

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

In the Matter of
Review of Foreign Ownership Policies for
Common Carrier and Aeronautical Radio
Licensees under Section 310(b)(4) of the
Communications Act of 1934, as Amended
IB Docket No. 11-133

SECOND REPORT AND ORDER

Adopted: April 18, 2013

Released: April 18, 2013

By the Commission: Chairman Genachowski and Commissioners Clyburn, Rosenworcel and Pai issuing
separate statements; Commissioner McDowell not participating.

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I. INTRODUCTION

1. Recognizing the need to review our foreign ownership policies and procedures and reduce delay, uncertainty, and expense to facilitate further investment in our wireless networks, this Second Report and Order in the above-captioned proceeding modifies the policies and procedures that apply to foreign ownership of common carrier radio station licensees – *i.e.*, companies that provide fixed or mobile telecommunications service over networks that employ spectrum-based technologies, either in whole or in part – pursuant to sections 310(b)(3) and 310(b)(4) of the Communications Act of 1934, as amended (the “Act”).¹ These new measures also will apply to foreign ownership of aeronautical en route and aeronautical fixed (hereinafter, “aeronautical”) radio station licensees pursuant to section 310(b)(4) of the Act.² We believe the actions we are taking today will reduce the regulatory costs and burdens imposed on common carrier and aeronautical radio station applicants, licensees, and spectrum lessees;³ provide greater transparency and more predictability with respect to the Commission’s foreign ownership filing requirements and review process; and facilitate investment from new sources of capital at a time of growing need for capital investment in this sector of our Nation’s economy, while continuing to protect important interests related to national security, law enforcement, foreign policy, and trade policy.⁴ The new rules that we adopt in this Second Report and Order will be codified in Parts 1 and 25 of the Commission’s rules and are appended to this document.⁵

¹ 47 U.S.C. §§ 310(b)(3), (4).

² For ease of reference, we refer to aeronautical en route and aeronautical fixed radio station licenses as “aeronautical” radio station licenses. In using this shorthand, we do not include other types of aeronautical radio station licenses issued by the Commission. *See, e.g.*, 47 C.F.R. § 87.5 (defining various types of aeronautical radio stations); 47 C.F.R. §§ 87.19(a), (b) (applying foreign ownership requirements to aeronautical en route and aeronautical fixed station licenses).

³ For ease of reference, we refer to common carrier and aeronautical radio station applicants, licensees, and spectrum lessees collectively in this Second Report and Order as “licensees” unless the context warrants otherwise. “Spectrum lessees” are defined in section 1.9003 of Part 1, Subpart X (“Spectrum Leasing”), 47 C.F.R. § 1.9003.

⁴ This proceeding does not address our policies with respect to the application of sections 310(b)(3) and (b)(4) to broadcast licensees. *See Review of Foreign Ownership Policies for Common Carrier and Aeronautical Radio Licensees under Section 310(b)(4) of the Communications Act, as Amended*, IB Docket No. 11-133, Notice of Proposed Rulemaking, FCC 11-121, 26 FCC Rcd 11703, 11704, ¶ 1 n.3 (2011) (*NPRM*). Thus, we do not consider the comments and *ex parte* statements filed by the Minority Media and Telecommunications Council asking the Commission, in this proceeding, to change its policies and procedures with respect to foreign ownership of broadcast licensees. *See, e.g.*, Comments of the Minority Media and Telecommunications Council, IB Docket No. 11-133 (filed Dec. 1, 2011). Recently, the Media Bureau sought comment on a request for clarification of the Commission’s policies and procedures under 47 U.S.C. § 310(b)(4) with respect to foreign investment in broadcast licensees. *See Media Bureau Announces Filing of Request for Clarification of the Commission’s Policies and Procedures under 47 U.S.C. § 310(b)(4) by the Coalition for Broadcast Investment*, MB Docket No. 13-50, Public Notice, DA 13-281, 28 FCC Rcd 1469 (MB 2013).

⁵ *See infra* Appendix B.

II. EXECUTIVE SUMMARY

2. Wireless networks are critical components of the nation's telecommunications infrastructure. They provide mobile broadband Internet access, mobile voice and data services, and fixed telecommunications services.⁶ Demand for wireless broadband services and the network capacity associated with those services is surging. For example, the total number of mobile wireless connections now exceeds the total U.S. population.⁷ As of the second quarter of 2012, 55 percent of U.S. mobile subscribers owned smartphones, compared to 41 percent in July 2011.⁸ Tablet ownership among Americans is also increasing. Pew Internet research surveys, as of the end of 2012, show that 25 percent of American adults own a tablet computer, up from four percent in September 2010.⁹ Global mobile data traffic is anticipated to grow thirteen-fold between 2012 and 2017.¹⁰ The Commission continues to work to free up additional licensed and unlicensed spectrum to meet this demand. Of particular note, the Commission is moving forward towards holding the world's first incentive auction of repurposed television broadcast spectrum.¹¹ The Commission has also recently taken additional measures to free up spectrum for mobile broadband, including 40 megahertz of AWS-4 spectrum and 30 megahertz of Wireless Communications Services (WCS) spectrum.¹² The Commission is also pursuing opportunities for innovative sharing using small cells in 100 megahertz of spectrum in the 3.5 GHz band, and recently

⁶ See, e.g., *Implementation of Section 6002(b) of the Omnibus Budget Reconciliation Act of 1993 Annual Report and Analysis of Competitive Market Conditions With Respect to Mobile Wireless, Including Commercial Mobile Services*, WT Docket No. 11-186, Sixteenth Report, FCC 13-34 (rel. Mar. 21, 2013).

⁷ See CTIA – The Wireless Association® Wireless Industry Indices, Semi-Annual Data Survey Results, A Comprehensive Report from CTIA Analyzing the U.S. Wireless Industry, Mid-Year 2012 Top-of-the-Line Survey Results, Annualized Wireless Survey Results – Dec. 1985 to June 2012 (estimating 321,716,905 total U.S. subscriber connections as of June 2012), available at http://files.ctia.org/pdf/CTIA_Survey_MY_2012_Graphics_final.pdf (visited Apr. 17, 2013). According to the Bureau of the Census, the combined population of the 50 states, the District of Columbia, and Puerto Rico, as of July 1, 2012, was estimated to be 313.9 million. See U.S. Census Bureau, <http://www.census.gov/popest/data/national/totals/2012/index.html> (visited Apr. 17, 2013).

⁸ Nielsen Newswire, The Nielsen Company, *Two Thirds of New Mobile Buyers Now Opting for Smartphones*, July 12, 2012, available at http://blog.nielsen.com/nielsenwire/online_mobile/two-thirds-of-new-mobile-buyers-now-opting-for-smartphones/ (visited Apr. 17, 2013).

