



Virginia Association of Broadcasters Legal Review



Brooks, Pierce, McLendon, Humphrey &
Leonard, LLP
Counsel to VAB • (919) 839-0300

250 West Main Street, Suite 100
Charlottesville, VA 22902 • (434)
977-3716

January 10, 2017

Legal Memorandum

In this issue, link to information about

Developments: [FCC Approves 49% Foreign Ownership for Univision](#)
[Music Licensing: Interim GMR Radio Music License Available](#)
[FCC Again “Urges” TV Broadcasters to Update Contact Information](#)

Deadlines: [January 31: Deadline to Secure Interim Music License with GMR](#)

FCC Approves 49% Foreign Ownership for Univision

The FCC’s Media Bureau in early January [granted a petition](#) (“Petition”) for a declaratory ruling filed by Univision Holdings, Inc. (“Univision”) and Mexican media conglomerate Grupo Televisa, S.A.B. (“Televisa”) permitting foreign ownership of Univision up to 49 percent. The Petition was filed in anticipation of Univision’s expected initial public offering, which could come later this year. According to the FCC’s decision, Televisa currently owns approximately 14 percent of the voting interests and 10 percent of the equity in Univision and provides around 35 percent of Univision’s broadcast programming in the United States.

The relevant legal background here is that the Communications Act of 1934 (as amended) sets a 25 percent foreign ownership cap for broadcast licensees, but the Commission has discretion to waive that limit if it determines that the public interest would be served. Generally, with respect to the public interest analysis for requests to exceed the 25 percent cap, the FCC has “emphasized the need to encourage new sources of investment in the broadcast industry, including foreign investment.” It 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 the statutory limit. In its recent ruling, the FCC’s Media Bureau found that granting the Petition—which was unopposed—would serve the public interest because the “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 from foreign governments.” In addition, the FCC found that allowing investment to exceed the statutory cap “will further Univision’s service to the Hispanic community and other minority communities and advance its empowerment initiatives.”

It’s important to understand that the FCC’s grant of the Petition is not a “blank check” for Univision (or any other broadcaster) to increase its foreign ownership at will. Indeed, the FCC’s decision imposes several conditions on Univision. Among other things, the company must get prior Commission approval before foreign equity and/or foreign voting interests exceed 49 percent individually for Televisa (and its affiliates) or in the aggregate. Prior Commission approval is also required before any individual foreign investor or group other than Televisa (and its affiliates) acquires a voting or equity interest in Univision greater than five percent (or ten percent for certain institutional investors). Univision must also modify its organizational documents to ensure that its Board of Directors has all powers necessary to implement the various provisions of the declaratory ruling, including the right to restrict transfer of shares to foreign investors, the right to require disclosure when a foreign investor acquires five percent or more of the equity or voting interests in the company, and the right to compel the redemption of shares held by foreign investors.

It is worth noting, too, that the FCC adopted a [Foreign Ownership Order](#) last September, which modified the broadcast licensee foreign ownership review process by streamlining certain aspects of and procedures developed for evaluating foreign ownership of broadcast stations. The new streamlined rules will take effect at the end of January 2017 and were not directly implicated in the FCC’s review of the Univision/Televisa Petition, though the Media Bureau made a point to observe that its ruling in this case is consistent with the rules adopted by the 2016 Order. (We will distribute a memorandum towards the end of January to further discuss the streamlined foreign ownership rules/procedures adopted in 2016.)

While the FCC’s decision is obviously significant for Univision (and Televisa), there are implications for other broadcasters as well. The Petition and FCC decision provide a roadmap of sorts for broadcasters and other entities that seek to increase the proportion of foreign ownership of stations or station groups above the statutory limit. While the FCC will continue to evaluate proposals to increase foreign ownership above the cap on a case-by-case basis—using the new “streamlined” approach adopted in the 2016 Foreign Ownership Order—the fact that the FCC has granted the Univision/Televisa Petition (and a prior application filed by Pandora in connection with its ownership of a radio station in South Dakota) indicates that the agency appears to be ready, willing, and able to follow through on its stated goal of facilitating foreign investment in the broadcast industry.

