

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

In the Matter of
Univision Holdings, Inc.
and
Grupo Televisa S.A.B.
Petition for Declaratory Ruling
MB Docket No. 16-217

DECLARATORY RULING

Adopted: January 3, 2017

Released: January 3, 2017

By the Chief, Media Bureau:

I. INTRODUCTION

1. Univision Holdings, Inc. (Univision) and Grupo Televisa, S.A.B. (Grupo Televisa) (jointly Petitioners) filed a Petition for Declaratory Ruling (Initial Petition), requesting that the Commission find, pursuant to Section 310(b)(4) of the Communications Act of 1934, as amended (the Act), that the public interest would be served by permitting foreign ownership of Univision in excess of the 25 percent benchmark contained in that subsection. Petitioners request that the Commission permit foreign investors to own up to 49 percent of Univision's equity and 49 percent of its voting interests, including up to 40 percent of its equity and voting interest to be held by Televisa and its affiliates. The petition is unopposed. Upon consideration of the record, we grant the Petition as set forth below.

II. BACKGROUND

2. Existing Corporate Structure. Univision, a privately held Delaware corporation, is a multi-platform media company that serves the U.S. Hispanic market. It is the parent company of licensees that own and operate broadcast radio and television stations throughout the United States. Univision also operates multiple national broadcast and cable television networks, including Univision

1 The Petitioners also jointly filed a Supplemental Petition (Supplemental Petition) and Reply Comments in Support of Petition for Declaratory Ruling (Reply Comments). Univision separately filed a Request for Confidentiality and Public Supplemental Response (Univision Response). Televisa separately filed a Response to FCC Questions (Televisa Reponse) and a Request for Specific Approval (Televisa Request).

2 47 U.S.C. § 310(b)(4).

3 Initial Petition at 1.

4 Id.

5 The National Hispanic Foundation for the Arts, The National Hispanic Media Coalition, and the National Association of Latino Independent Producers all filed comments in support of the Petition.

6 Initial Petition at 3.

7 Id. A complete list of Univision's broadcast holdings is found at Supplemental Petition, Attachment 2.

Network, UniMás, and Galavisión.⁸ In addition to its Spanish-language programming, Univision has online services in English targeting the African American community and younger audiences interested in Latin culture.⁹

3. Televisa, a Mexican corporation that is publicly traded on the New York stock exchange, is a producer of Spanish language programming and a long time program provider to Univision and its affiliated stations.¹⁰ The Petitioners state that Televisa provides 35 percent of Univision's broadcast programming and that its programming reaches 92 percent of Hispanic households in the United States.¹¹

4. In 1997, Univision was acquired by a consortium of five private equity investors and their affiliates (the Investors).¹² The Investors are: Madison Dearborn Partners, LLC, which holds 20.5 percent of the voting interests and 18.9 percent of the equity of Univision; Providence Equity Partners, LLC, which holds 19.5 percent of the voting interests and 19 percent of the equity; Saban Capital Group, Inc., which holds 10.3 percent of the voting interests and 7.1 percent of the equity; Thomas H. Lee Partners, L.P., which holds 0 percent of the voting interests and 19 percent of the equity; and TPG Global, LLC, which holds 27.3 percent of the voting interests and 20.6 percent of the equity. All of the investors are U.S. organized entities and controlled by U.S. citizens.¹³ None of the Investors has an individual investor within the private equity entity with a greater than 5 percent voting interest.¹⁴ In 2014, an additional U.S. organized and controlled investor, Glade Brook Capital Partners, LLC, (Glade Brook) acquired 3.2 percent of Univision's voting interest and 2.2 percent of its equity.¹⁵ Univision states that Glade Brook is deemed attributable even though its interest is less than 5 percent because it has the right to designate one member of Univision's board of directors.¹⁶