⁹ See Lee Rainie, Pew Internet & American Life Project, “25% of American Adults Own Tablet Computers” (Oct. 4, 2012), available at <http://www.pewinternet.org/Reports/2012/Tablet-Ownership-August-2012.aspx> (visited Apr. 17, 2013).

¹⁰ See Cisco White Paper, *Cisco Visual Networking Index: Global Mobile Data Traffic Forecast Update, 2012-2017*, Executive Summary at 3, February 6, 2013, available at http://www.cisco.com/en/US/solutions/collateral/ns341/ns525/ns537/ns705/ns827/white_paper_c11-520862.pdf (visited Apr. 17, 2013).

¹¹ See *Expanding the Economic and Innovation Opportunities of Spectrum Through Incentive Auctions*, GN Docket No. 12-268, Notice of Proposed Rulemaking, FCC 12-118, 27 FCC Rcd 12357 (2012) (*Incentive Auctions NPRM*).

¹² See *Service Rules for Advanced Wireless Services in the 2000-2020 MHz and 2180-2200 MHz Bands*, WT Docket No. 12-70, *Fixed and Mobile Services in the Mobile Satellite Service Bands at 1525-1559 MHz and 1626.5-1660.5 MHz, 1610-1626.5 MHz and 2483.5-2500 MHz, and 2000-2020 MHz and 2180-2200 MHz*, ET Docket No. 10-142, *Service Rules for Advanced Wireless Services in the 1915-1920 MHz, 1995-2000 MHz, 2020-2025 MHz and 2175-2180 MHz Bands*, WT Docket No. 04-356, Report and Order and Order of Proposed Modification, FCC 12-151, 27 FCC Rcd 16102 (2012) (*AWS-4 Report and Order*); *Amendment of Part 27 of the Commission's Rules to Govern the Operation of Wireless Communications Services in the 2.3 GHz Band; Establishment of Rules and Policies for the Digital Audio Radio Satellite Service in the 2310-2360 MHz Frequency Band*, WT Docket No. 07-293, IB Docket No. 95-91, Order on Reconsideration, FCC 12-130, 27 FCC Rcd 13651 (2012).

started a proceeding to potentially free up an additional 195 megahertz in the 5 GHz band suitable for “Gigabit Wi-Fi.”¹³ All of these trends, including the growth in mobile data traffic, also create more demand for network capacity and for capital to invest in the infrastructure, technology, and spectrum to support this capacity.¹⁴ Investment in telecommunications infrastructure and capacity contributes positively to economic growth and labor productivity in the United States. This investment will support critical economic, public safety, health care, and other activities essential to U.S. leadership in technological innovation, growing the U.S. economy and maintaining its global competitiveness.

3. As discussed in the Notice of Proposed Rulemaking (*NPRM*) in this proceeding,¹⁵ foreign investment has been and will continue to be an important source of financing for U.S. telecommunications companies,¹⁶ fostering technical innovation, economic growth, and job creation.¹⁷ At the same time, licensees seeking Commission approval of foreign ownership under section 310(b) have faced significant difficulties and expense in: (1) ascertaining their percentages of foreign ownership, whether existing or planned, from World Trade Organization (“WTO”) Member countries as distinguished from non-WTO Member countries, as required by the Commission’s existing policies; (2) compiling detailed information as to the citizenship and principal places of business of their investors, which often hold their interests through multiple intervening investment vehicles and holding companies; and (3) filing additional petitions for declaratory ruling after the licensee has already received a foreign ownership ruling. Over the last 15 years, these proceedings have produced voluminous records consisting of highly detailed information regarding the citizenship and principal places of business of even *de minimis* investors. Each case requires Commission staff to undertake an intensive, time-consuming review of the ownership information, and even after a ruling, requires a licensee to return to the Commission repeatedly when there are foreign ownership changes in excess of the parameters of the ruling. For example, companies that already have received a foreign ownership ruling must nonetheless return to the Commission to obtain prior approval to create a new subsidiary or affiliate with the same

¹³ *Amendment of the Commission’s Rules with Regard to Commercial Operations in the 3550-3650 MHz Band*, GN Docket No. 12-354, Notice of Proposed Rulemaking and Order, FCC 12-148, 27 FCC Rcd 15594 (2012); *Revision of Part 15 of the Commission’s Rules to Permit Unlicensed National Information Infrastructure (U-NII) Devices in the 5 GHz Band*, ET Docket No. 13-49, Notice of Proposed Rulemaking, FCC 13-22 (rel. Feb. 20, 2013).

¹⁴ See CTIA – The Wireless Association® Wireless Industry Indices, Semi-Annual Data Survey Results, A Comprehensive Report from CTIA Analyzing the U.S. Wireless Industry, Mid-Year 2012 Top-of-the-Line Survey Results, Annualized Wireless Survey Results (detailing growth in cumulative capital investment and cell sites), *supra* note 7.

¹⁵ *NPRM*, 26 FCC Rcd 11703.

¹⁶ *Id.* at 11705, ¶ 2. See generally Reply Comments of CTIA – The Wireless Association®, IB Docket No. 11-133 (filed Jan. 4, 2012) at 2-4; see also *id.* at 3 (“Additional capital is critical for U.S. wireless providers that seek to expand 4G network deployment, acquire needed additional spectrum, and participate in upcoming spectrum auctions.”).

¹⁷ See, e.g., *The Economic Benefits of New Spectrum for Wireless Broadband*, Council of Economic Advisors (Feb. 2012) at 14-16, available at http://www.whitehouse.gov/sites/default/files/cea_spectrum_report_2-21-2012.pdf (visited Apr. 17, 2013). See also *U.S. Inbound Foreign Direct Investment*, Council of Economic Advisors (June 2011) (U.S. affiliates of foreign-domiciled companies play an important role in crucial areas of U.S. economic activity, accounting for over 14 percent of total U.S. private investment in research and development, employing five percent of the U.S. private workforce, and accounting for over 11 percent of total U.S. private capital investment), available at http://www.whitehouse.gov/sites/default/files/microsites/cea_fdi_report.pdf (visited Apr. 17, 2013); *Summary Estimates for Multinational Companies: Employment, Sales and Capital Expenditures for 2010*, News Release, Bureau of Economic Analysis (Apr. 18, 2012) (majority-owned U.S. affiliates of foreign multinational companies employed 5.2 million workers in 2010), available at <http://www.bea.gov/newsrelease/international/mnc/2012/mnc2010.htm> (visited Apr. 17, 2013).

foreign ownership; introduce a new foreign-organized entity into the company's approved vertical ownership chain; provide a new service, or the same service in a new geographic area; or accept additional investment by previously-approved foreign investors or other foreign investors.

