U.S. Department of Transportation
Office of the Secretary of Transportation

GENERAL COUNSEL

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Washington, D.C. 20590

MEMORANDUM FOR THE SECRETARY

From: Judith S. Kaleta
Deputy General Counsel
Designated Agency Ethics Official

JUDITH SUE KALETA Digitally signed by JUDITH SUE KALETA Date: 2021.02.03 20:29:48 -05'00'

RE: Request for a Determination Pursuant to 5 CFR § 2635.502

This memorandum documents my limited authorization to you) to participate in particular matters involving specific parties in which iHeartMedia + Entertainment, Inc. (iHeartMedia) is a party or represents a party. After considering the relevant circumstances, I have determined that you may participate in particular matters involving iHeartMedia while serving as Secretary of the U.S. Department of Transportation (Department or DOT), because the interest of the Federal government in your participation in certain iHeartMedia matters outweighs any concern that a reasonable person may question the integrity of DOT's programs and operations. Therefore, in accordance with 5 CFR § 2635.502(d), you may participate in particular matters involving iHeartMedia in the manner explained in this memorandum.

I. Ethics Agreement Commitments

In your Ethics Agreement dated January 14, 2021, you described your relationship with iHeartMedia based on your service as the host of a podcast series on iHeartRadio titled "The Deciding Decade." Your service as a host of the series ended in December 2020, and you will not perform any services on these podcasts during your time as Secretary of Transportation. You have received all minimum guaranteed payments from iHeartMedia that you are due, and you are entitled to a share of the net profits from the podcast after the minimum guarantee has been met.

You agreed that you will not participate personally and substantially in any particular matter that to your knowledge has a direct and predictable effect on the ability or willingness of iHeartMedia to pay these shares of the profits to you, unless you first obtain a written waiver, pursuant to 18 U.S.C. § 208(b)(1), or qualify for a regulatory exemption, pursuant to 18 U.S.C. § 208(b)(2). Your participation in interviews with entities owned by the iHeartMedia network would not affect iHeartMedia's ability or willingness to pay their shares of any profits to you. Therefore, an 18 U.S.C. § 208 waiver is not necessary for your participation in the

activities for which you are seeking an authorization. Your relationship with iHeartMedia is not subject to the restrictions described in Paragraph 2 of the Ethics Pledge (Executive Order 13989) because you did not serve as an "employee, officer, director, trustee, or general partner" for iHeartMedia. See E.O. 13989, § 2(k).

In addition, your Ethics Agreement stated that pursuant to the impartiality regulation at 5 CFR § 2635.502, you have a "covered relationship" with iHeartMedia and you agreed that you will not participate personally and substantially in any particular matter involving specific parties in which you know iHeartMedia is a party or represents a party, unless you are first authorized to participate, pursuant to 5 CFR § 2635.502(d). In your Ethics Agreement, you indicated that you intended to seek written authorization to participate personally and substantially in particular matter involving specific parties in which you know iHeartMedia is a party or represents a party.

II. Purpose of Authorization

As Secretary of Transportation, you are likely to receive frequent invitations to interact with a variety of media organizations to convey DOT's mission and priorities to the American public. As the head of the Department and as a spokesperson for the Administration on transportation issues, it is in the Department's interest that you have an opportunity to reach members of the public through a variety of mediums. Such opportunities include interviews with television networks, print news publishers, online media organizations, and radio and digital streaming stations and programs.

The purpose of your request for a 5 CFR § 2635.502(d) authorization is to enable you to participate in interviews with entities that are owned by iHeartMedia, including those under the iHeartRadio umbrella brand. Under the Federal ethics rules, your participation in one-on-one interviews with stations and programs owned by iHeartMedia would constitute a "particular matter involving specific parties" where iHeartMedia is or represents a party. iHeartMedia's website states that its radio network is "the #1 streaming broadcast radio platform," reaching "9 out of 10 Americans every month" and including "more than 850 live broadcast stations in 153 markets across America." iHeartMedia also serves as a platform for a podcasts and other media content that is not owned by iHeartMedia. Please note that an authorization is not necessary for you to participate in interviews with any radio stations, podcasts, and other mediums that are available on iHeartMedia platforms, but are not owned by iHeartMedia. For example, "NPR News Now" is a podcast that is available for streaming on the iHeartRadio platform but not owned by iHeartRadio or iHeartMedia.

