FOREIGN OWNERSHIP GUIDELINES FOR FCC COMMON CARRIER AND AERONAUTICAL RADIO LICENSES

Section 310 of the Communications Act of 1934, as amended

Initial Authorizations and Transfers of Control and Assignments of Common Carrier and Aeronautical Radio Licenses

International Bureau
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INTRODUCTION

Under Section 310 of the Communications Act of 1934, as amended (the "Act"), the Federal Communications Commission ("FCC" or "Commission") reviews foreign investment in FCC radio licensees. To that end, the Commission has developed over the years a body of case law that interprets Section 310 of the Act.

A review of the applications involving foreign ownership interests received by the Commission suggests that the case law may not provide sufficiently clear guidance to applicants. For example, applications received by the Commission often do not contain all the information required by the Commission for its review. Even sophisticated applicants have failed to successfully apply the case law and, therefore, have not always provided the necessary foreign ownership information to the Commission. Consequently, Commission staff often finds it necessary to request additional information from applicants. Noncompliance with the Commission's rules in the first instance not only taxes the Commission's limited resources but also creates unnecessary administrative delay that may have an adverse impact on the operations of businesses seeking to merge their assets, assign or transfer licenses, acquire initial authorizations, or engage in spectrum leasing.

Accordingly, to assist the public and applicants in understanding and complying with the Commission's interpretation of Section 310 of the Act, its rules, and foreign ownership policies as set forth in case law, the International Bureau ("Bureau") issues these "Foreign Ownership Guidelines for FCC Common Carrier and Aeronautical Radio Licenses." These Guidelines interpret existing Commission policy and precedent. Because foreign ownership issues are often fact-dependent, however, these Guidelines should not be viewed as exhaustive of all foreign ownership issues that may arise under Section 310.

SECTION I – PURPOSE AND OVERVIEW

Section I describes the purpose and the limitations of these Guidelines. Section II provides a brief discussion of Section 310 of the Act. Sections III and IV present a detailed discussion of the Commission's foreign ownership analysis under Section 310(b)(4) of the Act and other relevant Commission precedent. Section V defines certain terms used in these Guidelines, while Section VI provides a non-exhaustive list of cases where the Commission or the Bureau, under delegated authority, has applied the Commission's foreign ownership analysis.

A. Purpose

These Guidelines are an interpretation of existing Commission policy and precedent. The Guidelines are intended to explain how the Commission analyzes foreign ownership issues related to foreign investment in radio licensees, applications for initial radio licenses, transfers of control and assignments of radio licenses, and spectrum leasing in the secondary market for radio licenses.

The Bureau anticipates that these Guidelines will assist applicants in submitting applications that contain the information that the Commission requires and that comply with existing policy and precedent. This, in turn, will assist Commission staff in analyzing the foreign ownership issues presented in applications under Section 310 of the Act. Further, the Bureau expects that these Guidelines will be used by licensees to ensure their continuing compliance with the foreign ownership requirements of Section 310 of the Act.

B. Limitations

Foreign ownership issues vary from case to case and are often fact-dependent. Accordingly, no set of guidelines will provide specific answers to every foreign ownership question.

These Guidelines are advisory in nature and are not binding on the Commission. They do not modify the Commission's existing foreign ownership analytical framework, and they may not be cited as precedent. The Commission will continue to exercise its judgment and discretion in analyzing foreign ownership issues, evaluating each case on its own facts, and applying the analytical framework that is generally described in these Guidelines.

These Guidelines are intended to apply to two categories of radio licenses: (1) common carrier and (2) aeronautical en route or aeronautical fixed (hereinafter, "aeronautical") licenses.[1]

[1] These Guidelines also discuss existing broadcast radio license precedent. We note that the Commission may, where applicable, apply such broadcast precedent to foreign ownership issues presented in the common carrier context.

SECTION II: BACKGROUND

A. Section 310 of the Act

Section 310 of the Act requires the Commission to review foreign investment in radio station licenses.[2] This section imposes specific ownership restrictions on who may hold certain types of radio licenses.

The relevant provisions of Section 310 of the Act are as follows:

> Section 310. Limitation on Holding and Transfer of Licenses
>
> (a) The station license required under this Act shall not be granted to or held by any foreign government or representative thereof.
>
> (b) No broadcast or common carrier or aeronautical en route or aeronautical fixed radio station license shall be granted to or held by–
>
> > (1) any alien or the representative of any alien;
> >
> > (2) any corporation organized under the laws of any foreign government;
> >
> > (3) any 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;
> >
> > (4) 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.

[2] A "station license" is defined under Section 3(42) of the Act as "that instrument of authorization required by [the] Act or the rules and regulations of the Commission made pursuant to [the] Act, for the use or operation of apparatus for transmission of energy, or communications, or signals by radio by whatever name the instrument may be designated by the Commission." The Communications Act of 1934, as amended § 3(42), 47 U.S.C. § 153(42). For example, radio station licenses include broadcast, wireless personal communications services ("PCS"), cellular, microwave, fixed wireless, aeronautical en route, and mobile satellite services.

Section 310(a) of the Act expressly prohibits a foreign government or representative[3] from holding ***any*** radio license. This prohibition is absolute and the Commission has no discretion to waive it. Section 310(a), however, does not expressly prohibit indirect foreign government control of licensees. As explained in the *VoiceStream/Deutsche Telekom Order*, a foreign government or representative may hold a controlling ownership interest in a U.S. domestic licensee through a domestically organized holding company under Section 310(b)(4) of the Act, provided the Commission does not find that the public interest would be served by the refusal or revocation of the license.[4]

Section 310(b) of the Act contains four subsections that place specific restrictions on the ownership of broadcast, common carrier, or aeronautical radio station licensees.

- **Section 310(b)(1) of the Act** prohibits any alien or representative of any alien from holding a broadcast, common carrier, or aeronautical radio station license. This prohibition is absolute and the Commission has no discretion to waive it. Section 310(b)(1), however, does not bar indirect foreign control of a U.S. domestic licensee that holds licenses.

- **Section 310(b)(2) of the Act** prohibits a foreign corporation from holding a broadcast, common carrier, or aeronautical radio station license. This prohibition is absolute and the Commission has no discretion to waive it. However, as with Sections 310(a) and 310(b)(1), Section 310(b)(2) does not expressly prohibit indirect foreign control of licensees.

- **Section 310(b)(3) of the Act** prohibits foreign governments, individuals, and corporations from owning more than 20 percent of the stock of a broadcast, common carrier, or aeronautical radio station licensee. The Commission strictly applies the statutory restrictions of this section and has no discretion to waive the 20 percent statutory benchmark.

    - The prohibition contained in Section 310(b)(3) also applies in situations where a foreign government, individual, or corporation holds equity or voting interests in a licensee through an intervening domestically organized holding company that itself holds *non-controlling* interests in the licensee.[5]

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[3] For purposes of Section 310(a), a "representative" is an entity who acts "in behalf of" or "in connection with" the foreign government. *See, e.g., QVC Network, Inc.,* Memorandum Opinion and Order, 8 FCC Rcd 8485, 8490-91, ¶ 21 (1993) (citing *Letter from the Commission to Russell G. Simpson, Esq.*, 2 F.C.C. 2d 640 (1966)).

[4] *See Application of VoiceStream Wireless Corporation, Powertel, Inc., Transferors, and Deutsche Telekom AG, Transferee, for Consent to Transfer Control of Licenses and Authorizations Pursuant to Sections 214 and 310(d) of the Communications Act and for Declaratory Ruling Pursuant to Section 310 of the Communications Act,* Memorandum Opinion and Order, 16 FCC Rcd 9779, 9805-9806, ¶¶ 41- 42 (2001) ("*VoiceStream/Deutsche Telekom Order*").

[5] *See Request for Declaratory Ruling Concerning the Citizenship Requirements of Sections 310(b)(3) and (4) of the Communications Act of 1934, as amended,* Declaratory Ruling, 103 F.C.C. 2d 511, 520-522, ¶¶

- **Section 310(b)(4) of the Act** establishes a 25 percent benchmark for investment by foreign individuals, corporations, and governments in entities that control a U.S. broadcast, common carrier, or aeronautical radio station licensee. This section also grants the Commission discretion to allow higher levels of foreign ownership unless it finds that such ownership is inconsistent with the public interest.

    - By its express language, Section 310(b)(4), rather than Section 310(b)(3), applies in situations where the foreign entity holds equity or voting interests in a domestically organized holding company that directly or indirectly *controls* the licensee.[6]

    - The majority of the cases where foreign ownership is an issue implicate Section 310(b)(4) of the Act.

B. Applicability of Section 310

The provisions of Section 310 of the Act apply to applications for initial radio licenses, applications for assignments and transfers of control of radio licenses, and spectrum leasing arrangements within the secondary market. The Commission or the Bureau, under delegated authority,[7] must approve the foreign ownership interests presented in these applications before or at the same time as grant of the licenses to the foreign owned or controlled entity. In order to apply for a foreign ownership ruling before the grant of a license or license transfer or assignment, applicants must file a petition or request for declaratory ruling.

- **Initial authorizations.** The Policy Division of the International Bureau, in coordination with the licensing divisions of the International Bureau and the Wireless Telecommunications Bureau, along with the Office of General Counsel, analyzes foreign ownership issues presented in applications for initial common carrier and aeronautical radio licenses.[8]

16-20, n.45 (1985) ("*Wilner & Scheiner I*"), *reconsidered in part*, 1 FCC Rcd 12 (1986) ("*Wilner & Scheiner II*").

[6] *Compare* 47 U.S.C. § 310(b)(3) with § 310(b)(4).

[7] *See* 47 C.F.R. § 0.261 (2003).