4. The Commission sought comment in the *NPRM* on measures to revise and simplify its regulatory framework under section 310(b)(4) for authorizing foreign ownership in the controlling U.S. parents of common carrier and aeronautical radio licensees. In addition, in the *First Report and Order* in this proceeding that adopted our section 310(b)(3) forbearance approach for the class of common carrier licensees subject to section 310(b)(3) forbearance, we stated that we would assess in this Second Report and Order whether to apply any changes we adopt to the section 310(b)(4) policy framework to our analysis of petitions for declaratory ruling under the section 310(b)(3) forbearance approach.¹⁸

5. In this Second Report and Order, we adopt several of the proposals set forth in the *NPRM* as well as other measures that respond to comments filed in this proceeding on the various options and questions raised in the *NPRM*. We have revised certain of our initial proposals in light of the views of the Executive Branch agencies,¹⁹ in order to ensure their continued ability to review proposed foreign investment in advance (through either section 310(b) petitions or Title III license or spectrum lease applications) and assess whether such investment is consistent with national security, law enforcement, foreign policy, and trade policy concerns. Under our new rules and policies for authorizing foreign ownership²⁰ of common carrier and aeronautical radio station licensees, we will:

- Eliminate the distinction between foreign investment from WTO Member countries and non-WTO Member countries, and instead apply an “open entry standard” in our public interest assessment of *all* foreign investment under the section 310(b)(3) forbearance approach we adopted in the *First Report and Order* and under our section 310(b)(4) review;
- Continue to coordinate with the relevant Executive Branch agencies all petitions for declaratory ruling and applications for licenses, transfers and assignments where the applicant has foreign ownership exceeding the limits in section 310(b)(3) and/or section 310(b)(4), and continue to accord deference to the agencies' views on matters related to national security, law enforcement, foreign policy, and trade policy that may be raised by a particular proceeding;

¹⁸ *Review of Foreign Ownership Policies for Common Carrier and Aeronautical Radio Licensees under Section 310(b)(4) of the Communications Act, as Amended*, IB Docket No. 11-133, First Report and Order, FCC 12-93, 27 FCC Rcd 9832, 9844, ¶ 33 (2012) (*First Report and Order*). For purposes of this Second Report and Order, we refer to the class of licensees eligible to file petitions seeking a declaratory ruling under our section 310(b)(3) forbearance approach as “licensees subject to section 310(b)(3) forbearance.” See *infra* ¶¶ 9, 18.

¹⁹ Letter from Christine Bliss, Assistant United States Trade Representative For Services and Investment, USTR, to Marlene H. Dortch, Secretary, FCC, IB Docket No. 11-133 (filed Nov. 8, 2012) (“USTR Letter”); Letter from Richard C. Sofield, Director, Foreign Investment Review Staff, National Security Division, United States Department of Justice, and Shawn Cooley, Director, Foreign Investment Risk Management, Office of Policy, United States Department of Homeland Security, to Mindel De La Torre, Chief, International Bureau, FCC, IB Docket No. 11-133 (filed Mar. 7, 2013) (“DOJ/DHS Letter”); Comments of the Department of Justice and the Department of Homeland Security, IB Docket No. 11-133 (filed Dec. 5, 2012); Comments of the Department of Defense, IB Docket No. 11-133 (filed Dec. 5, 2012) (stating, *inter alia*, that “[t]he Department of Justice and Department of Homeland Security appreciate the Commission’s continuing efforts to coordinate its actions in this proceeding in order to support important interests related to national security, law enforcement, and public safety” and that “DOJ and DHS do not intend to object” to the streamlining actions we are adopting here). See also *infra* note 99.

²⁰ We use the term “ownership” in this Second Report and Order to refer to both equity and/or voting interests held in a licensee or the controlling U.S. parent of a licensee.

- Maintain the Commission’s ability to condition or disallow foreign investment that may pose a risk of harm to important national policies;
- Codify the requirement for prior approval of foreign ownership under our section 310(b)(3) forbearance approach and under our section 310(b)(4) review;
- Continue to issue foreign ownership rulings in the name of the licensee, in order to maintain uniformity between our section 310(b)(3) forbearance approach and section 310(b)(4) review;
- Continue to entertain petitions that request approval for named foreign investors to hold specified percentages of equity and/or voting interests in the licensee, under our section 310(b)(3) forbearance approach, and in the licensee’s controlling U.S. parent, under our section 310(b)(4) review; but adopt a streamlined approach that (1) no longer requires petitioners to identify foreign equity and/or voting interests of five percent or less, and in certain situations of ten percent or less; (2) allows petitioners to request specific approval for any named foreign investor (even below these limits) to increase its equity and/or voting interest up to and including a non-controlling 49.99 percent at some future time; and (3) permits petitioners, under section 310(b)(4), to request specific approval for any named foreign investor that proposes to acquire a controlling interest of less than 100 percent to increase the interest to 100 percent at some future time;
- In granting such petitions, adopt a 100 percent aggregate allowance for unnamed and future foreign investors, *provided that* the licensee obtains approval before any foreign investor acquires an interest that exceeds five percent (or, in certain situations, an interest that exceeds ten percent) of the common carrier licensee’s equity and/or voting interests under section 310(b)(3) forbearance, or of the controlling U.S. parent’s equity and/or voting interests under section 310(b)(4);
- Allow the licensee’s “subsidiaries and affiliates,” as defined in the codified rules, to rely on the licensee’s foreign ownership ruling – whether issued under section 310(b)(3) forbearance or under section 310(b)(4) – rather than having to file a new petition for declaratory ruling, *provided that* foreign ownership of the licensee and the subsidiary or affiliate remains in compliance with the terms of the licensee’s ruling and the requirements of our rules;
- Allow licensees to introduce new foreign-organized entities into the approved vertical ownership chain above the licensee’s controlling U.S. parent (under section (b)(4)) or above a non-controlling, U.S.-organized entity investing in the licensee (under section 310(b)(3)) without prior approval, *provided that* the new foreign-organized entity is under 100 percent common ownership and control with a previously-approved foreign investor;
- Eliminate the practice of issuing service- and geographic specific rulings, and instead permit a licensee with a foreign ownership ruling to add new services and new geographic service areas without filing a new petition for declaratory ruling;
- Establish content and filing requirements for petitions for declaratory ruling; and
- Allow, but not require, licensees with existing rulings to request modifications under the new rules.

