

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

In the Matter of)	
)	
CTIA-USTelecom Petition for Rulemaking and)	WT Docket No. 20-186
Declaratory Ruling Regarding Certain)	RM-11860
Pro Forma Transactions)	
)	
)	
)	

**COMMENTS OF THE
NATIONAL ASSOCIATION OF BROADCASTERS**

I. INTRODUCTION AND SUMMARY

The National Association of Broadcasters (NAB)¹ supports the CTIA-USTelecom Petition asking the Commission to (i) eliminate all existing requirements for licensees to obtain prior approval for pro forma transactions and (ii) issue a declaratory ruling clarifying that certain transactions do not constitute transfers of control.² For the reasons set forth below, NAB agrees with Petitioners and urges the Commission to adopt a notice of proposed rulemaking that proposes to grant the requested relief for all licensees, including broadcasters. Applying a uniform approach across platforms will promote regulatory parity

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 *Petition of CTIA – The Wireless Association and USTelecom for Rulemaking and Declaratory Ruling To Streamline Federal Communications Commission Processes Regarding Non-Substantial Assignments of Licenses and Transfers of Control* (Jun. 5, 2020) (Petition), <https://ecfsapi.fcc.gov/file/106051130814680/200605%20CTIA-USTelecom%20Pro%20Forma%20Reform%20Petition%20-%20FINAL.pdf>. See also *Comment Sought on CTIA-USTelecom Petition for Rulemaking and Declaratory Ruling Regarding Certain Pro Forma Transactions*, DA 20-661, WT Docket No. 20-186, RM 11860 (rel. Jun. 24, 2020).

and ensure that the public interest benefits of the Petitioners' proposals will be realized across communications services.

II. ALLOWING POST-CONSUMMATION NOTIFICATIONS FOR PRO FORMA TRANSACTIONS WILL SERVE THE PUBLIC INTEREST

As the Petitioners correctly observe, pro forma transfers of control and assignments involve non-substantial changes in a licensee's ownership structure where, by definition, ultimate control of the licenses does not change.³ These transfers of control and assignments are often administrative in nature or result from the need to make internal corporate reorganizations, such as a company assigning an authorization from one wholly-owned subsidiary to another, or a company in the ownership chain of a Commission licensee changing its corporate form (e.g., from a corporation to a limited liability company).⁴ The Commission has previously stated that these transactions are presumptively in the public interest and has taken some steps to reduce administrative burdens of the filing requirements associated with some of these transactions.⁵ For example, certain

³ Petition at 2.

⁴ Petition at 2.

⁵ Petition at 2, *citing Communications Bar Ass'ns Petition for Forbearance from Section 310(d) of the Communications Act Regarding Non-Substantial Assignments of Wireless Licenses and Transfers of Control Involving Telecomms. Carriers*, Memorandum Opinion and Order, 13 FCC Rcd 6293, 6295, ¶ 2 (1998)(FCBA Wireless Order); *Implementation of Further Streamlining Measures for Domestic Section 214 Authorizations*, Report and Order, 17 FCC Rcd 5517, ¶ 50 (2002) ("We conclude that pro forma transactions in general have no impact, or a de minimis impact, on the public interest, because the same interstate services will be offered to the same customers following the transfer of lines."); *Comprehensive Review of Licensing and Operating Rules for Satellite Services*, Second Report and Order, 30 FCC Rcd 14713, 14809, ¶ 303 (2015) ("We conclude that such pro forma assignments and transfers do not raise public interest concerns and that we should, therefore, cease requiring licensees to obtain prior Commission approval of such transactions. We also conclude that eliminating the requirement for prior approval would promote competitive market conditions by allowing licensees to change their ownership structure or internal organization as business needs require without undue regulatory burdens.").

transactions involving wireless licenses,⁶ Cable Television Relay Service (CARS) licenses⁷ and non-common carrier space stations and earth station licenses⁸ are exempt from the full-fledged prior approval process and subject only to a post-consummation notification requirement, subject only to a streamlined review, or exempted from both pre- or post-transaction filings. Broadcast licensees, on the other hand, remain subject to prior FCC approval requirements for all pro forma transactions, with filing processes that have remained the same for many years while the process was streamlined for other services.⁹

The burdens arising from the existing filing requirements are significant. As Petitioners explain, a single non-substantial internal transaction can result in filing requirements that strain resources, delay business decisions and divert sparse resources

⁶ Petition at 5, *citing* FCBA Wireless Order (concluding that prior approval of applications for consent to pro forma transfers of control and assignments for certain wireless licenses were not necessary).