5. In 2010, Televisa acquired an equity stake in Univision and debentures convertible into additional equity, subject to applicable laws and regulations and certain contractual limitations.¹⁷ Currently, Televisa, through a series of wholly owned subsidiaries, holds 14.4 percent of the voting interests and 10 percent of the equity of Univision.¹⁸ Televisa owns 100 percent of the voting interests and 100 percent of the equity of Grupo Telesistema, S.A. de C.V., which in turn owns 100 percent of the voting interests and 100 percent of the equity of Grupo Bissagio, S.A. de C.V., which owns 0 percent of the voting interests and 76 percent of the equity of Multimedia Telecom, S.A. de C.V. (Multimedia Telecom). At the same time Televisa directly owns 100 percent of the voting interests and 24 percent of the equity of Multimedia Telecom. Multimedia Telecom owns 14 percent of the voting interests and 10 percent of the equity in Univision.¹⁹ Televisa has sought specific approval for each of these entities to

⁸ Initial Petition at 3.

⁹ *Id.*

¹⁰ Initial Petition at 4. The Petitioners state that approximately half of Televisa's shares are U.S. owned. Supplemental Petition at 4. Televisa's U.S. ownership is held through American Depository shares, which foreign companies that have a primary listing on a non-U.S. stock exchange and a secondary listing on a U.S. exchange can use for U.S. trading. *Id.* at n.2

¹¹ *Id.*

¹² *Id.* at 2.

¹³ Univision Response at para. 1.

¹⁴ *Id.*

¹⁵ Supplemental Petition at 2.

¹⁶ *Id.*

¹⁷ Initial Petition at 3.

¹⁸ Supplemental Petition at 2.

¹⁹ Televisa Request at 2.

hold equity and voting interests greater than five percent.²⁰ In addition, Emilio Fernando Azcarraga Jean is an owner of Televisa who holds 43 percent of the voting interests and 14.7 percent of the equity of Televisa and also holds an attributable interest in and sits on the board of Univision.²¹ Televisa has also sought specific approval for Mr. Azcarraga Jean to hold voting and equity interests greater than five percent.²²

6. Each of the Investors has the right to appoint three directors, except that Saban Capital may appoint two;²³ Televisa may appoint four; and, as noted above, Glade Brook may appoint one.²⁴ No single investor has a controlling interest in Univision.²⁵

7. In 2015, in anticipation of a planned initial public offering (IPO), Univision reduced its outstanding debt by entering into an agreement with Televisa pursuant to which the 2010 debentures were converted into warrants, which are exercisable for the number of shares of common stock that Televisa would have otherwise received on conversion of the debentures.²⁶ By their terms, the warrants, which are exercisable for approximately a 29.2 equity interest in Univision, may not be utilized unless the resulting increase would comply with Section 310(b)(4) of the Act.²⁷

8. The Petitioners state that Univision's aggregate foreign equity investment is approximately 15.6 percent, of which 4.9 percent is held by the Investors and 10 percent is held by Televisa and less than 1 percent is held by Gladebrook and certain non-attributable investors of Univision.²⁸ The aggregate foreign voting interest in Univision is 19.9 percent, of which 4.5 percent is held by the Investors, 14.4 percent is held by Televisa, and approximately 1 percent is held by Gladebrook and certain non-attributable investors of Univision.²⁹ As a privately held corporation, Univision determined its foreign ownership levels by direct inquiry of its shareholders.³⁰

9. *The Petitioners' Request for a Declaratory Ruling.* The Petitioners request a declaratory ruling in anticipation of Univision's expected IPO, which may result in increased foreign investment, and to facilitate exercise of the Televisa warrants and any additional associated investment from Televisa.³¹ The Petitioners state that the precise number of shares of Univision common stock that will be made available for sale or ultimately purchased during the IPO, or the allocation of those shares between domestic and foreign, cannot be known at this time.³² Petitioners further state that the percentage of

²⁰ *Id.*

²¹ Supplemental Petition at 6. *See also* Grupo Televisa, FCC Form 323, Ownership Report for Commercial Broadcast Stations, File No. BOA-20151201FUM. Through his direct voting interest in Televisa Mr. Azcarraga Jean's voting interest in Univision is 6.2% percent. (.43 (his voting interest in Televisa) x .144 (Televisa's voting interest in Univision) = .0619 or 6.2%) In addition his status as "control person" of Televisa would attribute all of Televisa's voting interest in Univision to him. Televisa has indicated that no other entity or individual holds more than 5 percent of the voting interests or equity in it.

