review of applications involving foreign ownership. Standard questions will reduce transaction costs to applicants and speed review at a time when access to capital is critical for broadcasters struggling with unprecedented reductions in their advertising revenues.

Respectfully submitted,

**NATIONAL ASSOCIATION OF
BROADCASTERS**

1 M Street, SE
Washington, DC 20003
(202) 429-5430



Rick Kaplan
Jerianne Timmerman
Erin Dozier
Emily Gomes

June 18, 2020

information is properly secured. If the Commission is still considering a NORS approach, we again urge the exercise of caution to secure confidential information.