Music Licensing Reminder: Global Music Rights Makes Interim License Available to Radio Stations; Stations Must Take Action by **January 31, 2017!**

As we have previously reported, the Radio Music License Committee (RMLC) and Global Music Rights (GMR) have been in protracted negotiations over music licensing fees for the public performance by radio stations of songs in GMR's newly-created repertory. In November, the RMLC filed an antitrust lawsuit against GMR in the United States District Court for the Eastern District of Pennsylvania. And in early December, GMR responded with its own antitrust lawsuit against the RMLC (and up to 3,000 yet-to-be-named radio station operators) in the United States District Court for the Central District of California.

On December 24, the RMLC announced that GMR will make available to radio stations an interim license agreement pending the resolution of these lawsuits. This announcement is very timely. In the absence of this development, stations risked potential copyright infringement if they played songs in GMR's repertory.

The RMLC reports that GMR will make the interim license available to all radio stations until January 31, 2017, and that GMR will not file a copyright lawsuit against any station without a license before that date.

You must **take action** if you wish to use the interim license for your station. The interim license is not automatic. You must contact GMR to enter into the interim license and ascertain your station's specific fee for the interim license. You can contact GMR at: licensing@globalmusicrights.com.

Here's a summary of the key provisions of GMR's interim license:

- You have until January 31, 2017, to enter into the GMR interim license and to start making payments of your station's interim fee.
- The term of the interim license is for nine (9) months, commencing January 1, 2017 (ending September 30, 2017).
- The interim license is on a "non-precedential basis," meaning that your station and GMR each retains the right to seek a retroactive fee adjustment in future license agreements or as a result of the RMLC's and GMR's pending lawsuits.
- The interim license covers terrestrial, non-interactive digital simulcasts, and promotional websites owned by your station.
- The license fee is payable on a monthly basis, without monthly invoices from GMR. Fees are due on or before the end of each month during the term (e.g., on or before January 31, 2017, February 28, 2017, etc.).

- GMR is required to provide your station with a full and complete list of all songs owned or controlled by GMR, along with all ownership splits.
- Your station must provide substantially the same reporting data to GMR that it provides to ASCAP, BMI, and SESAC from time to time.
- The terms of the interim license—in particular, your specific license fee and GMR’s non-public client and song list—must be kept confidential.

Again, for your specific interim license fee and to enter into the interim license, you need to contact GMR. You should evaluate your specific interim license proposal with your legal counsel.

For the Second Time, FCC “Urges” TV Broadcasters to Update Contact Information

By [Public Notice](#) released in early January, the FCC again reminded all television licensees to ensure that their contact information on file with the FCC is accurate and current and urged them to correct and update it if necessary. This latest Public Notice largely repeats the FCC’s exhortation that was [first released last October](#), about which we previously reported.

While all licensees are legally obligated to keep current contact information on file for each of their stations, the FCC’s (second) reminder comes now because it is tied to critical information that will flow from the ongoing broadcast Incentive Auction. The FCC anticipates that it will communicate directly with television stations about the post-Incentive Auction repack. More specifically, the FCC intends to send communications to stations about channel reassignments, and plans to do so approximately three to four weeks after the final stage rule is met in the Forward Auction and the FCC’s systems have identified new post-Auction channel assignments for all stations that will remain on the air. In an effort to give stations as much time as possible to begin planning for channel changes, these repacking-related communications from the FCC will be sent before the Incentive Auction officially closes (which won’t occur until the FCC issues a public notice announcing the Auction’s results). The FCC is encouraging stations to provide a street address rather than a post office box, because the channel reassignment correspondence will be sent via overnight delivery if a station identifies a street address, but by regular mail (which is typically much slower than overnight delivery) if the contact information on file with the FCC identifies a post office box.

The Public Notice advises that the FCC will rely either on (i) contact information provided in the FCC Form 177 Auction application (only for stations that were included on a Form 177 application) or (ii) contact information currently contained in the FCC’s Licensing and Management System (“LMS”) (only for stations that were not the subject of a Form 177 Auction application). Thus, if your station was listed on a Form 177 Auction application, the FCC will use the contact information in the Form 177 for your station, irrespective of whether the application was deemed complete with respect to the station, whether the licensee made an initial commitment

with respect to the station, whether any initial commitment made could be accommodated, or whether the station has exited the Auction (or exits the Auction in the future), voluntarily or involuntarily. For stations that were included in a Form 177 Auction application, the FCC has provided the instructions below about how to review and update (if necessary) the contact information provided in Form 177.