²² Televisa Request at 2.

²³ Supplemental Petition at 5

²⁴ *Id.*

²⁵ *Id.*

²⁶ *Id.*

²⁷ *Id.* at 4.

²⁸ Supplemental Petition at 8.

²⁹ *Id.*

³⁰ Univision Response at para. 2. As a foreign corporation, all of Televisa's interests are deemed foreign.

³¹ Initial Petition at 6.

³² Supplemental Petition at 8.

ownership of each Investor and Televisa is subject to adjustment depending on the results of the IPO.³³ The Petitioners claim that the increased foreign investment will serve the public interest, because it will allow Univision to strengthen its partnership with Televisa and to continue to provide award-winning programming to Hispanic audiences and other minority communities across multiple platforms on a level that competes with and often outperforms the top-four networks, thereby enhancing competition.³⁴ Furthermore, the Petitioners argue that grant of their Petition will enhance their community-based empowerment programs, which include, among other things, school programs, incubator programs, and writing and development fellowships.³⁵ Finally, they state that grant of the Petition aligns with U.S. trade policy and will encourage reciprocity with U.S. trading partners.³⁶

10. The Initial Petition and Supplemental Petition were put out for public comment on July 7, 2016.³⁷ No parties have opposed the Petitions or asked for conditions to be placed on a grant.³⁸

III. DISCUSSION

11. As described below, we find that the public interest would not be served by refusing to grant Univision's petition for a declaratory ruling to permit foreign ownership of Univision Holdings, Inc., as described herein, above the statutory cap of 25 percent in Section 310(b) and up to 49 percent. In this section, first we summarize the relevant law and Commission precedent related to foreign ownership of broadcast licensees. Then we consider facts presented by Univision regarding its foreign ownership status and its public interest arguments.

12. *Relevant Law and Commission Precedent:* Section 310(b) of the Act restricts investment by non-U.S. citizens in broadcast, common carrier, aeronautical en route, and aeronautical fixed radio licensees.³⁹ Section 310(b)(4) of the Act states:

No broadcast or common carrier or aeronautical en route or aeronautical fixed radio station 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.⁴⁰

13. In the *2013 Broadcast Clarification Order*,⁴¹ the Commission clarified the policies and

³³ *Id.* at 9.

³⁴ *Id.* at 2, 11-15.

³⁵ *Id.* at 2, 15-17.

³⁶ Supplemental Petition at 2, 21-23.

³⁷ *Media Bureau Announces Filing of Petition for Declaratory Ruling by Univision & Televisa & Permit-but-Disclose Ex Parte Status for the Proceeding*, 31 F.C.C. Rcd. 7343 (2016).

³⁸ On August 2, 2016, the Commission received a request to defer action on the Petition pending review by Executive Branch agencies. See *Letter from Bermel Paz to Marlene Dortch, Secretary, Federal Communications Commission*, dated August 2, 2016, MB Docket 16-217. A further letter withdrawing the deferral request and stating that the reviewing agencies have no objection to the Petition was received by the Commission on November 25, 2016. See *Letter from Bermel Paz to Marlene Dortch, Secretary, Federal Communications Commission*, dated November 23, 2016, MB Docket 16-217.

³⁹ 47 U.S.C. § 310(b).

⁴⁰ 47 U.S.C. § 310(b)(4).