6. We estimate that the rule changes we are adopting will reduce the number of section 310(b) petitions for declaratory ruling filed with the Commission annually in the range of 40 to 70 percent as compared to the current regulatory framework.²¹ We also conclude that the changes will reduce substantially the number of hours that applicants and licensees will have to spend in preparing and submitting the petitions that they will need to file under the new rules. Although the commenters in this proceeding did not quantify the extent to which the costs and burdens of complying with the current regulatory framework would be reduced by the proposals and other options raised in the *NPRM*, the qualitative descriptions they provided in the record, and the sheer volume of information that petitioners have had to produce in particular proceedings (and which the Commission has had to analyze in its decisions), leave no doubt that the current requirements impose significant costs and burdens that the new rules will reduce.

III. BACKGROUND

A. Section 310 of the Act

7. Section 310 of the Act requires the Commission to review foreign investment in radio station licenses.²² This section imposes specific restrictions on who may hold certain types of radio licenses. The provisions of section 310 apply to applications for initial radio licenses,²³ applications for assignments and transfers of control of radio licenses, and spectrum leasing arrangements under the Commission's secondary market rules.²⁴ The relevant provisions of section 310 are as follows:

²¹ This estimate is based on two reviews done by International Bureau staff. In the first review, based on the 21 section 310(b)(4) petitions filed with the Commission during a randomly-selected period (September 1, 2007 through August 31, 2008), staff concluded that adoption of the proposals and other options discussed in the *NPRM* would result in a more than 70 percent reduction in the number of petitions for declaratory ruling filed with the Commission annually, as compared to the current regulatory framework. In the second review, based on the 13 section 310(b)(4) petitions filed between January 1, 2011, and October 1, 2012, staff concluded that the rules adopted in this Order would result in at least a 40 percent reduction. We note that a large proportion of the filings during the first review period involved requests by licensees with existing foreign ownership rulings for approval, under section 310(b)(4), to acquire licenses in new wireless services being auctioned. In the second review period, these auctions had been completed and no auction-related petitions were filed. The lack of auction-related filings by licensees with existing foreign ownership rulings during the second review period accounts in large part for the difference between the higher 70 percent reduction figure and the 40 percent reduction figure for the two review periods. Significantly, industry commenters in this proceeding broadly support elimination of the requirement that licensees with existing rulings return to the Commission for a new ruling when they apply for a license in a new service or geographic service area. See *infra* ¶¶ 105-110.

²² A "station license" is defined in 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." 47 U.S.C. § 153(42). For example, the Commission issues radio station licenses for the provision of broadcast, wireless personal communications services, cellular, microwave, aeronautical en route, and mobile satellite services.

²³ With respect to an applicant seeking to participate in a spectrum auction pursuant to section 1.2101 *et seq.* of the Commission's rules, the applicant must certify, as of the deadline for filing a short-form application, that it complies with the foreign ownership provisions of section 310 or that it has a request for waiver or other relief from the requirements of section 310 pending. See 47 C.F.R. § 1.2105(a)(2)(v), (vi).

²⁴ See *Promoting Efficient Use of Spectrum Through Elimination of Barriers to the Development of Secondary Markets*, WT Docket No. 00-230, Report and Order and Further Notice of Proposed Rulemaking, FCC 03-113, 18 FCC Rcd 20604 (2003), *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, FCC 04-167, 19 FCC Rcd 17503 (2004) (*Secondary Markets Second Report and Order*), Second Order on Reconsideration, FCC 08- (continued....)

Sec. 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.²⁵

8. Section 310(a) of the Act expressly prohibits a foreign government or its representative from holding any radio license.²⁶ Section 310(a), however, does not prohibit indirect foreign government control of licensees.²⁷ As explained in the *DT-VoiceStream Order*, a foreign government or

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243, 23 FCC Rcd 15081 (2008) (*Second Order on Reconsideration*). See also discussion of Commission precedent on spectrum leasing arrangements in *Foreign Ownership Guidelines for FCC Common Carrier and Aeronautical Radio Licenses*, 19 FCC Rcd 22612, 22634-37 (Int'l Bur. 2004), *erratum*, 21 FCC Rcd 6484 (*Foreign Ownership Guidelines*), *pet. for recon. pending*. The Commission has extended its secondary market spectrum manager leasing rules to any Mobile Satellite Service spectrum used for terrestrial services pursuant to the Commission's Ancillary Terrestrial Component rules. See *Fixed and Mobile Services in the Mobile Satellite Service Bands at 1525-1559 MHz and 1626.5-1660.5 MHz, 1610-1626.5 MHz, and 2483.5-2500 MHz, and 2000-2020 MHz and 2180-2200 MHz*, ET Docket No. 10-142, Report and Order, FCC 11-57, 26 FCC Rcd 5710 (2011).

²⁵ 47 U.S.C. §§ 310(a), (b).

²⁶ 47 U.S.C. § 310(a). This prohibition is absolute, and the Commission has no discretion to waive it. The Commission has stated that, for purposes of section 310(a), a “representative” is a person or entity that 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) (quoting *Letter from the Commission to Russell G. Simpson, Esq.*, 2 F.C.C. 2d 640 (1966)).

²⁷ In assessing whether a person or entity does or does not control a licensee, the Commission looks at both *de jure* and *de facto* control. See, e.g., *Rochester Telephone Corporation v. United States*, 23 F. Supp. 634, 636 (W.D.N.Y. 1938), *aff'd*, 307 U.S. 125 (1939) (Congress intended the term “control” as used in the Act to “embrace every form of control, actual or legal, direct or indirect, negative or affirmative”). *De jure* control (control as a matter of law) is typically determined by whether a shareholder owns more than 50 percent of the voting shares of a corporation. *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). In determining whether *de facto* control (control as a matter of fact) exists, the Commission has held that influence and control are not the same. Rather, the influence necessary to constitute *de facto* control must be such that the minority shareholder is able to determine some or all of the licensee's core policies and operations, or dominate corporate affairs. See, e.g., *News International*, Memorandum Opinion and Order, FCC 84-79, 97 F.C.C. 2d 349, 356, ¶ 16 (1984); *WHDH, Inc.*, Memorandum Opinion and Order, FCC 69-543, 17 F.C.C. 2d 856, 863 (1969); *Benjamin L. Dubb*, 16 F.C.C. 274, 289 (1951). In the context of common carrier authorizations, a variety of factors have been found to be relevant in determining whether a person or entity has *de facto* control over a company. See generally *Applications of Intermountain Microwave*, Public Notice, 12 F.C.C. 2d 559 (1963); *Application of Ellis Thompson Corp.*, 10 FCC Rcd 12554, 12555-56, ¶ 9 (ALJ 1995); see also *NPRM*, 26 FCC Rcd at 11727, ¶ 46 n.93; cf. *Promoting Efficient* (continued....)

representative may hold a controlling ownership interest in a U.S.-organized company that controls the licensee pursuant to 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.²⁸