[8] Applicants for licenses subject to competitive bidding must certify in their short-form applications that they are in compliance with the foreign ownership provisions of Section 310 of the Act. Any auction applicant that is controlled by a corporation with more than 25 percent foreign ownership, or which seeks to exceed the amount of foreign ownership approved in a prior ruling, must file a petition for declaratory ruling with the International Bureau and reference its pending petition in its short form application. The International Bureau will accept these petitions, but will not necessarily rule on them prior to the auction start date. The International Bureau will act on petitions before or at the same time as the grant of the underlying licenses. *See Wireless Telecommunications Bureau Responds to Questions about the Local Multipoint Distribution Service Auction*, Public Notice, 13 FCC Rcd 13017 (1998).

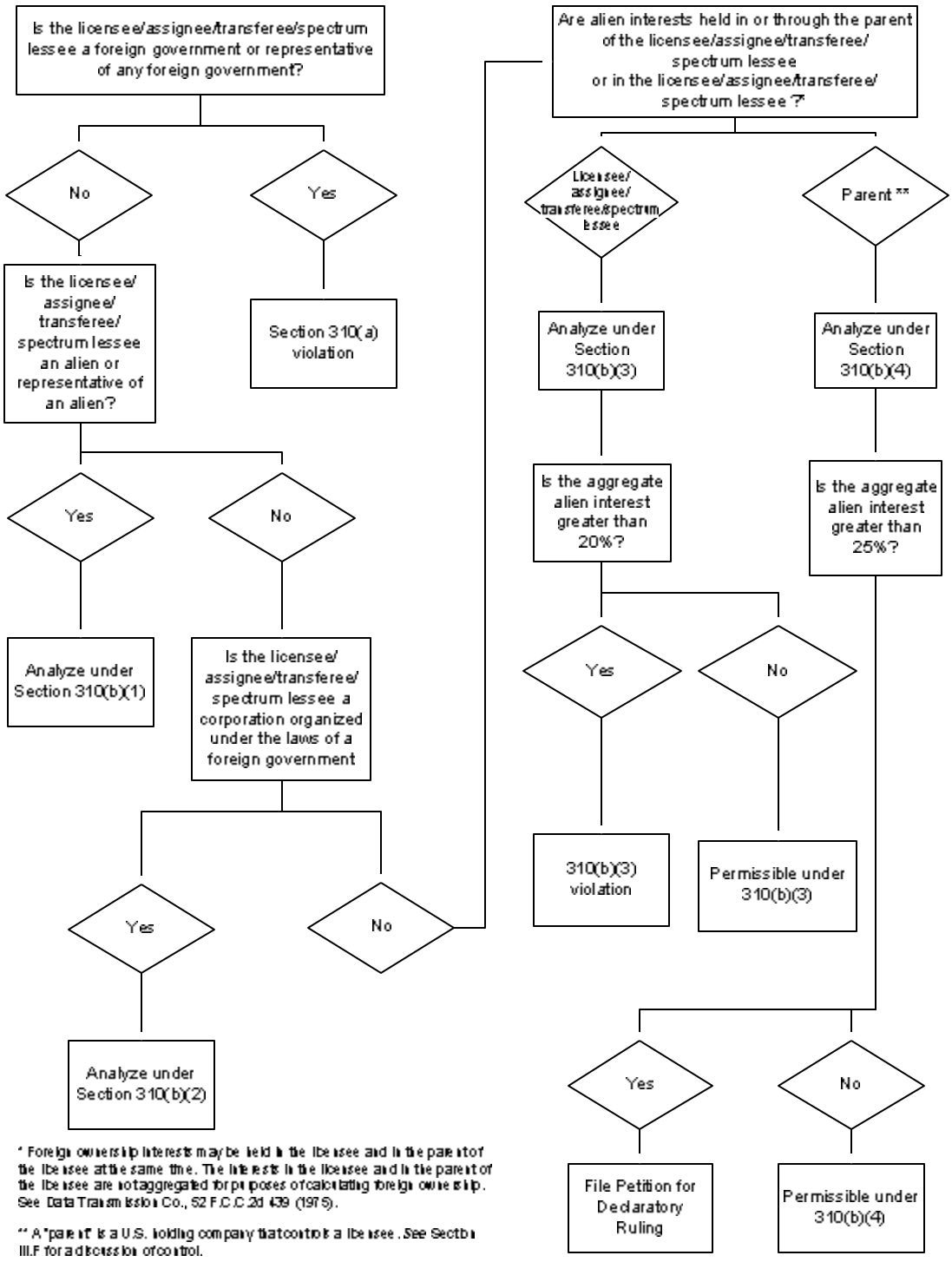
- **Assignments and Transfers of Control.** The Policy Division of the International Bureau, in coordination with the licensing divisions of the International Bureau and the Wireless Telecommunications Bureau, along with the Office of General Counsel, examines the foreign ownership issues presented by assignees and transferees in applications for the assignment and transfer of control of common carrier and aeronautical radio licenses.

- **Spectrum Leasing within the Secondary Market**. The Policy Division of the International Bureau, in coordination with the Wireless Telecommunications Bureau and the Office of General Counsel, assesses the foreign ownership issues raised by spectrum lessees in spectrum leasing arrangements and will, when necessary, issue a declaratory ruling concerning spectrum lessees prior to or concurrently with the effective date of the leasing arrangement under the secondary market rules.[9]

[9] *Promoting Efficient Use of Spectrum Through Elimination of Barriers to the Development of Secondary Markets*, Report and Order and Further Notice of Proposed Rulemaking, 18 FCC Rcd 20604 (2003) *modified by Erratum*, 18 FCC Rcd 24817 (2003) ("*Secondary Markets Report and Order*"), Second Report and Order, Order on Reconsideration, and Second Further Notice of Proposed Rulemaking, 19 FCC Rcd 17503 (2004) ("*Secondary Markets Second Report and Order*"); *see* 47 C.F.R. §§ 1.913, 1.948, 1.2002, 1.2003, 1.8002, 1.9001, 1.9003, 1.9005, 1.9010, 1.9020, 1.9030, 1.9035, 1.9040, 1.9045, 1.9048, 1.9050, 1.9055, 1.9060, 1.9080, 24.239, 27.4, 27.10, 27.12, 90.20 (2004).

C. Section 310 Decision Flowchart

The following chart provides a general outline of how the Commission analyzes foreign ownership under Section 310 of the Act.



* Foreign ownership interests may be held in the licensee and in the parent of the licensee at the same time. The interests in the licensee and in the parent of the licensee are not aggregated for purposes of calculating foreign ownership. See Data Transmission Co., 52 F.C.C.2d 439 (1975).

** A "parent" is a U.S. holding company that controls a licensee. See Section III.F for a discussion of control.

SECTION III - FOREIGN OWNERSHIP ANALYSIS UNDER SECTION 310(B)(4)

A. Analytical Framework

Section 310(b)(4) of the Act establishes a 25 percent benchmark for investment by foreign individuals, corporations, and governments in entities that control U.S. common carrier and aeronautical radio licensees.[10] This section, however, grants the Commission discretion to allow higher levels of foreign ownership unless it finds that such ownership is inconsistent with the public interest.[11] Thus, a foreign government, individual, or corporation may own, directly or indirectly, up to 100 percent of the stock of a U.S. holding company that holds a controlling interest in a common carrier or aeronautical radio licensee provided the Commission does not find the foreign ownership to be inconsistent with the public interest.

B. Foreign Investments

The Commission treats foreign investments from World Trade Organization ("WTO") Member countries and non-WTO Member countries differently. As discussed below, the Commission uses a "principal place of business" test to determine whether the nationality or "home market" of a foreign investor is a WTO Member country.

1. WTO Member Countries

In the *Foreign Participation Order*, the Commission unanimously concluded that the public interest would be served by permitting greater investment by individuals and entities from WTO Member countries in U.S. common carrier and aeronautical radio licensees.[12] Accordingly, they are afforded a rebuttable presumption by which the Commission presumes that foreign investment from WTO Member countries does not pose competitive concerns in the U.S. market.

Where there is a showing of a risk to competition in the U.S. market from foreign investments by an individual or entity from a WTO Member country, the Commission may impose specific conditions on the licensee to address such risks to competition. In addition, in the exceptional case where an application poses a very high risk to competition in the U.S. market, where conditions imposed by the Commission would not satisfactorily address competition concerns, the Commission could deny the application.[13]

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[10] 47 U.S.C. § 310(b)(4).

[11] *Id.*

[12] *Rules and Policies on Foreign Participation in the U.S. Telecommunications Market; Market Entry and Regulation of Foreign-Affiliated Entities*, Report and Order and Order on Reconsideration, 12 FCC Rcd 23891, 23896, ¶ 9, 23913, ¶ 50, and 23940, ¶¶ 111-12 (1997) ("*Foreign Participation Order*"), *modified by Order on Reconsideration*, 15 FCC Rcd 18158 (2000).

[13] *Foreign Participation Order*, 12 FCC Rcd at 23913-15, ¶¶ 51-54.

In addition to the presumption regarding competitive concerns noted above, the Commission considers other public interest concerns related to national security, law enforcement, foreign policy, and trade policy.[14] If the Executive Branch raises national security, law enforcement, foreign policy, or trade policy concerns, the Commission accords deference to its expertise on such matters.[15]

2. Non-WTO Member Countries

Applicants with foreign ownership interests from non-WTO Member countries are not afforded the same rebuttable presumption. These applicants must satisfy the Commission's effective competitive opportunities ("ECO") test in order to obtain authorization to exceed the 25 percent benchmark set forth in Section 310(b)(4) of the Act.

The ECO test was adopted by the Commission in 1995.[16] Under the ECO test, common carrier and aeronautical radio applicants and licensees are required to demonstrate, as a condition of exceeding the 25 percent benchmark, that no legal or practical restrictions on U.S. investment exist in the relevant service sector of the home markets of the applicant's foreign investors. The ECO test was developed to promote effective competition in the U.S. telecommunications service market, to prevent anti-competitive conduct in the provision of international services or facilities, and to encourage foreign governments to open their telecommunications markets.