For stations that were not included in a Form 177 Auction application, the FCC has provided the instructions below about how to review and update (if necessary) the contact information in LMS. Stations that are uncertain about their contact information or how to review or correct it may wish to contact their communications counsel. And, remember, too, that the FCC's anti-collusion "quiet period" is ongoing, and during this time stations are prohibited from communicating about Auction bids or bidding strategy; thus in any discussions regarding a review or update of Form 177 (or LMS) contact information, stations should be careful not to mention the station's current status with respect to the Auction.

Updating Station Contact Information in LMS

To view a station's contact information in LMS, follow the instructions below:

1. Access the LMS public search webpage at <https://enterpriseefiling.fcc.gov/dataentry/public/tv/publicSearchLanding.html>
2. Click the "Facility Search" button.
3. Enter the call sign or facility ID number for the station and click the "search" button.
4. Click on the station's facility ID number.
5. Review for accuracy the Licensee and Contact Representative information (name, address, telephone number and e-mail address) that appears under on the "Facility Details" tab.

If, after reviewing the contact information, you determine that it is necessary to update the station's Licensee or Contact Representative information, you will need to file an "Administrative Update" in LMS by following the instructions below.

1. Access the LMS applicant data entry home page at <https://enterpriseefiling.fcc.gov/dataentry/>
2. Log in using the FRN associated with the station.
3. Click on the "Facilities" tab on the left top of the page.
4. Click on the facility ID number of the station.
5. Click on the "File an Application" button.
6. Select the "Administrative Update" option from the drop down menu.
7. Input appropriate changes in contact information and click "Submit."

After the updated contact information has been submitted, a confirmation page will be displayed on the screen. The FCC recommends that the station print a copy of the confirmation page for its records.

Updating Station Contact Information on Form 177 in the Auction System

Reverse auction applicants may view and/or update their respective contact information in the Auction System by following the steps below. Any party with multiple applications must follow these steps with respect to each application separately.

1. Access the log in screen at <https://auctionsignon.fcc.gov> or auctionsignon2.fcc.gov
2. Enter the applicant's FRN and password and click on the "log in" button, which will take you to the "My Auctions Page" screen.
3. Click on the "Click here to file FCC Form 177" link, which is under the "Incentive Auctions" heading.
4. Click on the "Auction 1001" link, which will display the application's "Summary" screen in a "view/edit" mode.
5. A navigation pane on the right side of the screen will display the various sections of the FCC Form 177. Click on the "Applicant Information" link to view the subsections within that section of the application.
6. Click on the "Contact Details" link, which will take you to the "Contact Details" screen where you may view and/or update the station's contact information.
7. If you find contact information that requires revision, make the revisions and then navigate to the "Certify & Submit" screen.
8. On the "Certify & Submit" screen, you must click on the "Certify & Submit" button in order to submit the changes you made to the contact information in Form 177.

After the updated contact information has been submitted, a confirmation page will be displayed on the screen. The FCC recommends that the station print a copy of the confirmation page for its records.

If you have any questions concerning the information discussed in this memorandum, please contact your communications counsel or any of the undersigned.

Stephen Hartzell, Editor

BROOKS, PIERCE, McLENDON,
HUMPHREY & LEONARD, L.L.P.

Wade H. Hargrove
Mark J. Prak
Marcus W. Trathen
David Kushner
Coe W. Ramsey
Charles E. Coble
Charles F. Marshall
Stephen Hartzell
J. Benjamin Davis
Julia C. Ambrose
Elizabeth E. Spainhour
Eric M. David
Timothy G. Nelson

This Legal Review should in no way be construed as legal advice or a legal opinion on any specific set of facts or circumstances. Therefore, you should consult with legal counsel concerning any specific set of facts or circumstances.

© 2017 Brooks, Pierce, McLendon, Humphrey & Leonard, L.L.P.