9. Section 310(b) of the Act contains four subsections that place specific restrictions on who can hold a broadcast, common carrier, or aeronautical radio station license. Sections 310(b)(1) and (b)(2) of the Act prohibit any alien or representative, and any foreign-organized corporation, respectively, from holding a broadcast, common carrier, or aeronautical radio station license.²⁹ As with section 310(a), these provisions do not bar an alien or representative, or a foreign-organized entity, from holding a controlling ownership interest in a U.S.-organized company that controls the licensee pursuant to the discretionary authority afforded by section 310(b)(4). Section 310(b)(3) of the Act prohibits foreign individuals, governments, and corporations from owning more than 20 percent of the capital stock of a broadcast, common carrier, or aeronautical radio station licensee.³⁰ In the *First Report and Order* in this proceeding, we determined to forbear from applying the foreign ownership limitations in section 310(b)(3) to the class of common carrier licensees in which the foreign investment is held in the licensee through U.S.-organized entities that do not control the licensee, to the extent we determine such foreign ownership is consistent with the public interest under the policies and procedures the Commission has adopted for the public interest review of foreign ownership subject to section 310(b)(4) of the Act.³¹

10. Section 310(b)(4) of the Act establishes a 25 percent benchmark for investment by foreign individuals, governments, and corporations in U.S.-organized entities that directly or indirectly control a U.S. broadcast, common carrier, or aeronautical radio station licensee.³² A foreign individual, government, or entity may own, directly or indirectly, more than 25 percent (and up to 100 percent) of the stock of a U.S.-organized entity that holds a controlling interest in a common carrier or aeronautical radio licensee, unless the Commission finds that the public interest will be served by refusing to permit such foreign ownership.

11. Licensees must request Commission approval of their controlling U.S. parents' foreign ownership under section 310(b)(4), normally done by filing a petition for declaratory ruling.³³ In order

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Use of Spectrum Through Elimination of Barriers to the Development of Secondary Markets, WT Docket No. 00-230, Report and Order and Further Notice of Proposed Rulemaking, FCC 03-113, 18 FCC Rcd 20604, 20626-30, ¶¶ 46-53 (2003) (replacing *Intermountain Microwave* standard only in the context of spectrum leasing).

²⁸ 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*, IB Docket No. 00-187, Memorandum Opinion and Order, 16 FCC Rcd 9779, 9805-06, ¶¶ 41-42 (2001) (*DT-VoiceStream Order*).

²⁹ 47 U.S.C. §§ 310(b)(1), (2). The prohibitions in sections 310(b)(1) and (b)(2) are absolute, and the Commission has no discretion to waive them.

³⁰ 47 U.S.C. § 310(b)(3).

³¹ *First Report and Order*, 27 FCC Rcd 9832. Our forbearance authority does not extend to broadcast or aeronautical radio station licensees covered by section 310(b)(3). See 47 U.S.C. § 160. The forbearance approach we adopted in the *First Report and Order* applies only to foreign ownership in common carrier licensees held through intervening U.S.-organized entities that do not control the licensee. *First Report and Order*, 27 FCC Rcd at 9833, ¶ 1. Foreign interests in a U.S.-organized parent that controls the licensee are subject to section 310(b)(4), not section 310(b)(3), and we will continue to assess foreign ownership interests subject to section 310(b)(4) separately from foreign ownership interests subject to section 310(b)(3). *Id.* at 9844, ¶ 28 n.63.

³² 47 U.S.C. § 310(b)(4).

³³ See 47 C.F.R. § 1.2.

for the Commission to make the public interest findings required by that section of the Act, licensees must file the petition and obtain Commission approval *before* direct or indirect foreign ownership of their U.S. parent companies exceeds 25 percent.³⁴ Similarly, the section 310(b)(3) forbearance approach requires a licensee that falls within the class of licensees subject to section 310(b)(3) forbearance to obtain Commission approval before foreign ownership of the licensee exceeds 20 percent of its equity and/or voting interests.³⁵ The Commission, or the International Bureau on delegated authority,³⁶ will assess, in each particular case, whether the foreign interests presented for approval by the licensee are in the public interest, consistent with the Commission's section 310(b)(4) policy framework. In determining the level of its foreign equity interests and/or voting interests under section 310(b)(3), the licensee must count all of its foreign interests, regardless of whether the interests are held in the licensee itself or through intervening U.S.-organized entities that do not control the licensee.³⁷ The licensee is not allowed to have foreign ownership under section 310(b)(3) in excess of 20 percent unless and until the Commission has granted the licensee's petition for declaratory ruling or similar request.³⁸ Under either provision, where the petition is filed in connection with an application for an initial radio station license, an assignment or transfer of control of a license, or a spectrum leasing arrangement, the Commission or the International Bureau, on delegated authority, must act on the petition before or at the same time as the application is granted.

B. Current Regulatory Approach to Section 310(b)(4)

12. Commission implementation of section 310(b)(4) since 1995 has evolved from a case-by-case evaluation³⁹ to a review of foreign ownership in the controlling U.S. parents of common carrier and aeronautical licensees in accordance with a policy framework intended to promote liberalization of telecommunications markets internationally. Under that framework, we apply an "open entry standard" to foreign investment from WTO Member countries, and an effective competitive opportunities ("ECO")

³⁴ See *NPRM*, 26 FCC Rcd at 11710, ¶ 11.

³⁵ *First Report and Order*, 27 FCC Rcd at 9837, ¶ 10. As explained in paragraph 9 above, we determined in the *First Report and Order* to forbear from applying section 310(b)(3) to the class of common carrier licensees in which the foreign investment is held in the licensee through U.S.-organized entities that do not control the licensee, to the extent we determine such foreign ownership is consistent with the public interest under the policies and procedures the Commission has adopted for its public interest review of foreign ownership under section 310(b)(4) of the Act. See also *infra* ¶ 18. In the *First Report and Order*, we assumed that section 310(b)(3) of the Act applies where a foreign government, individual, or entity holds interests in a licensee through an intervening U.S.-organized entity that itself does not control the licensee, and we did not address commenters' contrary argument that section 310(b)(4) applies to all "indirect" foreign interests in a common carrier licensee. See *id.* at 9837, ¶ 10 n.26. We noted that to the extent commenters argued that indirect foreign interests are governed by section 310(b)(4) of the Act, the regulatory treatment of common carrier licensees as a result of the *First Report and Order* would have been the same: the application of the Commission's section 310(b)(4) policies and procedures to indirect foreign interests, whether held through an intervening U.S.-organized entity that controls or does not control such common carrier licensees. See *id.* The *NPRM* here did not address that decision; nor has this Second Report and Order addressed or changed it.