⁴¹ *Commission Policies and Procedures Under Section 310(b)(4) of the Communications Act, Foreign Investment in Broadcast Licensees*, MB Docket No. 13-50, Declaratory Ruling, 28 FCC Rcd 16244 (2013) (*2013 Broadcast Clarification Order*).

procedures for evaluating potential foreign investment in broadcast licensees under Section 310(b)(4) of the Act to remove apparent uncertainty.⁴² The Commission declined to adopt a standardized review process in that proceeding, and instead clarified that it would continue to conduct a fact-specific, individualized case-by-case review of each application or petition for declaratory ruling involving broadcast stations.⁴³ The Commission reiterated its position that, in the context of 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.”⁴⁴ The Commission also 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.”⁴⁵

14. The Commission has ruled on only one petition for declaratory ruling regarding foreign ownership in the broadcast context since the *2013 Broadcast Clarification Order*. In the *2015 Pandora Declaratory Ruling*, the Commission granted a petition for declaratory ruling filed by Pandora Radio LLC (Pandora) to exceed the 25 percent foreign ownership benchmark set out in Section 310(b)(4), in connection with an application for consent to assignment of license of KXMZ(FM), Box Elder, South Dakota.⁴⁶ In its petition, Pandora sought permission for its parent company, Pandora Media, a publicly traded company organized and headquartered in the United States, to have varying levels of foreign ownership (voting and equity) because it could not prove that foreign entities did not own or vote more than 25 percent of its shares.⁴⁷ Based on the facts specific to that case and in view of existing broadcast foreign ownership policies, the Commission approved the request to exceed the 25 percent benchmark under Section 310(b)(4) provided that Pandora obtain prior Commission approval for (1) aggregate foreign equity and/or foreign voting interests in Pandora Media exceeding 49.99 percent; (2) any change in the Pandora Media Board of Directors that would result in a majority of foreign members; or (3) any individual foreign investor or “group” acquiring a greater than 5 percent voting or equity interest (or greater than 10 percent for certain institutional investors) in Pandora Media.⁴⁸ The Commission required Pandora Media to modify its organizational documents to ensure that its Board of Directors has all necessary powers to maintain compliance with Section 310(b)(4), including the right to request and obtain information regarding citizenship of Pandora Media’s interest holders, and the necessary powers to cure noncompliance, specifically: (1) the right to restrict the transfer of shares to aliens; (2) the right to require disclosure when an alien acquires an equity and/or voting interest; and (3) the right to compel the redemption of shares held by aliens.⁴⁹

⁴² *Id.*

⁴³ The Commission stated that it would not entertain petitions to exceed the foreign ownership limits of Section 310(b)(3) for foreign investment in broadcast licensees. *2013 Broadcast Clarification Order*, 28 FCC Rcd at 5752, para. 15, n.49. Unlike Section 310(b)(4), Section 310(b)(3) does not afford the Commission discretion to approve foreign investment in broadcast licensees in excess of the limitations contained therein.

⁴⁴ *2013 Broadcast Clarification Order*, 28 FCC Rcd at 16249-50, para. 11.

⁴⁵ *Id.* at 16249, para. 10.

⁴⁶ *Pandora Radio LLC Petition for Declaratory Ruling Under Section 310(b)(4) of the Communications Act of 1934, as Amended*, MB Docket No. 14-109, Declaratory Ruling, 30 FCC Rcd 5094, 5095-96, para. 4 (2015) (*2015 Pandora Declaratory Ruling*), *recon denied*, 30 FCC Rcd 10570 (2015).

⁴⁷ *Id.*

⁴⁸ *Id.* at 5101, para. 19.

⁴⁹ *Id.* at 5101, para. 20.

15. The Commission recently adopted its *2016 Foreign Ownership Order*,⁵⁰ which 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.⁵¹ In the *2016 Foreign Ownership Order*, the Commission also reformed the methodology used by both common carrier and broadcast licensees to assess compliance with the foreign ownership limits in Sections 310(b)(3)⁵² and 310(b)(4) of the Act, as appropriate, in recognition of the difficulty that U.S. publicly traded companies face in attempting to ascertain their level of foreign ownership.⁵³ This reformed methodology provides a framework for a publicly traded licensee or controlling U.S. parent to ascertain its foreign ownership using information that “is known or reasonably should be known” to the company in the ordinary course of business and eliminates the need for shareholder surveys.⁵⁴