C. Home Market Determination

For purposes of determining whether foreign investors are based in WTO Member countries and, thus, afforded greater investment opportunities under Section 310(b)(4) of the Act, the Commission uses the "principal place of business" test to determine the nationality or "home market" of foreign entities that seek to invest directly or indirectly in the U.S. parent company of a common carrier or aeronautical radio applicant or licensee. The Commission generally considers a foreign individual's home market to be its country of citizenship. The Commission does not determine a foreign investor's home market based on the investor's address of record.

An applicant must provide, in support of its request for a foreign ownership ruling, sufficient information to establish the home market of any foreign individual or entity that would hold a direct or indirect equity or voting interests in the applicant's U.S. parent company.[17] Where the interest would be held by a foreign individual, the applicant must disclose the individual's country of citizenship.

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[14] *Id*., at 23919-21, ¶¶ 61-66.

[15] *See Bell Atlantic New Zealand Holdings, Inc., Transferor and Pacific Telecom Inc., Transferee*, Order and Authorization, 18 FCC Rcd 23140, 23158, ¶ 38 (2003).

[16] *See Market Entry and Regulation of Foreign-Affiliated Entities*, Report and Order, 11 FCC Rcd 3873 (1995) ("*Foreign Carrier Entry Order*").

[17] The calculation of foreign equity and voting interests is explained in Section III.D., *infra*.

Where the interest would be held by a foreign corporation, partnership, or other business organization, the applicant must establish the investing entity's principal place of business by specifying the following information:

- the country of its incorporation, organization or charter;
- the nationality of all investment principals,[18] officers, and directors;
- the country in which its world headquarters is located;
- the country in which the majority of its tangible property, including production, transmission, billing, information, and control facilities, is located; and
- the country from which it derives the greatest sales and revenues from its operations.[19]

If an applicant believes it cannot provide the information required for each foreign individual or entity that would hold a direct or indirect equity or voting interest in the applicant's U.S. parent company, it should contact Commission staff prior to filing its request for a ruling. The applicant should discuss the basis for its determination that such information cannot be ascertained or would be unduly burdensome or costly to ascertain. As discussed in Section III.C.1. below, if the Commission cannot reasonably determine the citizenship or principal place of business of a proposed foreign investor based upon the information provided by the applicant, the Commission will consider these investments as though they were from non-WTO Member countries.

The following cases illustrate how the Commission determines the home market of an applicant's foreign investors:

- *Lockheed Martin Global Telecommunications, Comsat Corporation, and Comsat General Corporation, Applications for Assignment of Section 214 Authorizations, Private Land Mobile Radio Licenses, Experimental Licenses, and Earth Station Licenses*, Order and Authorization, 16 FCC Rcd 22897, 22908-09 ¶¶ 25-27 (2001).

- *Space Station System Licensee, Inc. (Assignor) and Iridium Constellation LLC (Assignee) et al.*, Memorandum Opinion, Order and Authorization, 17 FCC Rcd 2271, 2281-82 ¶¶ 19-23 (IB 2002).

- *Vodafone Americas Asia Inc. (Transferor), Globalstar Corporation (Transferee), Consent to Transfer Control of Licenses and Section 214 Authorizations and Petition for Declaratory Ruling Allowing Indirect Foreign Ownership*, Order and Authorization, 17 FCC Rcd 12849, 12864-65, ¶¶ 46-50 (IB 2002).

[18] The term "investment principal" means any individual or entity holding a ten percent or greater equity or voting interest, or a controlling interest, whether direct or indirect, in a foreign entity.

[19] *See Foreign Participation Order*, 12 FCC Rcd at 23941-42, ¶ 116 (citing *Foreign Carrier Entry Order*, 11 FCC Rcd at 3951, ¶ 207).

1. Unidentifiable Foreign Interests

If the applicant does not provide the information required by the Commission to conduct its home market determination for entities investing directly or indirectly in its U.S. parent company, the Commission will treat the foreign investor's interests as unidentifiable foreign interests from non-WTO Member countries. This situation arises where applicants, for various reasons, fail to provide the information required by the Commission to establish a foreign investor's home market. Similarly, if the Commission cannot reasonably ascertain the citizenship of foreign individuals with ownership interests based on information provided by the applicant, the Commission will consider these investments as unidentifiable foreign interests from non-WTO Member countries.

2. Representations Made by Applicants

The Commission will accept applicants' representations as to the principal places of business of their proposed foreign investors if Commission staff can independently verify the accuracy of these representations through publicly available resources. If the Commission staff cannot independently verify the accuracy of these representations, then the Commission will not accept the representations made by applicants as to foreign investors' principal places of business. We caution applicants, however, that Commission resources are limited. Accordingly, applicants are strongly encouraged to provide the Commission with the necessary information to assist the Commission in conducting its principal place of business analyses.[20]

D. Calculating Foreign Ownership Interests

Under the Commission's longstanding policies, any ownership or voting interest held by an individual other than a United States citizen or an entity organized under the laws of a foreign government is counted in the application of the statutory benchmarks.[21] The list of attributable interests includes nearly all forms of voting and equity interests held in and through the successive corporate parents of an applicant or licensee.

In applying Section 310(b), the Commission has interpreted the term "capital stock" to include not only the individual shareholdings of the corporate parent, but also the many "alternative means by which equity or voting interests are held in these [non-corporate entities],"[22] including

[20] In the past, the Commission in some cases has accepted representations made by applicants as to the principal places of business of their proposed foreign investors. For example, in the *Vodafone/Globalstar Order*, the Commission accepted the applicants' representations that the foreign investors named in the applications had their principal places of business in WTO Member countries. *See Vodafone Americas Asia Inc. (Transferor), Globalstar Corporation (Transferee), Consent to Transfer Control of Licenses and Section 214 Authorizations and Petition for Declaratory Ruling Allowing Indirect Foreign Ownership*, Order and Authorization, 17 FCC Rcd 12849 (IB 2002) ("*Vodafone/Globalstar Order*").

[21] *See Wilner & Scheiner I*, 103 F.C.C. 2d at 514-15.

[22] *Applications of PrimeMedia, et al.*, Memorandum Opinion and Order, 3 FCC Rcd 4293, 4295 (1988) (emphasis omitted) ("*PrimeMedia*") (citing *Wilner & Scheiner I*, 103 F.C.C. 2d at 516).

partnership interests,[23] policyholders of mutual insurance companies,[24] church members,[25] union members,[26] and beneficiaries of irrevocable trusts.[27]

1. Ownership Interests Up the Vertical Ownership Chain

The Commission considers all the relevant ownership interests up the vertical ownership chain including "even small investments in publicly traded securities."[28] The Commission has stated that even these small investments, if aggregated, could nevertheless create a degree of control or influence over a licensee that would be contrary to U.S. national security or law enforcement interests.[29] The Commission, therefore, requires all applicants under Section 310(b)(4) of the Act to "indicate how much [indirect foreign ownership] is attributable to each identified shareholder and how much of that amount is an allowance for fluctuations in publicly traded shares."[30]

2. Calculating Foreign Equity and Voting Interests

As the Commission has previously held, "[c]ompliance with Section 310(b) is a two-pronged analysis, one pertaining to voting interests and the second to ownership interests."[31] The Commission, therefore, evaluates compliance with Section 310(b) in terms of both voting and equity interests in the Commission licensee, under Section 310(b)(3), and in a controlling parent company, under Section 310(b)(4).

Recognizing that voting interests may differ from equity interests, the Commission begins its evaluation of the foreign ownership interests presented in applications and petitions under

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[23] *Wilner & Scheiner I*, 103 F.C.C. 2d at 519; *Application of Continental Cellular for Authority to Construct and Operate a Domestic Cellular Radio Telecommunications System on Frequency Block A*, 5 FCC Rcd 691 (1990).

[24] *Farragut Television Corp.*, 4 Rad. Reg. 2d (P&F) 350 (1965).

[25] *Kansas City Broadcasting Co.*, 5 Rad. Reg. (P&F) at 1094.

[26] *Chicagoland TV Co.*, 4 Rad. Reg. 2d (P&F) 747, 752 (1965).

[27] *See, e.g., PrimeMedia*, 3 FCC Rcd at 4295.

[28] *Foreign Participation Order*, 12 FCC Rcd at 23941, ¶ 115.

[29] *Id. See also Wilner & Scheiner II*, 1 FCC Rcd at 13, ¶ 7 ("The adoption of the equity benchmarks in Section 310(b) reflects congressional concern over substantial alien ownership of Commission licensees and persons or companies controlling these licensees even where the alien's ownership interest is noninfluential in nature.").

[30] *Foreign Participation Order*, 12 FCC Rcd at 23941, ¶ 115.

[31] *BBC License Subsidiary L.P.*, Memorandum Opinion and Order, 10 FCC Rcd 10968, 10973-74, ¶¶ 22, 25 (1995) ("*BBC License Subsidiary*") (citing Section 310(b)(4) and *Wilner & Scheiner I*, 103 FCC 2d 511, 519 n.37 (1985) and noting that the plain language of Section 310(b) "limits the amount of capital stock which can be 'owned … *or* voted' by aliens. 47 U.S.C. § 310(b)(3), (4) (Emphasis added.).").

Section 310(b)(4) by calculating separately the foreign equity and voting interests in the licensee's U.S. parent.[32]

The Commission first calculates the equity interest of each foreign investor in the parent and then aggregates these interests to determine whether the sum of the foreign equity interests exceeds the statutory benchmark. The Commission next calculates the voting interest of each foreign investor in the parent and aggregates these voting interests.[33] The presence of aggregated alien equity or voting interests in the parent company in excess of 25 percent triggers the applicability of Section 310(b)(4)'s statutory benchmark.[34] Once the benchmark is exceeded, Section 310(b)(4) directs the Commission to determine whether the "public interest will be served by the refusal or revocation of such license."[35] The Commission then determines whether these foreign interests properly are ascribed to individuals or entities whose home markets are in WTO Member countries. If the Commission finds that more than 25 percent of the ownership of an entity that controls a common carrier radio or aeronautical radio licensee or applicant is attributable to investors whose home markets are in non-WTO Member countries, the licensee or applicant must satisfy the Commission's ECO analysis in order to obtain authorization to exceed the 25 percent benchmark.[36]

As previously stated, applicants and licensees that propose foreign investment from WTO Member countries are given the benefit of a rebuttable presumption that foreign investment from these countries does not pose competitive concerns in the U.S. market. If this presumption is rebutted, however, the Commission may find it necessary in a particular case to impose specific conditions on a licensee to address a demonstrated risk to competition from WTO investment; or, where conditions would not satisfactorily address competitive concerns, the Commission could deny the application or petition for declaratory ruling.[37] In addition, the Commission's public interest analysis takes into account and affords the appropriate level of deference to Executive Branch agencies on national security, law enforcement, foreign policy, and trade policy issues.[38]

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[32] *Id.*

[33] *See id.* at 10972-73 ¶ 20, 10973-74, ¶¶ 23-27.