³⁶ See 47 C.F.R. § 0.261.

³⁷ *Id.* at 9843-44, ¶ 28.

³⁸ *Id.* at 9844, ¶ 30.

³⁹ See *Market Entry and Regulation of Foreign-Affiliated Entities*, IB Docket No. 95-22, Notice of Proposed Rulemaking, FCC 95-53, 10 FCC Rcd 4844, 4851-53, ¶¶ 15-19 (1995). See also *Foreign Carrier Entry Order*, IB Docket No. 95-22, Report and Order, FCC 95-475, 11 FCC Rcd 3973, 3943, ¶ 183 (1995) (noting that, prior to adoption of the *Foreign Carrier Entry Order*, the Commission had exercised its section 310(b)(4) discretion sparingly).

standard to foreign investment from non-WTO Member countries, as a means to facilitate foreign investment in the U.S. telecommunications market and encourage non-WTO Member countries to open their telecommunications markets to competition and to join the WTO.⁴⁰

13. In the 1997 *Foreign Participation Order*, the Commission concluded that the public interest would be served by permitting greater investment by foreign individuals and entities from WTO Member countries in U.S. common carrier and aeronautical radio licensees pursuant to the discretionary authority in section 310(b)(4).⁴¹ The Commission therefore adopted a rebuttable presumption by which it presumes that foreign investment from WTO Member countries in such licensees does not pose competitive concerns in the U.S. market.⁴² 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 of a common carrier or aeronautical radio licensee.⁴³ The Commission’s public interest analysis under section 310(b)(4) also considers any national security, law enforcement, foreign policy or trade policy concerns raised by the proposed foreign investment.⁴⁴ In assessing the public interest, the Commission takes into account the record developed in each particular case and accords deference to Executive Branch agencies on issues related to national security, law enforcement, foreign policy and trade policy.⁴⁵

14. With respect to foreign investment from countries that are not Members of the WTO, the Commission determined in the *Foreign Participation Order* to continue to apply the ECO test as part of

⁴⁰ See *Rules and Policies on Foreign Participation in the U.S. Telecommunications Market: Market Entry and Regulation of Foreign-Affiliated Entities*, IB Docket Nos. 97-142 and 95-22, Report and Order and Order on Reconsideration, FCC 97-398, 12 FCC Rcd 23891, 23944-45, ¶ 125, 23945, ¶ 127 (1997) (*Foreign Participation Order*), Order on Reconsideration, FCC 00-339, 15 FCC Rcd 18158 (2000).

⁴¹ See *Foreign Participation Order*, 12 FCC Rcd at 23893-97, ¶¶ 1-12, 23935-42, ¶¶ 97-118. The Commission extended its foreign ownership policies that apply to common carrier radio licensees under section 310(b)(4) to aeronautical radio licensees in the *Foreign Participation Order*, because it found that some aeronautical radio services are basic telecommunications services that fall within the class of services covered by the WTO Basic Telecommunications Agreement. See *id.* at 23942, ¶ 117.

⁴² 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. *Foreign Participation Order*, 12 FCC Rcd at 23913-15, ¶¶ 51-54.

⁴³ The Commission generally considers a foreign individual’s home market to be its country of citizenship. Where the interest would be held by a foreign corporation, partnership, or other business organization, the petition must establish the investing entity’s principal place of business by specifying the following information: (1) the country of a foreign entity’s incorporation, organization, or charter; (2) the nationality of all investment principals, officers, and directors; (3) the country in which the world headquarters is located; (4) the country in which the majority of the tangible property, including production, transmission, billing, information, and control facilities, is located; and (5) the country from which the foreign entity derives the greatest sales and revenues from its operations. *Foreign Participation Order*, 12 FCC Rcd at 23941, ¶ 116 (citing *Foreign Carrier Entry Order*, 11 FCC Rcd at 3951, ¶ 207).

⁴⁴ *Foreign Participation Order*, 12 FCC Rcd at 23913-15, ¶¶ 59-66. The Commission has also identified public safety and security of critical infrastructure as relevant to the Commission’s and Executive Branch agencies’ review of foreign investment under section 310(b)(4). *Secondary Markets Second Report and Order*, 19 FCC Rcd at 17515, ¶ 22; *Second Order on Reconsideration*, 23 FCC Rcd at 15084, ¶ 6.

⁴⁵ *Foreign Participation Order*, 12 FCC Rcd at 23918, ¶¶ 59, 23919, ¶¶ 61-66.

its public interest analysis under section 310(b)(4).⁴⁶ The Commission found in the *Foreign Participation Order* that the markets of non-WTO Member countries, in almost all cases, had not been liberalized since adoption of the *Foreign Carrier Entry Order*, and continued to present legal and practical barriers to entry.⁴⁷ Thus, the Commission stated that it would deny an application if it found that more than 25 percent of the ownership of an entity that controls a common carrier radio licensee is attributable to parties whose principal place(s) of business are in non-WTO Member countries that do not offer effective competitive opportunities to U.S. investors in the particular service sector in which the applicant seeks to compete in the U.S. market, unless other public interest considerations outweigh that finding.⁴⁸ The Commission concluded that its goals of increasing competition in the U.S. telecommunications service market and opening foreign telecommunications service markets would continue to be served by opening the U.S. market to investors from non-WTO Member countries only to the extent that the investors' home markets are open to U.S. investors.⁴⁹

C. The *NPRM*, *Forbearance Public Notice*, and *First Report and Order*

15. In the *NPRM*, the Commission sought comment on measures to revise and simplify the regulatory framework under section 310(b)(4) for authorizing foreign ownership of common carrier and aeronautical radio licensees. The Commission also proposed to codify whatever measures it ultimately adopts in this proceeding to provide more predictability and ensure transparency of our section 310(b)(4) filing requirements and review process.⁵⁰ The Commission estimated that adopting the proposals and other options discussed in the *NPRM* would result in a more than 70 percent reduction in the number of section 310(b)(4) petitions for declaratory ruling filed with the Commission annually, as compared to the current regulatory framework.⁵¹ The Commission also anticipated a reduction in the time and expense associated with filing petitions under the proposed framework.