16. The rules adopted in the *2016 Foreign Ownership Order* have not yet taken effect, and thus our foreign ownership review process is still governed by the *2013 Broadcast Clarification Order*.⁵⁵ As noted, in the *2013 Broadcast Clarification Order* the Commission adopted a case-by-case approach to reviewing petitions for declaratory ruling to exceed the 310(b)(4) benchmark.⁵⁶ In that order, the Commission stated that “[b]y their nature, these case-by-case reviews will lead to distinct, factually driven results.”⁵⁷ Thereafter, in the *Pandora Declaratory Ruling*, the Commission granted such a petition based on the facts and circumstances of that case and, imposed a series of conditions appropriate to those circumstances.⁵⁸ The *2013 Broadcast Clarification Order* allows us discretion in considering petitions such as the instant one to impose terms and conditions on a licensee if warranted based on the facts and circumstances of each particular case.⁵⁹ Because the Commission clearly acknowledged that fact-specific inquiries will lead to different results in different cases, we need not conclude that the conditions imposed in the *Pandora Declaratory Ruling* are appropriate under the facts and circumstances of this case or that we are limited to those conditions here if we conclude that new or different conditions would be more appropriate to the present case.

⁵⁰ *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, GN Docket 15-236 (2016)(*2016 Foreign Ownership Order*). See note 39 *supra*.

⁵¹ *Id.*

⁵² 47 U.S.C. § 310(b)(3)(Prohibiting grant of a broadcast, common carrier, aeronautical en route and aeronautical fixed radio license to “[A]ny corporation of which more than one-fifth of the capital stock is owned of record or voted by aliens or their representatives or by a foreign government or representative thereof or by any corporation organized under the laws of a foreign country...”). See note 43 *supra*.

⁵³ *2016 Foreign Ownership Order*, at paras. 35-72.

⁵⁴ *Id.* at paras. 44-53.

⁵⁵ By its terms, the *2016 Foreign Ownership Order* takes effect 60 days after publication in the Federal Register, except those provisions that contain new or modified information collection requirements that require approval by the Office of Management and Budget (OMB) under the Paperwork Reduction Act. *Id.* at para. 113. Those sections will become effective after the Commission publishes a notice in the Federal Register announcing such approval and the relevant effective date. *Id.* The *2016 Foreign Ownership Order* was published in the Federal Register on December 1, 2016. *Review of Foreign Ownership for Broadcast, Common Carrier and Aeronautical Radio Licensees*, 81 Fed. Reg. 86568 (Dec. 1, 2016). The order will be effective on January 30, 2017, except for those sections requiring OMB approval.

⁵⁶ *2013 Broadcast Clarification Order*, 28 FCC Rcd at 16252.

⁵⁷ *Id.*

⁵⁸ *Pandora Declaratory Ruling*, 30 FCC Rcd at 5101-5103.

⁵⁹ *Id.*

17. In the context of considering whether to grant this petition, and, if so, whether conditions are necessary and what conditions should apply, we are cognizant of the Commission's recent decision in the *2016 Foreign Ownership Order*, which is scheduled to become effective soon after the adoption of this declaratory ruling. Although the rules adopted in that order are not yet in effect, we note that our action here is not inconsistent with the policies or rules the Commission adopted.⁶⁰

18. *Facts Regarding Univision's Foreign Ownership Status.* Univision has identified each U.S. broadcast station license that it currently holds.⁶¹ Univision has described how it conducted its foreign ownership review using information that it knew or reasonably should have known as a privately held corporation at the time the Petition was filed. Based on its review, Univision has shown that there are no unaccounted for attributable shareholders with a greater than 5 percent interest, equity or voting, in the company, and no unaccounted for alien shareholders with a greater than 5 percent interest, equity or voting, in the company. The Petitioners have submitted the necessary ownership diagrams and demonstrated that Univision is currently in compliance with the 25 percent benchmark under Section 310(b)(4). We find that Univision has provided sufficient information regarding its current foreign ownership status and its proposed future foreign ownership status to inform our decision on the pending petition.