[34] *See, e.g., Sprint Corporation Petition for Declaratory Ruling Concerning Section 310(b)(4) and (d) and the Public Interest Requirements of the Communications Act of 1934, as amended*, Declaratory Ruling and Order, 11 FCC Rcd 1850, 1857-58, ¶ 47 (1995) ("*Sprint*"). *See also BBC License Subsidiary*, 10 FCC Rcd at 10973-74, ¶¶ 23-27.

[35] *See Sprint*, 11 FCC Rcd at 1857-58, ¶ 47. *See also Application of Fox Television Stations, Inc. for Renewal of License Station WNYW-TV, New York, New York*, Memorandum Opinion and Order, 10 FCC Rcd 8452, 8474-75, ¶ 52 (1995) ("*Fox Television*").

[36] *See Foreign Participation Order*, 12 FCC Rcd at 23946, ¶ 131. *See also* Section III.B.2, *supra.*

[37] *See* Section III.B.1, *supra.*

[38] *Id.*

3. Redemption Rights

The Bureau reminds applicants that, in calculating foreign ownership amounts, the Commission does not consider convertible interests such as options, warrants, and convertible debentures until converted. However, the Commission will consider convertible interests in calculating foreign ownership interests if specifically requested by the petitioner, *i.e.*, where the petitioner is requesting approval so those rights can be exercised in a particular case without further Commission action under Section 310(b)(4).

E. Use of the Multiplier

As part of the calculation of foreign ownership interests in the U.S. parent of an applicant or licensee, the Commission uses a "multiplier" to ascertain ownership interests held by foreign investors through one or more intervening entities.[39] As discussed in Section III.D. above, once the equity and voting interests of each foreign investor are calculated, these equity and voting interests are then aggregated separately to determine whether the sum of the equity or voting interests exceeds the statutory benchmark in Section 310(b)(4). The guidelines discussed below for calculating foreign equity and voting interests in the U.S. parent company of an applicant or licensee also apply for purposes of calculating foreign equity and voting interests in an applicant or licensee under Section 310(b)(3) of the Act.

1. Multiplier Used

Equity Interests. The Commission uses a multiplier to calculate the percentage of each investor's equity interest in the applicant's or licensee's U.S. parent company when those interests are held through intervening companies. The multiplier is applied to each link in the vertical ownership chain, regardless of whether any particular link in the chain represents a controlling interest in the company positioned in the next lower tier.

- For example, if foreign individuals or entities hold a 20 percent equity interest in Company A and Company A, in turn, holds a 40 percent equity interest in Company B, but has *de facto* control of Company B, the percentage of Company B's equity capital supplied by Company A is 40 percent even though Company A controls Company B. In this case, the foreign equity interest attributed to the foreign individuals or entities would be 8 percent because "the percentage of that 40 percent equity capital reasonably attributable to aliens is proportionate to the alien contribution to Company A. The use of the multiplier (40% x 20% = 8%) properly discounts the alien participation in Company B."[40]

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[39] *See BBC License Subsidiary*, 10 FCC Rcd at 10973-74, ¶¶ 23-27 (citing *Wilner & Scheiner I*, 103 F.C.C. 2d at 521-24 and *Wilner & Scheiner II*, 1 FCC Rcd at 13, and overruling *Wilner & Scheiner II* insofar as it established a method of calculating foreign equity ownership or contributed capital interests which directly tracked that used to determine foreign voting interests). *See also News International, PLC*, 97 F.C.C. 2d 349, 366 (1984); *Corporate Ownership Reporting and Disclosure by Broadcast Licensees*, 97 F.C.C. 2d 997, 1018 (1984).

[40] *BBC License Subsidiary*, 10 FCC Rcd at 10973-74, ¶ 25.

Non-controlling Voting Interests. In calculating foreign voting interests in the applicant's or licensee's U.S. parent company, the Commission applies a multiplier to each link in the vertical ownership chain that does not constitute a controlling interest in the company positioned in the next lower tier. Thus, a non-controlling stockholder may use the multiplier to dilute the percentage of its foreign voting interests that will be attributed to the company positioned in the next lower tier of the ownership chain.

- For example, under a Section 310(b)(3) scenario, if foreign individuals or entities hold a non-controlling 30 percent voting interest in Corporation A which, in turn, holds a non-controlling 40 percent voting interest in Licensee Corporation B, the foreign voting interest in Licensee Corporation B would be calculated by multiplying the foreign individuals' or entities' voting interest in Corporation A by Corporation A's voting interest in Licensee Corporation B. The resulting foreign voting interest (30% x 40% = 12%) would not exceed the 20 percent statutory benchmark set forth in Section 310(b)(3).

2. Multiplier Not Used

Controlling Voting Interests. In calculating foreign voting interests in the applicant's or licensee's U.S. parent company, the Commission does not apply the multiplier to any link in the vertical ownership chain that constitutes a controlling interest in the company positioned in the next lower tier. Thus, a controlling stockholder's foreign voting interests flow entirely to the next tier of the ownership chain.

- For example, if foreign individuals or entities hold a non-controlling 20 percent voting interest in Company A which, in turn, has a *de facto* controlling 40 percent voting interest in Company B, the 20 percent foreign voting interest in Company A, which has *de facto* control of Company B, would flow entirely to the next tier, and be attributed to Company B (20% x 100% = 20%). The Commission has explained that counting all of Company A's foreign voting interest is appropriate, because "actual control over the business . . . is unlikely to be significantly attenuated through intervening companies."[41]

3. Calculating Voting Interests Held Through Intervening Partnerships

Where foreign voting interests in a parent company are held through one or more intervening partnerships, a different set of guidelines applies depending upon whether the foreign individual or entity holds an insulated limited partnership interest, a general partnership interest, or an uninsulated limited partnership interest.

Insulated Limited Partnership Interests. A common carrier applicant or licensee can use the multiplier to calculate foreign voting interests held in a parent company through an intervening limited partnership where the licensee or applicant can demonstrate that the foreign investor holds its interest in the partnership as a limited partner that effectively is insulated from active involvement in partnership affairs. The Bureau has applied the multiplier in the context of

[41] *Id.*, at 10973, ¶ 23. *See also Wilner & Scheiner I*, 103 F.C.C. 2d at 521-22, ¶ 19.

Section 310(b)(4) rulings where the common carrier applicant or licensee has demonstrated that the foreign limited partners are prohibited by the relevant partnership agreement from participating in the day-to-day management of the partnership, and that only the usual and customary investor protections are contained in the limited partnership agreement.[42]

A different standard applies in the context of broadcast licensees and applicants. The Commission has stated that, while a broadcast licensee has flexibility in the manner in which it chooses to demonstrate insulation, a foreign limited partner will be deemed to be effectively insulated for purposes of calculating the Section 310(b) foreign ownership benchmarks if the licensee can demonstrate that the foreign limited partner conforms to the specific insulation criteria for exemption from attribution under the media ownership rules.[43] Specifically, fully insulated interests will not be considered in calculating a broadcast licensee's foreign *voting* interest.[44]

For purposes of calculating foreign *equity* ownership, the Commission includes fully insulated limited partnership interests (along with uninsulated limited partnership interests and general partnership interests). A broadcast as well as a common carrier and aeronautical radio licensee or applicant can use the multiplier in computing foreign equity interests held through intervening limited or general partnerships regardless of whether the foreign individual or entity holds a general partnership interest, an insulated limited partnership interest, or an uninsulated limited partnership interest.[45]

The following example illustrates the application of the multiplier to calculate foreign voting interests held in a common carrier applicant's or licensee's U.S. parent company through an intervening limited partnership:

- U.S. Limited Partnership A proposes to hold a non-controlling 40 percent equity and voting interest in U.S. Parent Corporation B. The aggregate percentage of equity held by foreign limited partners in U.S. Limited Partnership A is 25 percent.[46] Because each of the foreign limited partners is effectively insulated from active involvement in partnership affairs, the foreign voting interest in U.S. Parent Corporation B would be

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[42] *Applications of XO Communications, Inc.*, Memorandum Opinion and Order, 17 FCC Rcd 19212, 19222-23, ¶ 25 (2002) ("*XO Communications*").

[43] *See Wilner & Scheiner I*, 103 F.C.C. 2d at 521-22, ¶¶ 20-21. The Commission's insulation criteria for purposes of attributing ownership and other interests in broadcast licensees are codified in Note 2(f) to Section 73.3555 of the rules, 47 C.F.R. § 73.3555, Note 2(f).

[44] *Id*. A broadcast licensee or applicant must always include uninsulated limited partnership interests and general partnership interests in its calculation of foreign voting interests.

[45] *See also Amendment of Parts 20, 21, 22, 24, 26, 80, 87, 90, 100, and 101 of the Commission's Rules to Implement Section 403(k) of the Telecommunications Act of 1996 (Citizenship Requirements)*, Order, 11 FCC Rcd 13072 (1996); *Fox Television*, 10 FCC Rcd 8452.