⁴⁶ *Foreign Participation Order*, 12 FCC Rcd at 23944-46, ¶¶ 124-127, 131. The Commission adopted the ECO test in 1995 as a part of its public interest determination under section 310(b)(4) for all foreign investment in U.S. parent companies of common carrier radio licensees above the 25 percent benchmark. See *Foreign Carrier Entry Order*, 11 FCC Rcd at 3941-64, ¶¶ 179-238. In applying the ECO test, the Commission will consider the legal and practical limitations on U.S. investment in the foreign investor's home market for the particular wireless service (or analogous service) in which the investor seeks to participate in the U.S. market. *Id.* at 3948, ¶¶ 197-98; see also *id.* at 3952-53, ¶¶ 209-212 (the ECO analysis compares "restrictions on U.S. participation in the home market for the particular wireless service in which the foreign investor seeks to participate in the U.S. market. If the services in the U.S. and home markets are not precisely matched, we will use the most closely substitutable wireless service in the home market, as determined from the consumers' perspective."); and *id.* at 3954, ¶¶ 213-215 (stating that the ECO test considers first, the existence and extent of any legal restrictions on U.S. investment in the relevant market(s) and, to the extent they are relevant, the practical limitations on U.S. participation, including the price, terms and conditions of interconnection, competitive safeguards, and the regulatory framework of the relevant market(s)).

⁴⁷ See *Foreign Participation Order*, 12 FCC Rcd at 23944-45, ¶ 125 ("Since 1995, our application of the ECO test has provided incentives for foreign governments to allow U.S. participation in their markets, and it played a part in the WTO negotiations that resulted in the Basic Telecom Agreement. We believe that continuing to apply the ECO test to non-WTO Member countries may encourage some of those countries to take unilateral or bilateral steps toward opening their markets to competition and may provide incentives for them to join the WTO.").

⁴⁸ *Id.* at 23946, ¶ 131.

⁴⁹ *Id.*

⁵⁰ *NPRM*, 26 FCC Rcd at 11706, ¶ 3.

⁵¹ This estimate was based on the International Bureau staff's review of the 21 section 310(b)(4) petitions filed with the Commission during a randomly-selected period (September 1, 2007 through August 31, 2008). See *id.* at 11706, ¶ 3 n.9.

16. Eleven comments and seven reply comments were filed in response to the *NPRM*.⁵² We also received a letter from the U.S. Trade Representative (USTR) and a letter filed jointly by the Department of Justice (DOJ) and the Department of Homeland Security (DHS) (together, the “Departments”) supplementing the joint comments they filed in this proceeding.⁵³ Several of the parties that filed comments in response to the *NPRM* asked that the scope of this proceeding – which was limited to section 310(b)(4) of the Act – be broadened to consider the relationship of section 310(b)(3) and section 310(b)(4) as applied to foreign interests in a common carrier licensee held through an intervening U.S.-organized entity that does not control the licensee. These commenters requested that the Commission adopt an approach that analyzes such foreign interests under section 310(b)(4), and not under section 310(b)(3).⁵⁴

17. On April 11, 2012, the International Bureau issued the *Forbearance Public Notice*, which expanded the scope of the proceeding by requesting comment on the legal and policy implications of forbearing under section 10 of the Act⁵⁵ from applying section 310(b)(3) to certain foreign interests in common carrier licensees held through an intervening U.S.-organized entity that itself holds non-controlling equity and voting interests in the licensee.⁵⁶ Four comments and one reply comment were filed in response to the *Forbearance Public Notice*.⁵⁷

18. As noted in paragraph 9 above, in the *First Report and Order* we determined to forbear from applying the 20 percent limit in section 310(b)(3) to the class of common carrier licensees in which the foreign investment is held through U.S.-organized entities that do not control the licensee, to the extent we determine such foreign ownership is consistent with the public interest under the policies and procedures we use for assessing foreign ownership under section 310(b)(4).⁵⁸ Under the section 310(b)(3) forbearance approach adopted in the *First Report and Order*, we will approve foreign investment in a common carrier licensee, held through U.S.-organized entities that do not control the licensee, if, upon the licensee’s filing of a petition for declaratory ruling or similar request, the Commission finds the particular foreign interests to be consistent with the public interest. We stated that we would evaluate petitions from

⁵² Appendix A of this Second Report and Order lists the parties filing comments and reply comments in this proceeding.

⁵³ See *supra* note 19.

⁵⁴ Verizon, Vodafone, AT&T, and EABC filed comments urging consideration of the relationship of sections 310(b)(3) and (b)(4). See Vodafone NPRM Comments at 12-29; Verizon NPRM Comments at 18-19; AT&T NPRM Comments at 5-8; EABC NPRM Comments at 3-6. Verizon, Vodafone, USTelecom, Sprint, OFII, ETNO, and CTIA filed reply comments on this issue. See Verizon NPRM Reply at 3-4; Vodafone NPRM Reply at 7-9; USTelecom NPRM Reply at 3; Sprint NPRM Reply at 4; OFII NPRM Reply at 5-6; ETNO NPRM Reply at 2; and CTIA NPRM Reply at 6-7.

⁵⁵ 47 U.S.C. § 160.

⁵⁶ *International Bureau Seeks Further Comment on Foreign Ownership Policies: Forbearance from Section 310(b)(3) for Common Carrier Licensees*, IB Docket No. 11-133, Public Notice, DA 12-573, 27 FCC Rcd 3946 (Int’l Bur., 2012) (*Forbearance Public Notice*). A summary of the *Forbearance Public Notice* appeared in the Federal Register on April 24, 2012. 77 Fed. Reg. 24452 (Apr. 24, 2012).

⁵⁷ The filers uniformly urged adoption of a section 310(b)(3) forbearance approach. See Vodafone Public Notice Comments at 10; Verizon Public Notice Comments at 15; AT&T Public Notice Comments at 5; USTelecom Public Notice Comments at 9; DT/T-Mobile Public Notice Reply at 6.

⁵⁸ *First Report and Order*, 27 FCC Rcd at 9837, ¶ 10.

common carrier licensees subject to section 310(b)(3) forbearance consistent with the Commission's section 310(b)(4) foreign ownership policies established in the *Foreign Participation Order*.⁵⁹

19. In the *First Report and Order*, we deferred to this second phase of the proceeding a decision on whether to apply any changes we adopt to the section 310(b)(4) policy framework to our analysis of petitions for declaratory ruling or similar filings under our section 310(b)(3) forbearance approach.⁶⁰ We adopt in this Second Report and Order a comprehensive set of rules that will apply, as detailed below, to common carrier radio station licensees subject to our section 310(b)(3) forbearance approach that seek Commission approval to exceed the 20 percent foreign ownership limit in section 310(b)(3), and to common carrier and aeronautical radio station licensees that seek approval for the foreign ownership of their controlling U.S. parents to exceed the 25 percent foreign ownership benchmark in section 310(b)(4).