⁷ Under the CARS standard, changes that involve entities in the middle of an ownership chain are not considered changes in control, so no filing is required. Only transactions involving a change in the ultimate parent company or the licensee entity require a pro forma application. 47 C.F.R. § 78.35(c). See also *Amendment of Part 78 of the Commission's Rules Concerning Licensing Procedures and Reporting Requirements in the Cable Television Relay Service*, 100 F.C.C.2d 1136, 1140-41 (1985) (“[W]e see no need for FCC approval in cases where ownership transfer does not result in a change in the identity of the licensee or the ultimate controlling interest of the licensee. Section 310(d) requires Commission approval only when a license is transferred to another person or when control of a corporation holding a license is transferred. Thus, Section 310(d) does not appear to require FCC approval of ownership changes that do not involve a change in the identity or controlling interest of the licensee”).

⁸ Pro forma assignment/transfer applications of non-common carrier space station and earth station licenses are deemed granted one business day after filing. *Comprehensive Review of Licensing and Operating Rules for Satellite Services*, 30 FCC Rcd 14713, 14810 ¶ 305 (2015). The Commission adopted this streamlined review process after determining that pro forma applications “do not raise public interest concerns, and the Commission’s review is limited to determining that they are, in fact, pro forma in nature.” *Id.* The Commission stated that the “deemed-granted” approach would provide licensees with greater certainty in the timing of proposed restructurings while still permitting interested parties and the Commission to challenge or revisit the grant. *Id.*

⁹ Petition at 5 (observing that the FCC has been accepting short form applications for broadcast pro forma transactions for over 70 years).

away from providing services to the public.¹⁰ These concerns apply equally to broadcast licensees involved in pro forma transactions, who have observed that the requisite filings “often are complicated and time-consuming” and have “a significant real-world impact on productivity and costs.”¹¹ NAB member companies have informed us that in some instances, they have opted to temporarily maintain a suboptimal corporate structure due to concerns that a pro forma application could delay or complicate other pending regulatory approvals, or due to a lack of time and resources to prepare and secure approvals for the pro forma change. Pro forma applications also place substantial burdens on FCC staff, with the Wireless Telecommunications Bureau having processed an average of over 600 applications per year in the past decade.¹² Similarly, the Media Bureau has processed an average of nearly 400 pro forma applications per year over the past decade.¹³

As Petitioners explain, there are no statutory barriers to adopting their proposal.¹⁴ Section 310(d) states that no construction permit or license shall be transferred or assigned “except upon application to the Commission and upon finding by the Commission that the

¹⁰ Petition at ii-iii, 7-8 (“For companies with complex ownership structures and numerous licensee subsidiaries, even entirely non-substantive or intermediate ownership changes and modifications can trigger a requirement to make hundreds of filings. The legal expenses associated with these filings are often high, and the Commission itself must devote considerable time and resources to process them.”).

¹¹ Comments of CBS Corporation, The Walt Disney Company, 21st Century Fox, Inc. and Univision Communications Inc. (the “Content Companies”), MB Docket No. 17-105 (Jul. 5, 2017) at 13. See also Letter to Marlene H. Dortch, Secretary, FCC from Erin L. Dozier, NAB, MB Docket No. 17-105 (Mar. 14, 2019) (modernizing the broadcast pro forma application process would benefit broadcast licensees in their proposed restructurings without eliminating checks on the accuracy of pro forma filings).

¹² Petition at ii-iii.

¹³ NAB staff reviewed the Consolidated Database System (CDBS) for applications on FCC Form 316 that were processed between January 1, 2010 and December 31, 2019 and found a total of 3959 applications.