[46] The relevant measure of equity interests in partnerships is the percentage of the partner's capital contribution. *See XO Communications*, 17 FCC Rcd at 19221-22, ¶ 23, n.68 (citing *Wilner & Scheiner I*, at 522, ¶ 20 n.50).

calculated by multiplying the aggregate foreign investment interest in U.S. Limited Partnership A (25%) by that entity's voting interest in U.S. Parent Corporation B (40%). The resulting foreign voting interest in U.S. Parent Corporation B would be 10 percent (25% x 40% = 10%). The foreign equity interest in U.S. Parent Corporation B also would be 10 percent because the multiplier always applies to the calculation of foreign equity interests.[47]

General Partners/Uninsulated Limited Partners. In calculating foreign voting interests in a common carrier applicant's or licensee's U.S. parent company, the applicant or licensee may not use the multiplier to dilute a general partnership interest or uninsulated limited partnership interest held by a foreign individual or entity. The Bureau will consider a general partner to hold the same voting interest as the partnership holds in the company in the next lower tier of the vertical ownership chain. Similarly, in the absence of a specific demonstration that a limited partner effectively is insulated from active involvement in partnership affairs, a limited partner will be deemed to hold the same voting interest as the partnership holds in the company in the next lower tier of the vertical ownership chain.[48]

The following example illustrates the calculation of voting interests held by a foreign general partner when those interests are held in a common carrier applicant's or licensee's U.S. parent company through an intervening limited partnership:

- U.S. Limited Partnership A proposes to hold a non-controlling 40 percent equity and voting interest in U.S. Parent Corporation B. The percentage of equity held by the foreign general partner of U.S. Limited Partnership A is 10 percent. In these circumstances, the foreign general partner would be attributed with the 40 percent voting interest to be held by the limited partnership in U.S. Parent Corporation B. If U.S. Limited Partnership A also had an uninsulated foreign limited partner, that foreign limited partner also would be considered to hold U.S. Limited Partnership A's 40 percent voting interest in U.S. Parent Corporation B.

As demonstrated by the example above, when evaluating foreign voting interests in the U.S. parent company of a common carrier licensee or applicant, it is possible for the Bureau to treat multiple investors as holding the same voting interest in the U.S. parent company.[49] The Bureau's purpose in identifying the citizenship of the specific individuals or entities that hold these interests is not to increase the aggregate level of foreign investment, but rather to determine whether any particular interest that a foreign investor may acquire raises potential risks to

[47] *See* Section E.1., *supra.*

[48] *See, e.g., XO Communications*, 17 FCC Rcd at 19222, ¶ 24.

[49] This situation may occur when many small investors hold their interests in the licensee's parent company through an intervening general partnership and/or an uninsulated limited partnership. As explained above, these small ownership interests would "flow through" a general partnership or uninsulated limited partnership (*i.e.*, they would not be diluted by the percentage of ownership held by the partnership in the U.S. parent company). These small ownership interests would be fully attributed to the licensee's parent company. Thus, is possible that these interests, if aggregated, would exceed 100 percent. *See, e.g., Vodafone/Globalstar Order*, 17 FCC Rcd 12849.

competition or other public interests concerns, such as national security or law enforcement concerns.

F. Control

The term "control" as used in the Act means "every form of control, actual or legal, direct or indirect, negative or affirmative."[50]

Control is relevant to the Commission's foreign ownership analysis because it determines whether the Commission will analyze a particular transaction under Section 310(b)(3) or 310(b)(4) of the Act. The Commission will analyze a particular transaction or application under Section 310(b)(3) if a foreign investor holds a non-controlling interest directly in the licensee or in an intervening holding company that, in turn, holds a non-controlling interest in the licensee. By contrast, the Commission will analyze a particular transaction under Section 310(b)(4) if a foreign investor holds interests in a U.S. holding company that, in turn, holds a controlling interest in the licensee.[51] Control is also relevant to the Commission's calculation of foreign voting interests in an applicant or licensee. As explained in Section III.E.2., when the Commission calculates the level of foreign voting interests in an applicant or licensee, it does not apply the "multiplier" to any link in a vertical ownership chain that constitutes a controlling interest in the company positioned in the next lower tier.

The Commission examines two types of control: *de jure* (control as a matter of law) and *de facto* (control as a matter of fact).

1. *De Jure* Control

De jure control is typically determined by whether a shareholder owns more than 50 percent of the voting shares of a corporation.[52] For purposes of its foreign ownership analysis, the Commission does not consider future redemption rights relevant to determining *de jure* control until the future shares are actually redeemed.[53]

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[50] *WWIZ, Inc.*, 36 FCC 561, 579 (1964), *aff'd sub. nom., Lorain Journal Co. v. FCC*, 351 F.2d 824 (D.C. Cir. 1965), *cert. denied*, 383 U.S. 967 (1966).

[51] *See* Section II.C, *supra*.

[52] *Applications For Consent to the Transfer of Corporate Control from John W. Kluge (De Facto Control) to John W. Kluge (De Jure Control)*, Memorandum Opinion and Order, 98 F.C.C. 2d 300, 306 (1984) ("*Metromedia*").

[53] *WWOR-TV, Inc.*, 6 FCC Rcd 6569, 6571-72, n.13 (1991), *appeal dismissed as moot sub. nom. Garden State Broadcasting v. FCC*, 996 F.2d 386 (D.C. Cir. 1993). *But see* 47 C.F.R. § 1.2110(c)(ii)(2)(A) (for purposes of the Commission's designated entity rules, ownership interests, generally, shall be calculated on a fully diluted basis; all agreements such as warrants, stock options and convertible debentures will generally be treated as if the rights thereunder already have been fully exercised). Additionally, the Commission has previously held that restrictions on redemption or conversion can, in some instances, effectively assure compliance with Section 310(b) of the Communications Act. *Fox Television*, 10 FCC Rcd at 8513, at ¶ 152 (citing *Data Transmission Co.*, 44 F.C.C. 2d 935, 935 (1974); *Data Transmission Co.*, 52 F.C.C. 2d 439, 439-40 (1975)). *See also supra* Section III.D.3.

2. *De Facto* Control

Determining *de facto* control is more complex: it "transcends formulas, for it involves an issue of fact which must be resolved by the special circumstances presented. Case-by-case rulings are therefore required, and we have considered a variety of factors in making our determinations."[54] In the context of common carrier authorizations,[55] the Commission considers the following six factors set forth in *Intermountain Microwave*[56] and *Ellis Thompson*[57] to determine whether an investor has *de facto* control over a company:

- Does the licensee have unfettered use of all facilities and equipment?
- Who controls the daily operations?
- Who determines and carries out the policy decisions, including preparing and filing applications with the Commission?
- Who is in charge of employment, supervision, and dismissal of personnel?
- Who is in charge of the payment of financing obligations, including expenses arising out of operations?
- Who receives monies and profits derived from the operation of the facilities?

The Commission also considers negative control as part of its control analysis. Negative control is held by a person or entity that can block decisions, but cannot compel action without the concurrence of another party.[58]

In analyzing the presence of *de facto* control in a particular case, the Commission will consider the representations of the applicant, its actual conduct, and relevant corporate governance and contractual provisions.[59]

An applicant's or licensee's ownership structure frequently consists of a complex set of vertical ownership interests in its U.S. parent company. As discussed in Section III.E. above, a non-controlling stockholder may use the multiplier to dilute the percentage of its voting interest in the

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[54] *Applications of Univision Holdings, Inc. (Transferor) and Perenchio Television, Inc. (Transferee) et al.*, Memorandum Opinion and Order, 7 FCC Rcd 6672, 6675 (1992) ("*Univision*") (quoting *Stereo Broadcasters, Inc.*, 55 F.C.C. 2d 819, 821 (1975)). *See also Storer Communications, Inc.*, 101 F.C.C. 2d 434, 441 (1985) ("corporate control varies from case to case and cannot be properly defined").

[55] A discussion of *de facto* control in the broadcast context can be found in Section IV of these Guidelines.

[56] *Applications of Intermountain Microwave*, Public Notice, 12 F.C.C. 2d 559 (1963).

[57] *Application of Ellis Thompson Corp.*, 10 FCC Rcd 12554, 12555-56, ¶ 9 (ALJ 1995).

[58] *See e.g., Applications of Space Station System Licensee, Inc., Assignor et al.*, Memorandum Opinion and Order, 17 FCC Rcd 2271, 2282-85, ¶¶ 24-28 (IB 2002) ("*Space Station Order*"); *VoiceStream/Deutsche Telekom Order*, 16 FCC Rcd at 9814, n.168; FCC Form 323, Instruction 4(a) (Sept. 2000) (negative control consists of control of exactly 50 percent of voting stock).

[59] *See, e.g., News International PLC*, Memorandum Opinion and Order, 97 F.C.C. 2d 349, 356, ¶ 17 (1984); *Baker Creek Communications, L.P.*, Memorandum Opinion and Order, 13 FCC Rcd 18709, 18713-714, ¶ 7 (PSPWD/WTB 1998).

company positioned in the next tier of the ownership chain.[60] A controlling stockholder's interest, however, flows entirely to the next tier.[61] Therefore, in order to calculate foreign voting interests in the U.S. parent, the applicant or licensee must identify any controlling interests in the vertical ownership chain. This determination often involves examining control relationships between and among investors that may be far removed from the actual operations of the licensee,[62] where the *Intermountain Microwave* criteria are not directly applicable.[63] In these circumstances and for purposes of determining where *de facto* control is situated, applicants should consider the totality of the circumstances,[64] including who has the power to direct a company's operations or control its board of directors.[65] Applicants should also examine minority investor protections to determine whether these provisions may, either alone or in conjunction with other corporate governance provisions, shift *de facto* control to the minority investor.[66]

For more information on how the Commission conducts its control analyses, see

- *Applications of Space Station System Licensee, Inc., Assignor et al.*, Memorandum Opinion and Order, 17 FCC Rcd 2271, 2284, ¶ 26 (IB 2002) (recognizing that in the context of common carrier authorizations, the Commission traditionally uses the six

[60] For example, if a foreign individual or entity holds a non-controlling 45 percent voting interest in Company A, which, in turn, holds a non-controlling 30 percent voting interest in Parent Company B, the foreign investor's attributable voting interest in Parent Company B would be diluted by multiplying the investor's non-controlling 45 percent voting interest in Company A by Company A's non-controlling 30 percent voting interest in Company B, totaling 13.5 percent (45% x 30%).