19. *Public Interest Analysis.* In both the *2013 Broadcast Clarification Ruling* and the *2016 Foreign Ownership Order*, the Commission emphasized the need to encourage new sources of investment in the broadcast industry, including foreign investment.⁶² The Commission has also emphasized the need to protect important interests related to national security, law enforcement, foreign policy, trade policy, and other public policy goals while maintaining compliance with Section 310(b).⁶³ The relevant Executive Branch agencies with expertise on issues related to national security, law enforcement, foreign policy, and trade policy have not filed any objection to issuance of the declaratory ruling or requested that we impose conditions on the grant. Univision has submitted information that grant of its Petition has the potential to encourage investment in the company from new sources and to encourage reciprocity in parts of Latin America.⁶⁴ The Petitioners have also shown how grant of the application will further Univision's service to the Hispanic community and other minority communities and advance its empowerment initiatives.⁶⁵ As noted above, no parties have opposed the petition for declaratory ruling or asked for conditions to be placed on it. Therefore, we find that grant of the petition for declaratory ruling will serve the public interest.

⁶⁰ Univision's petition was on public notice, under review by the Executive Branch, and amended repeatedly during the pendency of the proceeding that resulted in the *2016 Foreign Ownership Order*. *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*, GN Docket 15-236, Notice of Proposed Rulemaking, 30 FCC Rcd 11830 (2015) (*2015 Foreign Ownership NPRM*). The *2016 Foreign Ownership Order NPRM* was released on October 22, 2015 and Univision filed its Initial Petition on November 30, 2015, and supplemented it after the release of the *2016 Foreign Ownership Order*. Univision petition is therefore differently situated than Pandora's. Pandora did not have the benefit of the Commission's guidance in the *2015 Foreign Ownership NPRM* or the *2016 Foreign Ownership Order*.

⁶¹ Supplement, Attachment 2.

⁶² *2013 Broadcast Clarification Ruling* at 16249; *2016 Foreign Ownership Order* at para. 2.

⁶³ *2013 Broadcast Clarification Order*, 28 FCC Fcd at 16251; *2016 Foreign Ownership Order* at para. 2.

⁶⁴ Supplemental Petition at 2, 21-23. U.S. Department of State, 2014 Investment Climate Statement at 4-5 (2014). See also, *Ley Federal de Telecomunicaciones y Radiodifusión*, Artículo Segundo (issued July 14, 2014), http://www.dof.gob.mx/nota_detalle.php?codigo=5352323&fecha=14/07/2014 (available in English at http://www.sct.gob.mx/fileadmin/Comunicaciones/LFTR_english.pdf, Article Two, at pdf p. 86).

⁶⁵ Supplemental Petition at 2, 15-17.

IV. DECLARATORY RULING

20. Under these circumstances, pursuant to Section 310(b) of the Act, we find that the public interest would not be served by prohibiting foreign ownership of Univision Holdings, Inc. in excess of the 25 percent benchmark in Section 310(b) of the Act, because this increased level of foreign investment in Univision will facilitate investment from new sources of capital in Univision that would not otherwise be available and encourage reciprocity by foreign governments. Specifically, this ruling permits aggregate foreign equity and voting interest in Univision Holdings, Inc. to exceed 25 percent and to increase up to and including 49 percent.

21. *Specific Approval.* Furthermore, this declaratory ruling grants specific approval to each of the following individuals and entities to hold up to 40 percent of the voting interests and 49 percent of the equity of Univision Holdings, Inc.:

- Grupo Televisa, S.A.B.,
- Grupo Telesistema, S.A. de C.V.,
- Grupo Bissagio, S.A. de C.V.,
- Multimedia Telecom, S.A. de C.V.,
- Emilio Fernando Azcarraga Jean

In granting these specific approvals, we have coordinated with the relevant Executive Branch agencies and given them the opportunity to review the Petitioners' filings and the requests for specific approval in light of interests related to national security, law enforcement, foreign policy, trade policy, and other public policy goals. The Executive Branch agencies have filed a letter with the Commission stating that they have no objections. We also find no grounds to object to the specific approvals, and we conclude that grant of them will facilitate the foreign investment sought by the petitioner.