III. Consideration of Relevant Factors

Under section 2635.502(d), where an employee's participation likely would create an appearance of partiality, "the agency designee may authorize the employee to participate in the matter based on a determination, made in light of all relevant circumstances, that the interest of the Government in the employee's participation outweighs the concern that a reasonable person may question the integrity of the agency's programs and operations." That section lists several factors that may be taken into consideration, as follows:

1. the nature of the relationship involved;
2. the effect that resolution of the matter would have on the financial interests of the person involved in the relationship;
3. the nature and importance of the employee's role in the matter;
4. the sensitivity of the matter;
5. the difficulty of reassigning the matter to another employee; and
6. adjustments that may be made in the employee's duties that would reduce or eliminate the likelihood that a reasonable person would question the employee's impartiality.

5 CFR § 2635.502(d).

iHeartMedia is not regulated by DOT or significantly affected by DOT programs. You had a limited relationship with iHeartMedia for a period of four months while you served as a podcast host. You no longer hold the position of podcast host with iHeartMedia, and you have no relationship with iHeartMedia other than your contractual entitlement to potential future profits as a result of work you concluded prior to your confirmation as Secretary. Your participation in interviews with radio stations, digital networks, or programs owned by iHeartMedia would not appear to raise significant questions about the substantive work of the Department's programs or ability to carry out its mission in an impartial manner.

Under the ethics rules, each interview with a media organization would constitute a separate particular matter. Because the purpose of the interviews is to disseminate information to the public, your participation in interviews with stations, networks or programs owned by iHeartMedia would not raise any novel or sensitive issues unique to iHeartMedia. Furthermore, your participation in interviews would not appear to raise particular concerns about any of the agency's programs or ability to carry out its mission in an impartial manner.

As Secretary, you are uniquely situated to participate in interviews on behalf of DOT and to convey information to the American people. Therefore, having other officials participate in these interviews on your behalf may not always be a viable alternative to your participation in such matters and may not be as effective in communicating DOT's priorities to some members of the public. Since iHeartMedia's network is so vast, your inability to participate in interviews with entities owned by iHeartMedia could substantially limit DOT's ability to reach segments of the American public who may not seek out information from other media sources. Permitting you to participate in iHeartMedia matters would benefit DOT and the Administration by ensuring that the Department's important safety message and information about DOT programs and priorities is widely disseminated.

IV. Conclusion

Based on a consideration of all relevant factors and the understanding that you intend to make yourself available to all interested media organizations during your appointment as Secretary, and that you will not give preferential treatment to any specific media entity or network, including iHeartMedia, I have determined that the interest of the Federal Government in your ability to participate in interviews with stations and programs owned by iHeartMedia outweighs the concern that a reasonable person may question the integrity of the Department's programs

and operations as a result of your participation in such interviews. After considering these factors, your request for an authorization to participate in such matters is approved. The authorization shall continue for the duration of your tenure as Secretary.

Pursuant to this authorization, you may not use your participation in such interviews to mention or speak about your iHeartRadio podcast, "The Deciding Decade." You also may not permit any party representing iHeartMedia to promote your podcast in connection with your participation in an interview. Finally, this authorization does not allow you to participate in decisions involving advertising funding for DOT programs where iHeartMedia is a party or represents a party.

The DOT Ethics Office will continue to provide ethics advice to you to ensure that your participation in matters involving iHeartMedia is consistent with this authorization and the Standards of Ethical Conduct for Employees of the Executive Branch. If you have further questions about the scope of this authorization, please do not hesitate to contact me.