[61] If the ownership percentage of any link in the vertical ownership chain exceeds 50 percent or represents actual control, it will be treated as if it were 100 percent. For example, if a foreign individual or entity holds a *de facto* controlling 45 percent voting interest in Company A which, in turn, holds a non-controlling 30 percent voting interest in Parent Company B, the multiplier would not be used to dilute the foreign investor's attributable voting interest in Parent Company B because the foreign investor's 45 percent voting interest in Company A is a *de facto* controlling interest. The foreign voting interest attributed to Parent Company B in this case is 30 percent because the foreign investor's 45 percent interest in Company A is treated as if it were 100 percent. The foreign investor would be deemed to control Company A and all that Company A controls (100% x 30%).

[62] Thus, in the preceding example, let us assume that Company A is a U.S. investment fund that is controlled by a foreign citizen. Although the investment fund (and, in turn, its controlling shareholder) do not have a controlling interest in Parent Company B, the fact that the fund itself is controlled by a foreign citizen is relevant to determining whether, and to what extent, foreign voting interests in the parent company exceed the 25 percent benchmark in Section 310(b)(4) of the Act.

[63] *VoiceStream/Deutsche Telekom Order*, 16 FCC Rcd at 9814, ¶ 58 n.171 (noting that the *Intermountain Microwave* factors focus on matters directly affecting control of the licensee).

[64] *Id*. (stating that, where the issue was whether the German government had *de facto* control of the licensee's ultimate holding company, Deutsche Telekom, a totality of the circumstances test was the appropriate standard, rather than the standard applied in *Intermountain Microwave*).

[65] *See, e.g., Metromedia*, 98 F.C.C. 2d at 306.

[66] *See, e.g., Space Station Order*, 17 FCC Rcd at 2282-85, ¶¶ 24-28.

factors set forth in *Intermountain Microwave* to determine whether *de facto* control exists).

- *Application of Volunteers in Technical Assistance for Authority to Construct, Launch and Operate a Non-Voice, Non-Geostationary Mobile-Satellite System*, Order, 12 FCC Rcd 3094, ¶ 23 (1997) (evaluating agreements under the guidelines established by the Commission in *Intermountain Microwave*).

As explained in greater detail below, the Commission, in the *Secondary Markets Order*, revised its *de facto* control standard for interpreting Section 310(d) requirements in the context of spectrum leasing, replacing the *Intermountain Microwave* standard.[67] The Commission has not similarly modified its control analysis for purposes of applying the foreign ownership requirements of Section 310 of the Act.

G. Separate Treatment of Section 310(b)(3) and (b)(4)

The Commission treats Section 310(b)(3) and 310(b)(4) restrictions separately and does not aggregate the foreign interests calculated under Section 310(b)(3) with foreign interests calculated under 310(b)(4). In other words, foreign investment in the licensee and foreign investment in the licensee's U.S. parent are not aggregated for purposes of calculating foreign ownership.[68]

H. Foreign Ownership Issues in the Context of Secondary Markets[69]

The Commission has issued new policies and rules applicable to spectrum leasing arrangements. Under these policies, licensees in many wireless services may enter into spectrum leasing arrangements with spectrum lessees – involving any amount of the licensed spectrum, in any geographic area of the license and for any period of time – provided certain conditions are met. The Commission permits spectrum leasing parties to enter into two different kinds of spectrum leasing arrangements: "spectrum manager" and "de facto transfer" leases. In both of these types of leasing arrangements, spectrum lessees (and spectrum sublessees)[70] are required to satisfy the same requirements related to foreign ownership as required of licensees.

1. "Spectrum manager" Leasing

Under spectrum manager leases, the Commission permits licensees and spectrum lessees to enter into spectrum leasing arrangements – for any amount of spectrum, in any geographic area, and

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[67] 47 U.S.C. § 310(d); *Secondary Markets Report and Order*, 18 FCC Rcd 20604.

[68] *See Data Transmission Co.*, 59 F.C.C. 2d 439 (1975).

[69] *See Secondary Markets Report and Order*, 18 FCC Rcd 20604; *Secondary Markets Second Report and Order*, 19 FCC Rcd 17503.

[70] The requirements applicable to spectrum lessees also apply to spectrum sublessees. Whenever we reference spectrum lessees, we also are including spectrum sublessees. We note that broadcast licensees cannot enter into spectrum leasing agreements.

for any period of time within the scope and term of the license – without the need for prior Commission approval. However, licensees must retain both *de jure* and *de facto* control (under a revised standard for spectrum leasing, as discussed below) over the leased spectrum by acting as a "spectrum manager" with regard to the spectrum rights it chooses to lease.

Under this leasing option, the licensee and spectrum lessee file a notification with the Commission. In this notification, the spectrum lessee must certify to foreign ownership criteria analogous to those applicable to Commission licensees. Accordingly, spectrum lessees are required to meet applicable foreign ownership eligibility requirements by certifying that they meet Section 310(a) requirements and, to the extent that Section 310(b) applies (*e.g.*, to the extent they are common carriers), that they meet those requirements as well. As part of the notification process for this type of leasing arrangement, each spectrum lessee must certify that it is not a foreign government or representative of a foreign government in the same manner as required of licensees pursuant to Section 310(a). In addition, if the spectrum lessee intends to provide a service to which Section 310(b) applies, it must certify that it is not an alien or representative of an alien; is not organized under the laws of a foreign government; and that no more than one-fifth of its capital stock is owned of record or voted by aliens, their representatives, or by a foreign government or representative thereof, or by any foreign corporation. The spectrum lessee must also state whether it is 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 foreign corporation. If this is the case, the spectrum lessee must be able to certify and substantiate that it has obtained the necessary declaratory ruling establishing its eligibility for the lease of spectrum.[71]

The Commission will hold a spectrum lessee directly and independently accountable for these certifications.[72] The Commission retains the ability to investigate and terminate any spectrum manager leasing arrangement to the extent the Commission determines, post-notification, that a spectrum manager lease arrangement raises foreign ownership concerns. In addition, spectrum lessees that violate Commission rules or other federal laws potentially will be subject to forfeitures under Section 503(b) of the Act, other administrative sanctions, and criminal prosecution.[73]

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[71] The Commission stated in the *Secondary Markets Report and Order* that, if the U.S. parent of a spectrum lessee has more than one-quarter indirect foreign ownership and "the lessee has not yet received a declaratory ruling establishing its eligibility regarding the lease of spectrum in the particular service at issue, consistent with the Commission's foreign ownership policies, then it may not enter into [a spectrum manager] leasing arrangement." *Id*., 18 FCC Rcd at 20653, ¶ 110 n.240. Further, under procedures adopted in the *Secondary Markets Second Report and Order*, a potential spectrum lessee that seeks "immediate processing" of a spectrum manager lease notification must be able to certify in its notification that it has previously obtained a declaratory ruling that establishes that the spectrum lease falls within the scope of the ruling (including the type of service and geographic coverage area) and that there has been no change in foreign ownership in the meantime. *Secondary Markets Second Report and Order*, 19 FCC Rcd at 17514-16, ¶¶ 19-23. *See also infra* n.74.

[72] *Secondary Markets Report and Order*, 18 FCC Rcd at 20652, ¶¶ 103-104.

[73] *Id*. at 20652, ¶ 104.

2. "*De Facto* transfer" Leasing

Under *de facto* transfer leasing arrangements, the Commission permits licensees and spectrum lessees to enter into spectrum leasing arrangements – for any amount of spectrum, in any geographic area, and for any period of time within the scope and term of the license – in which *de facto* control of the leased spectrum is transferred to the spectrum lessee(s) for the duration of the lease. As with spectrum manager leasing arrangements, for purposes of the Commission's foreign ownership analysis, the lessee of a *de facto* transfer leasing arrangement is required to meet applicable foreign ownership eligibility requirements.

Under this option, all spectrum lessees are required to file an application with the Wireless Telecommunications Bureau for approval of the transfer. A spectrum lessee that seeks to provide common carrier services must indicate whether it is: (1) a foreign government or representative of a foreign government; (2) an alien or a representative of an alien; (3) a corporation organized under the laws of a foreign government; or (4) a corporation of which more than one-fifth 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 foreign corporation. Any spectrum lessee seeking to provide common carrier service that answers in the affirmative to any of these questions will have its application dismissed without further consideration.

A spectrum lessee that seeks to provide common carrier services must also indicate whether it is 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 foreign corporation. If this is the case, the spectrum lessee must attach an exhibit explaining the nature and extent of these foreign equity and voting interests, and it must request approval of these foreign ownership interests pursuant to Section 310(b)(4). The Commission then applies the foreign ownership analysis presented in these Guidelines.

If the spectrum lessee seeks to rely on an existing declaratory ruling, the lessee must be able to certify and substantiate that it has obtained the necessary ruling establishing its eligibility for the lease of spectrum.[74] If the lessee has not received the appropriate ruling, it must attach to its

[74] In the *Secondary Markets Second Report and Order*, the Commission adopted "immediate approval" procedures for certain Wireless Radio Service applications that do not potentially raise specified public interest concerns. Under the new immediate approval procedures, a spectrum lessee whose U.S. parent has foreign ownership in excess of 25 percent must be able to certify in its application that it has previously obtained a declaratory ruling that establishes that the spectrum lease falls within the scope of the ruling (including the type of service and geographic coverage area) and that there has been no change in foreign ownership in the meantime. If a prior ruling does not cover the proposed lease transaction, the spectrum lessee must obtain a supplemental ruling that would apply to the particular transaction, and must do so *prior* to filing an application under the new immediate approval procedures. In order to minimize the need for multiple Section 310(b)(4) rulings, the Commission stated that it would entertain petitions for Section 310(b)(4) rulings that seek to cover future spectrum leasing arrangements involving spectrum for services and geographic coverage areas specified in the petitions. The Commission stated that it would entertain petitions that seek to cover such spectrum leases entered into by the petitioning carrier, as well

application a date-stamped copy of the request for declaratory ruling seeking approval of its foreign ownership. The lessee's application cannot be granted until it receives the declaratory ruling.