22. *Aggregate and Individual Ownership Limits.* Univision must obtain (1) prior Commission approval for foreign equity and/or foreign voting interests exceeding 49 percent in the aggregate or for any such interest held by any individual or entity listed above that exceeds 49 percent, which are the limits requested in the Petition; and (2) prior specific Commission approval for any individual foreign investor or "group" other than those listed above acquiring a greater than five percent voting or equity interest (or ten percent for certain institutional investors) in Univision.⁶⁶ While these conditions do not bar Univision from seeking additional future foreign investment opportunities, they accommodate the relief requested in the Petition while providing continued protection to important interests related to national security, law enforcement, foreign policy, trade policy, and other public policy goals.

23. *Changes to Organizational Documents.* Univision shall modify its organizational documents to the extent necessary to ensure that the Board of Directors has all necessary powers to implement the provisions of this Declaratory Ruling. Reflecting broadcast industry best practices these powers must include the right of Univision to request and obtain information regarding the citizenship of beneficial owners and those with voting rights in order to ensure compliance with Section 310(b). These powers must also include the right to take any and all actions that the Board of Directors deems necessary to so comply or to cure any noncompliance. Univision's certificate of incorporation, bylaws, or other organization documents must include the following: (1) the right to restrict the transfer of shares to foreign investors; (2) the right to require disclosure when a foreign investor acquires 5 percent or more the equity or voting interests in the company; and (3) the right to compel the redemption the redemption

⁶⁶ See *Pandora Declaratory Ruling*, 30 FCC Rcd at 5101. A "group" is two or more individuals or entities that have agreed to act together for the purpose of acquiring, holding, voting, or disposing of their equity and/or voting interests in the licensee and/or controlling U.S. parent of the licensee or in any intermediate company(ies) through which any of the individuals or entities holds its interests in the licensee and/or controlling U.S. parent of the licensee. 17 C.F.R. § 240.13d-5(b).

of shares held by foreign investors. These powers will enable Univision to better maintain compliance with the requirements of Section 310(b) and of this Declaratory Ruling.

24. *Compliance Monitoring.* Univision shall monitor its compliance on an ongoing basis.⁶⁷ If, at any time, Univision knows, or has reason to know, that it is no longer in compliance with this declaratory ruling, Section 310(b)(4) of the Act, or the Commission's rules and policies on foreign ownership, 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 and how it intends to correct the overage, either by filing a new petition for declaratory ruling or by reducing the foreign interest.⁶⁸ Ongoing monitoring will allow the licensee to stay ahead of changes in its foreign ownership levels to ensure that it obtains Commission approval before it goes out of compliance with this declaratory ruling. The required remedial action will provide the licensee with the opportunity and the incentive to correct an inadvertent error prior to enforcement action by the Commission.

25. As a privately held corporation, Univision has known the identity of its shareholders and has been able to monitor its level of foreign investment by direct inquiry of them. Following an IPO, as a publicly traded corporation, consistent with broadcast industry compliance practices, Univision must diligently seek to identify the citizenship of beneficial owners of its stock and of those entities or individuals with voting rights in numbers to make this certification on a reasonably reliable basis.⁶⁹ We expect Univision to use sources other than shareholder mailing addresses and corporate headquarters addresses. Recognizing the unique structure and circumstances of each company, we grant Univision some flexibility in the specific means of achieving compliance supporting its certifications; however, Univision should consider the following measures:

- Entering into the Depository Trust Corporation (DTC) SEG-100 or equivalent program that allows for the deposit of foreign-owned shares into a segregated account for monitoring of shares. When an issuer such as Univision requests to be included in the SEG-100 program, DTC notifies its participants that they must apply SEG-100 procedures to future trades of Univision stock. Each DTC participant is obligated to make inquiries of their own account holders and place the shares of every holder that is a non-U.S. citizen in the DTC participant's SEG-100 account. This process will allow Univision, through its transfer agent, to monitor foreign ownership levels and, if the threshold is exceeded, to notify DTC of the number of shares that must be transferred out of SEG-100 accounts. Univision will receive periodic reports from its transfer agent reflecting the total number of its shares placed in SEG-100 accounts.
- Monitoring shares held by current and former officers and directors.
- Monitoring relevant SEC filings, such as Form 13F, Schedule 13D, Schedule 13G, and Form ADV, with respect to shares held in Univision and any plan or proposal to influence the management or operation of the company.
- As to each institutional investor or other person/entity filing such SEC reports, reviewing the reports, consulting other publicly available sources, and contacting the filer as necessary (and permissible under SEC regulations and the company's governance documents) to determine (1) the citizenship of the holder(s) of sole or shared voting rights in the shares reported by the filer, and (2) the citizenship of the beneficial owners of (*i.e.* the persons or entities holding the economic interests in) such shares. Including as

⁶⁷ Nothing in this declaratory ruling excuses the petitioner or its subsidiary licensees from the requirements associated with Section 310(b) certification at the time of filing a Commission application that requires such certification.

⁶⁸ See *Pandora Declaratory Ruling*, 30 FCC Rcd at 5102.

⁶⁹ See *id.*

part of its recertification showing, alien ownership (equity) and voting data for shares reported by each institutional investor or person/entity filing a Form 13F, Schedule 13D or Schedule 13G.

- Requesting that Broadbridge Financial Services (or equivalent company) provide Univision with a non-objecting beneficial owner (NOBO) list, *i.e.*, a list of beneficial owners that own shares through a broker or bank intermediary and that do not object to their identifying information being reported to the issuer. Request that all NOBOs provide citizenship information. This may be done in connection with the issuance of Univision's annual meeting proxy notices.
- Committing to make reasonable efforts to secure the cooperation of the relevant financial intermediaries in obtaining citizenship information.

26. *Organizational Changes.* This ruling shall apply to all of Univision's subsidiaries and affiliates, whether existing or formed or acquired subsequently, that are wholly owned and controlled by, or under 100 percent common ownership and control with Univision. In addition, any foreign investor that has received specific approval may insert a new, foreign-organized company that is under 100 percent common ownership and control with the foreign investor in the investor's vertical ownership chain above the controlling U.S. parent.⁷⁰ The flexibility granted here reflects the reality that it is not uncommon for publicly traded companies to make changes within their corporate structure that in no way affect the operation, management, or control of those companies. This flexibility does not detract in any way from the requirement under the Act and our Rules to apply for and receive prior Commission consent to a voluntary assignment of license or transfer of control before such a transaction may be consummated⁷¹ or to seek a new declaratory ruling before its foreign ownership exceeds the terms or conditions of this declaratory ruling.⁷²

V. PROCEDURAL MATTERS

27. This declaratory ruling is issued pursuant to section 310(b)(4) of the Communications Act of 1934, 47 U.S.C. § 310(b)(4), and sections 0.61 and 0.283 of the Commission's rules, 47 C.F.R. §§ 0.61 and 0.283.

28. Issuance of this declaratory ruling is without prejudice to the Commission's action on any other matter.

⁷⁰ Although this condition was not in the *Pandora Declaratory Ruling*, we find that it is consistent with that decision's condition allowing the creation of new, wholly owned subsidiaries of the licensee's parent company to be inserted in the ownership chain.

⁷¹ See *Pandora Declaratory Ruling*, 30 FCC Rcd at 5102.

⁷² Some of the conditions we adopt here are similar to the terms of the rules adopted in the *2016 Foreign Ownership Order*. See, e.g. 47 C.F.R. §1.5001(i); 47 C.F.R. § 1.5004 (b), (d) and (f). However, we adopt these conditions here not to apply those rules, which are not yet effective, but because we conclude that these conditions are appropriate under the facts and circumstances of this case.

29. Pursuant to section 1.103 of the Commission's rules, 47 C.F.R. § 1.103, the consent granted herein is effective upon release of this declaratory ruling.

FEDERAL COMMUNICATIONS COMMISSION

William T. Lake
Chief
Media Bureau