¹⁴ Petition at 10-11.

public interest, convenience, and necessity will be served thereby.”¹⁵ Thus, all that Section 310(d) requires is an application to the Commission and a finding that the transaction is in the public interest. The Commission could reasonably determine that a post-closing pro forma transaction notification constitutes an “application.”¹⁶ Since the Commission has repeatedly held that pro forma transactions are presumptively in the public interest, it could reasonably adopt rules stating that pro forma transactions are deemed to be in the public interest.¹⁷ Existing FCC rules and procedures allow both the Commission and third parties to challenge post-closing notifications, and the same standards could be applied for all such notifications.¹⁸ This will safeguard against any potential use of the post-closing notification process for a transaction that is not pro forma.¹⁹

Petitioners additionally state that, if the Commission decides not to adopt its post-closing notification proposal, the Commission could still improve upon the existing process by adopting an automated or immediate approval process for all pro forma filings currently subject to prior approval procedures, similar to the changes previously made for the processing of certain satellite and earth station applications.²⁰ If a post-consummation notification process is not adopted, NAB would support this alternative for pro forma applications across platforms.

Licensees, including broadcasters, should be able to engage in efficient internal restructurings without expending significant time and resources to secure approvals for

¹⁵ 47 U.S.C. § 310(d).

¹⁶ Petition at 10.

¹⁷ Petition at 10-11.

¹⁸ Petition at 11, *citing* 47 C.F.R. §§ 1.106, 1.107.

¹⁹ Petition at 10-11.

²⁰ Petition at 12-13.

these changes that do not result in a change of control. Petitioners correctly observe that the public interest is served by eliminating or modifying outdated, unnecessary, and unduly burdensome regulations, such as the pro forma transaction rules,²¹ thereby allowing licensees to focus their resources on providing high-quality services and permitting FCC staff to focus on other important work. The Commission should expeditiously adopt a rulemaking notice to modernize its rules.

III. NAB SUPPORTS GRANT OF THE DECLARATORY RULING TO CLARIFY THAT CERTAIN OWNERSHIP CHANGES ARE NOT REPORTABLE TRANSFERS OF CONTROL

Petitioners also propose that the Commission issue a declaratory ruling to clarify that certain nonsubstantial changes in ownership do not amount to a reportable transfer of control. Specifically, they state that the Commission should extend to all services the approach applied to CARS licenses, which does not require approval or filing for ownership changes that change neither the licensee's identity nor its ultimate controlling ownership.²² Petitioners further request the Commission to clarify that a licensee planning to change its organizational form (for example, from a corporation to a limited liability company), is not automatically required to make a pro forma filing for a change in control.²³ NAB agrees with

²¹ See Petition at 8, citing *Commission Launches Modernization of Media Regulation Initiative*, Public Notice, 32 FCC Rcd 4406 (2017); *Remarks of FCC Chairman Ajit Pai at the National Association of Broadcasters Show* (Apr. 9, 2019) ("I launched a review of the Commission's media rules in order to revise or repeal rules that are outdated, unnecessary, or unduly burdensome. Since beginning this process, the Commission has opened 14 proceedings, and we've issued a total of 11 orders. And we're not done yet."); *Revisions to Reporting Requirements Governing Hearing Aid-Compatible Mobile Handsets*, Report and Order, 33 FCC Rcd 11549 (2018) (eliminating "unnecessary and outdated [hearing aid compatibility] reporting requirements and replac[ing] them with a streamlined annual certification"); *Reform of Certain Part 61 Tariff Rules*, Report and Order, WC Docket Nos. 18-276, 17-308, FCC 19-107 (rel. Oct. 30, 2019) (amending the tariff rules to minimize burdens and reduce unnecessary regulations that no longer serve the public interest).

²² Petition at iv, 13-15.

²³ Petition at iv, 15.

these proposals and urges the Commission to adopt the proposed changes for all licensees. There is no public policy or legal reason for broadcasters to be subject to a different and more burdensome standard.

IV. CONCLUSION

NAB urges the Commission to modernize its pro forma application processes as requested by Petitioners. The proposed reforms will reduce burdens on licensees, enabling them to focus their time, attention and resources on offering competitive and innovative services to the public. Moreover, the proposals will preserve the ability of the Commission and the public to ensure that the transactions at issue meet the pro forma standard.

NAB strongly urges the Commission to initiate a proceeding to examine these issues for all licensees and not limit its consideration to wireless licenses. If modernization is not considered across platforms, it will exacerbate existing regulatory disparities and limit the public interest benefits of the new approach to only certain communications services. There is no legal or public policy rationale for broadcast licensees to be held to a different standard than other licensees.

Respectfully submitted,

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