3. *De Facto* Control in the Context of Spectrum Leasing

In the *Secondary Markets Order*, the Commission revised its *de facto* control standard for interpreting Section 310(d) requirements as applied in the context of spectrum leasing, replacing the *Intermountain Microwave* standard.[75] The revised *de facto* control standard for spectrum leasing arrangements focuses on whether licensees continue to exercise effective working control over any spectrum they lease to others. Under this standard, licensees may lease spectrum usage rights to spectrum lessees, without the need for prior Commission approval, to the extent that the licensees (1) maintain an active, ongoing oversight role to ensure that the lessee complies with all applicable Commission policies and rules, (2) retain responsibility for all interactions with the Commission required under the license related to the use of the leased spectrum (including notification requirements), and (3) remain primarily and directly accountable to the Commission for any lessee violation of these policies and rules.[76]

I. Declaratory Rulings

Section 310(b)(4) of the Act requires the Commission to make an affirmative finding that foreign ownership of an applicant's or licensee's U.S. parent company in excess of 25 percent is in the public interest. Applicants and licensees are required to inform the Commission and obtain prior approval before direct or indirect foreign ownership of their U.S. parent company exceeds 25 percent.[77]

The Commission writes its declaratory rulings to allow the foreign investors named in the petition to hold the ownership amounts – both equity and voting – specified in the petition, provided the petition contains sufficient information to demonstrate that the foreign investment is properly ascribed to WTO Member countries. If the petition is properly supported, and absent countervailing public interest concerns, the Commission will permit up to and including 100 percent foreign ownership and control of a U.S. parent company that, in turn, controls a common carrier or aeronautical radio licensee.

Generally, in addition to approving specific ownership interests to be held by named foreign investors, the Commission, in its rulings, permits the petitioner to acquire an additional 25

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as by wholly-owned subsidiaries of that carrier. However, in order to discourage the filing of speculative petitions, the Commission cautioned that it would consider petitions for such "blanket" rulings only in conjunction with a spectrum lease application that would be covered by the requested ruling. *Secondary Markets Second Report and Order*, 19 FCC Rcd at 17514-16, ¶¶ 19-23.

[75] *Secondary Markets Report and Order*, 18 FCC Rcd 20604.

[76] For more information on the revised *de facto* control standard as it applies to spectrum leasing, *see generally*, *Secondary Markets Report and Order*,18 FCC Rcd 20604.

[77] *See Fox Television*, 10 FCC Rcd at 8474, ¶ 52.

percent foreign equity and voting interest, either from investors named in the ruling or from unnamed investors, without seeking additional Commission approval.[78] Thus, the Commission generally grants the petitioner an allowance for an additional, aggregate 25 percent foreign ownership to account for fluctuations in ownership, including ownership by investors from non-WTO Member countries.

The allowance, generally, is subject to two conditions. First, the petitioner may not use all or part of this allowance to permit any foreign investor, whether WTO or non-WTO, to acquire a block of equity and/or voting interests in excess of 25 percent. Any investment by a foreign individual or entity in excess of 25 percent must receive prior Commission approval. Second, once the petitioner "uses up" the allowance, *i.e.*, its U.S. parent company acquires an additional 25 percent direct or indirect foreign ownership from one or more foreign investors, the petitioner must obtain prior Commission approval before its parent may accept any additional foreign investment.[79]

The Commission's foreign ownership rulings do not satisfy the separate and independent requirement in Section 310(d) of the Act that licensees obtain Commission approval of an assignment or transfer of control of a radio license. Thus, for example, if the acquisition of an additional 25 percent foreign ownership in a licensee's U.S. parent company would result in a transfer of control of the licensee under Section 310(d) of the Act, the licensee must file an application seeking Commission approval of the transfer of control.

The Commission also writes its declaratory rulings to allow foreign ownership of only the applicant or licensee named in the petition. Entities not named in the petition and in the declaratory ruling issued by the Commission are not specifically covered by the ruling. Accordingly, the Commission will require those entities not named in the ruling, including an affiliate of an entity that has received a ruling, to submit a petition for declaratory ruling requesting Commission approval of its indirect foreign ownership pursuant to Section 310(b)(4) of the Act.

1. *Pro Forma* Assignments or Transfers of Control

The Commission recognizes that it may be unduly burdensome to require the submission of a petition for declaratory ruling in connection with a *pro forma* assignment or transfer of control where the licensee and assignee/transferee are under 100 percent ultimate common ownership

[78] *See Vodafone/Globalstar Order*, 17 FCC Rcd at 12866, ¶ 52. As a general rule, however, this allowance may not be used to increase the holdings of any named foreign investor for which the Commission's ruling specifically approves an equity and/or voting interest that exceeds 25 percent. Any ownership increases by such a foreign investor would require prior Commission approval. *See, e.g.*, *Application of General Electric Corporation, Transferors, and SES Global, S.A., Transferees*, Order and Authorization, 16 FCC Rcd 17575, 17593, ¶ 42 (IB/WTB 2001), *Supplemental Order*, 16 FCC Rcd 18878, 18884-885, ¶ 11 (IB/WTB 2001).

[79] *Global Crossing, Ltd. (Debtor-in-Possession), Transferor, and GC Acquisition Limited, Transferee,* Order and Authorization, 18 FCC Rcd 20301, 20329, ¶ 35 (IB/WCB/WTB 2003) (recon. pending).

and control by a U.S. parent company whose foreign ownership has been approved pursuant to Section 310(b)(4) of the Act.

Accordingly, in cases of *pro forma* assignments and transfers of control, the assignee (in the case of an assignment) and the licensee (in the case of a transfer of control) do not need to submit a petition for declaratory ruling *if* they certify and substantiate in their *pro forma* application that the licensee and assignee/transferee ultimately are wholly-owned and controlled by the same U.S. parent company and that the foreign ownership of the U.S. parent company has been approved in a declaratory ruling issued by the Commission. If the applicant cannot provide these certifications, the *pro forma* transaction may not be consummated unless and until the Commission grants the necessary petition for declaratory ruling.

We caution licensees and their parent companies that, in order for the assignee or transferee to rely on an existing ruling, any change in ownership structure that would result from a *pro forma* transaction must fall within the parameters of the ruling. For example, if as a result of the *pro forma* transaction a new foreign holding company would be inserted between the licensee and its ultimate parent, and if that holding company is a foreign corporation, partnership or limited liability company for which the licensee has not received specific approval under Section 310(b)(4), the licensee must request and obtain a declaratory ruling prior to consummation of the *pro forma* transaction.

2. Continuing Obligations

Licensees and lessees have a continuing obligation to remain in compliance with the foreign ownership provisions of Section 310.[80] Thus, a common carrier or aeronautical radio licensee must file a petition for declaratory ruling to obtain Commission approval pursuant to Section 310(b)(4) of the Act before the direct or indirect foreign ownership of its U.S. parent company exceeds the 25 percent benchmark. A licensee that has already received Commission approval to exceed the 25 percent benchmark up to a certain level of foreign ownership must seek further Commission approval before it may increase its foreign ownership above that level.[81]

The Bureau advises that corporate licensees and their parent companies, in particular, review Section IV of these Guidelines, which discusses "Other Commission Precedent." This section focuses on shareholder polling that traditionally has been used by applicants and licensees in the broadcast services to ensure that they are in compliance with the foreign ownership provisions of Section 310. The Bureau recommends that common carrier licensees and applicants, and their parent companies, use these same methodologies to ensure compliance with the foreign ownership provisions of Section 310 and with the particular foreign ownership rulings issued to them by the Bureau or Commission pursuant to Section 310(b)(4) of the Act.

[80] *See Fox Television*, 10 FCC Rcd at 8474, ¶ 52.

[81] *Foreign Participation Order*, 12 FCC Rcd at 23941, ¶ 114.

SECTION IV - OTHER COMMISSION PRECEDENT

The following Commission precedents apply specifically in the broadcast context.[82] However, the Commission may apply these precedents, where applicable, to foreign ownership issues presented in the common carrier context.

A. Corporate Applicants and Shareholder Polling in the Broadcast Context

In the context of broadcast licenses, the Commission has used shareholder polling to ascertain whether corporate applicants meet the citizenship requirements set forth in Section 310 of the Act. The statute requires that citizens own a specific portion of the total shares, not that a specific portion of the total shareholders be citizens. A share is defined as "alien" if the shareholder on the corporate shareholders list:

- is an alien person;
- is a corporation organized under the laws of a foreign country;
- is a foreign government;
- represents a share owner who is an alien;
- represents a share owner that is a corporation organized under the laws of a foreign country;
- represents a share owner that is a foreign government;
- represents an alien who votes the shares;
- represents a corporation that votes the shares and is organized under the laws of a foreign country; or
- represents a foreign government that votes the shares.

The status of all other shares is defined as "citizen."

1. Corporations with Few Stockholders

Where the required citizenship percentage cannot be established from "known" citizen shares, applicants must provide additional information. For corporations with few shareholders, the Commission recommends that the corporation conduct a survey of all shareholders whose citizenship is unknown. If the corporation receives enough "citizen" responses to demonstrate that the portion of shares held by citizens meets or exceeds the requirements, then the corporation satisfies the citizenship conditions of Section 310. The Commission counts shares owned by non-respondents as "alien" shares. Applicant citizenship status is determined by adding the citizen shares from "known" shareholders with those from the survey of general shareholders. If these shares total either eighty percent or seventy-five percent (for holding corporations), the citizenship requirements of Section 310 of the Act have been met.

[82] The information provided in this section is taken from a document entitled "Suggestion for Meeting Citizenship Requirements of Corporate Applicants." This document is provided to potential broadcast licensees to assist them in complying with the requirements of Section 310 of the Act.

2. Corporations with Numerous Stockholders

For firms with large numbers of shareholders, the Commission has allowed corporations to use properly conducted sampling procedures in order to collect additional citizenship information. These procedures should provide a conservative estimate of the portion of shares owned by citizens. Corporations that choose to use a sampling procedure may use any statistically valid method. The Commission reminds applicants that shares, not shareholders, should be sampled and that shares of non-respondents must be counted as owned by aliens.

B. "Control" in the Broadcast Context

The Commission does not apply *Intermountain Microwave* and *Ellis Thompson* in the context of broadcast services. The determinative question in the broadcast context is whether the allegedly controlling party has the power to "dominate management of corporate affairs."[83] The Commission has previously determined that a finding that a *de facto* transfer of control has occurred depends largely upon a review of the actual operation of the licensed station – not upon the potential for some hypothetical exercise of control. In determining whether an entity exercises such control, the Commission typically focuses on the ability to control finances, personnel and programming, and the ability to dominate the company's board of directors.[84]

[83] *Univision*, 7 FCC Rcd at 6675 (quoting *Benjamin L. Dubb*, 16 FCC 274, 289 (1951)); *UTV of San Francisco, Inc. (Assignors) and Fox Television Stations, Inc. (Assignee)*, 16 FCC Rcd 14975 (2001).

[84] *Letter to Mr. William S. Paley*, 1 FCC Rcd 1025, 1026 (1986).

SECTION V - DEFINITIONS

Effective competitive opportunities (ECO) test refers to the test adopted by the Commission in the *Foreign Carrier Entry Order*.[85] The ECO test was part of the Commission's overall public interest analysis for international Section 214 authorizations and foreign ownership of common carrier radio licensees under Section 310(b)(4) of the Act.[86] In the 1997 *Foreign Participation Order*, the Commission concluded that the public interest would be served by permitting greater investment by entities from World Trade Organization ("WTO") Member countries in U.S. common carrier and aeronautical fixed and en route radio licensees.[87] Therefore, with respect to indirect foreign investment in these radio licensees by entities from WTO Member countries, the Commission replaced its "effective competitive opportunities" or "ECO" test with a rebuttable presumption that such investment generally raises no competitive concerns.[88] However, the Commission will apply the ECO test in instances where there are investments from non-WTO Member countries.

De facto control refers to actual control, and is determined on a case-by-case basis. In the context of common carrier authorizations, the Commission considers, among other things, the totality of the circumstances and the following six factors set forth in *Intermountain Microwave* and *Ellis Thompson* to determine whether an investor has *de facto* control over a company: (1) Does the licensee have unfettered use of all facilities and equipment? (2) Who controls the daily operations? (3) Who determines and carries out the policy decisions, including preparing and filing applications with the Commission? (4) Who is in charge of employment, supervision, and dismissal of personnel? (5) Who is in charge of the payment of financing obligations, including expenses arising out of operations? (6) Who receives monies and profits derived from the operation of the facilities?

De jure control refers to legal control, and is typically determined by whether a shareholder owns more than 50 percent of the voting shares of a corporation.

Foreign ownership benchmarks refer to the permissible level of foreign ownership interests by foreign individuals, corporations, and governments in certain radio licensees as set forth in Section 310(a) and (b) of the Communications Act, as amended.[89]

Home market refers to the nationality of the foreign investors.

Principal place of business test refers to the test the Commission uses to determine a foreign investor's home market. For purposes of determining a foreign entity's home market under Section 310(b)(4), the Commission balances the following factors: (1) the country of its incorporation, organization or charter; (2) the nationality of all investment principals, officers,

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[85] *Foreign Carrier Entry Order*, 11 FCC Rcd 3873 (1995).

[86] 47 U.S.C. § 310(b)(4).

[87] *Foreign Participation Order*, 12 FCC Rcd at 23896, ¶ 9, 23913, ¶ 50, and 23940, ¶¶ 111-12.

[88] *Id.* at 23896, ¶ 9, 23913, ¶ 50, 23940, ¶¶ 111-12.

[89] 47 U.S.C. § 310(a), (b).

and directors; (3) the country in which its world headquarters is located; (4) the country in which the majority of its tangible property, including production, transmission, billing, information, and control facilities, is located; and (5) the country from which it derives the greatest sales and revenues from its operations.[90]

Station license is defined as "that instrument of authorization required by this Act or the rules and regulations of the Commission made pursuant to this Act, for the use or operation of apparatus for transmission of energy, or communications, or signals by radio by whatever name the instrument may be designated by the Commission."[91]

[90] *See Foreign Participation Order*, 12 FCC Rcd at 23941-42, ¶ 116.

[91] 47 U.S.C. § 153(42).

SECTION VI – SELECTED CASES

A. Section 310(a)

- *Application of VoiceStream Wireless Corporation, Powertel, Inc., Transferors, and Deutsche Telekom AG, Transferee*, Memorandum Opinion and Order, 16 FCC Rcd 9779 (2001).

B. Section 310(b)(1)

- *Application of Nevada Broadcasting Group, Las Vegas, Nevada, for Construction Permit for New Television Station*, Memorandum Opinion and Order, 1985 W.L. 291868 (MMB 1986).

- *KOZN-FM Stereo* 99*, Ltd., Licensee of Radio Station KOZN-FM, Imperial, CA, Order to Show Cause Why the License of KOZN-FM, Imperial CA Should not be Revoked*, Order to Show Cause, 59 Rad. Reg. 2d 628 (1986).

C. Section 310(b)(3)

- *Request for Declaratory Ruling Concerning the Citizenship Requirements of Section 310(b)(3) and (4) of the Communications Act of 1934, as amended*, Declaratory Ruling, 103 F.C.C. 2d 511 (1985), *reconsidered in part*, 1 FCC Rcd 12 (1986).

- *Catherine L. Waddill*, Memorandum Opinion and Order and Notice of Apparent Liability for Forfeiture, 8 FCC Rcd 2169 (1993).

- *Applications of BBC License Subsidiary L.P., et al.*, Memorandum Opinion and Order, 10 FCC Rcd 10968 (1995).

- *Glentel Corp.*, Memorandum Opinion and Order, 17 FCC Rcd 12008 (Satellite Division/IB 2002).

D. Section 310(b)(4)

- *Request for Declaratory Ruling Concerning the Citizenship Requirements of Section 310(b)(3) and (4) of the Communications Act of 1934, as amended*, Declaratory Ruling, 103 F.C.C. 2d 511 (1985), *reconsidered in part*, 1 FCC Rcd 12 (1986).

- *Applications of BBC License Subsidiary L.P., et al.*, Memorandum Opinion and Order, 10 FCC Rcd 10968 (1995).

- *Applications of AirTouch Communications, Inc., Transferor, and Vodafone Group, Plc., Transferee, for Consent to Transfer of Control of Licenses and Authorizations*, Memorandum Opinion and Order, 14 FCC Rcd 9430 (WTB 1999).

- *Applications of SATCOM Systems, Inc., TMI Communications and Company, LP, et al.*, Order and Authorization, 14 FCC Rcd 20798 (1999).

- *Applications of VoiceStream Wireless Corporation or Omnipoint Corporation, et al.*, Memorandum Opinion and Order, 15 FCC Rcd 3341 (2000).

- *Applications of Vodafone AirTouch, plc., and Bell Atlantic Corporation, For Consent to Transfer of Control or Assignment of Licenses and Authorizations*, Memorandum Opinion and Order, 15 FCC Rcd 16507 (IB/WTB 2000).

- *Applications of Aerial Communications, Inc., Transferor, and VoiceStream Wireless Holding Corporation, Transferee, et al.*, Memorandum Opinion and Order, 15 FCC Rcd 10089 (IB/WTB 2000).

- *Application of VoiceStream Wireless Corporation, Powertel, Inc., Transferors, and Deutsche Telekom AG, Transferee,* Memorandum Opinion and Order, 16 FCC Rcd 9779 (2001).

- *Motient Services, Inc., and TMI Communications and Company, LP, Assignors, and Mobile Satellite Ventures Subsidiary LLC, Assignee,* Order and Authorization, 16 FCC Rcd 20469 (IB 2001).

- *Application of General Electric Corporation, Transferors, and SES Global, S.A., Transferees*, Order and Authorization, 16 FCC Rcd 17575 (IB/WTB 2001), *Supplemental Order*, 16 FCC Rcd 18878 (IB/WTB 2001).

- *Lockheed Martin Global Telecommunications, Comsat Corporation, and Comsat General Corporation, Assignor, and Telenor Satellite Mobile Services, Inc., and Telenor Satellite, Inc., Assignee*, Order and Authorization, 16 FCC Rcd 22897 (2001), *modified by Errata*, 17 FCC Rcd 2147.

- *Space Station System Licensee, Inc. (Assignor) and Iridium Constellation LLC (Assignee) et al.*, Memorandum Opinion, Order and Authorization, 17 FCC Rcd 2271 (IB 2002).

- *Applications of XO Communications, Inc.*, Memorandum Opinion, Order and Authorization, 17 FCC Rcd 19212 (IB/WCB/WTB 2002).

- *Vodafone Americas Asia Inc. (Transferor), Globalstar Corporation (Transferee),* Order and Authorization, 17 FCC Rcd 12849 (IB 2002).

- *Global Crossing, Ltd. (Debtor-in-Possession), Transferor, and GC Acquisition Limited, Transferee*, Order and Authorization, 18 FCC Rcd 20301 (IB/WCB/WTB 2003) (recon. pending).

- *Bell Atlantic New Zealand Holdings, Inc., Transferor and Pacific Telecom Inc., Transferee*, Order and Authorization, 18 FCC Rcd 23140 (IB/WCB/WTB 2003).

- *Loral Satellite, Inc. (Debtor-in-Possession) and Loral SpaceCom Corporation (Debtor-in Possession), Assignors and Intelsat North America, LLC, Assignee,* Order and Authorization, 19 FCC Rcd 2404 (IB 2004).