IV. DISCUSSION

A. WTO and Non-WTO Investment

20. As discussed in the *NPRM*, the Commission determined in 1997, in the *Foreign Participation Order*, to distinguish between WTO and non-WTO Member investment in exercising our discretion under section 310(b)(4) to allow foreign investment in the controlling U.S.-organized parent companies of U.S. common carrier and aeronautical licensees in excess of the 25 percent benchmark.⁶¹ Under these policies, the Commission denies a section 310(b)(4) petition that does not contain the required ECO showing, in the absence of countervailing public interest considerations.⁶² The Commission concluded in the *Foreign Participation Order* that its goals of increasing competition in the U.S. telecommunications service market and opening foreign telecommunications service markets would continue to be served by opening the U.S. market to investors from non-WTO Member countries only to the extent that the investors' home markets are open to U.S. investors.⁶³ In the *First Report and Order* in this proceeding, we applied our existing section 310(b)(4) policies, including our treatment of non-WTO Member investment, to petitions for declaratory ruling by the class of common carrier licensees subject to section 310(b)(3) forbearance.⁶⁴

21. The *NPRM* sought comment on whether there is a continuing policy basis for retaining the distinction between WTO and non-WTO Member investment in its current form, modifying our application of the distinction, or eliminating the distinction.⁶⁵ AT&T asserts that continuation of the distinction between WTO and non-WTO Member investment is necessary to maintain market-opening incentives in non-WTO Member countries.⁶⁶ However, SIA argues that the burdens associated with the

⁵⁹ *Id.*

⁶⁰ *Id.* at 9844, ¶ 33.

⁶¹ See *NPRM*, 26 FCC Rcd at 11710-11712, ¶¶ 12-14 (citing *Foreign Participation Order*, 12 FCC Rcd 23891). See also *supra* ¶¶ 12-14.

⁶² See *NPRM*, 26 FCC Rcd at 11717, ¶ 25 (citing *Foreign Participation Order*, 12 FCC Rcd at 23946, ¶ 131).

⁶³ See *id.*

⁶⁴ *First Report and Order*, 27 FCC Rcd at 9837, ¶ 10.

⁶⁵ *NPRM*, 26 FCC Rcd at 11717, ¶ 27.

⁶⁶ AT&T *NPRM* Comments at 8-9. AT&T states that continuation of the distinction will provide incentives for WTO Observer countries and other countries that are not WTO Members to make binding commitments to open their telecommunications markets. *Id.* at 9. AT&T urges this approach as a means to further the goal of promoting effective competition in the global market and to encourage new foreign market opportunities for U.S. carriers. At (continued....)

current WTO and non-WTO distinction far outweigh any purported benefits.⁶⁷ Other commenters either did not address the issue at all; or did not directly address the issue while appearing to assume that the distinction would remain.⁶⁸ USTR supports the Commission eliminating, in this proceeding, the distinction between WTO and non-WTO Member investment in our treatment of foreign ownership in common carrier licensees and the controlling U.S. parents of common carrier and aeronautical licensees under section 310 of the Act, provided that the Executive Branch agencies, and, in particular, USTR, continue to receive notice of applications and retain the ability to file comments in opposition to applications where trade policy issues are implicated.⁶⁹ USTR states that the current practice imposes a non-trivial burden on applicants by requiring them to demonstrate whether foreign investors are from a WTO Member or non-WTO Member.

22. In deciding to treat WTO and non-WTO investment alike, we find, first, that the policy of distinguishing between WTO and non-WTO Member investment plays a less relevant role today in promoting competition in the U.S. telecommunications service market or in opening foreign markets to U.S. investors than when it was adopted.⁷⁰ There are now 158 countries that are Members of the WTO (in addition to the European Union which is itself a WTO signatory), up from 132 countries in 1998 when the WTO Basic Telecommunications Agreement went into effect.⁷¹ There also are 25 WTO Observer countries that are in the process of joining, or acceding to, the WTO.⁷² Although approximately one-fifth of all countries are WTO Observer countries or other non-WTO countries that have not opened up their markets pursuant to WTO accords, the WTO Observer and non-WTO Member countries collectively represent only about one percent of the world's gross domestic product.⁷³ We find these circumstances persuasive in refuting the argument that applying the ECO requirement, as a general rule, to foreign investment from non-WTO Member countries remains necessary to promote effective competition in the global market for communications services and to encourage foreign market opportunities for U.S. carriers.⁷⁴ Significantly, the USTR supports eliminating our policy of distinguishing between WTO and non-WTO Member investment, so long as we retain our long-standing policy of deferring to the Executive Branch on matters relating to trade policy.

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the same time, AT&T supports excluding interests of five percent or less from calculations of non-WTO investment. *Id.*

⁶⁷ SIA NPRM Comments at 5.

⁶⁸ See generally CTIA NPRM Reply; EABC NPRM Comments; ETNO NPRM Reply; Sprint NPRM Reply; T-Mobile NPRM Comments; USTelecom NPRM Reply; Verizon NPRM Comments; Vodafone NPRM Comments.

⁶⁹ See USTR Letter, *supra* note 19.

⁷⁰ See generally USTR Letter, *supra* note 19; SIA NPRM Comments at 5. See also NPRM, 26 FCC Rcd at 11717, ¶ 25 (noting the Commission's conclusion, in the *Foreign Participation Order*, that its goals would continue to be served by opening the U.S. market to investors from non-WTO Member countries only to the extent that the investors' home markets are open to U.S. investors).

⁷¹ See http://wto.org/english/thewto_e/whatis_e/tif_e/org6_e.htm (visited Apr. 17, 2013).

⁷² See *id.*; see also <http://www.state.gov/s/inr/rls/4250.htm> (U.S. Department of State list of 195 independent states in the world) (visited Apr. 17, 2013).

⁷³ The Commission derived this estimate by comparing the aggregate gross domestic product (GDP) for WTO Member countries to the aggregate GDP for WTO Member and non-WTO Member countries, using the most recent (2011) GDP information from the World Bank Development Indicators Database, <http://databank.worldbank.org/data/views/variableselection/selectvariables.aspx?source=world-development-indicators>, accessible at <http://data.worldbank.org/data-catalog> (visited Apr. 17, 2013).

⁷⁴ See AT&T NPRM Comments at 9.

23. Second, we find that our current policy – which requires licensees to calculate non-WTO Member investment in their controlling U.S. parents to ensure that it does not exceed 25 percent unless the licensee is able to make an ECO showing for the relevant non-WTO Member countries⁷⁵ – imposes significant costs and burdens on U.S. common carrier and aeronautical licensees and their U.S. parent companies. The costs and burdens of calculating non-WTO Member investment also extend to common carrier licensees subject to the section 310(b)(3) forbearance approach we adopted in the *First Report and Order* in this proceeding.⁷⁶ Industry commenters state that U.S. companies face significant difficulties and costs in attempting to determine the citizenship and principal places of business of investors, which often hold their interests indirectly through multiple investment vehicles and holding companies.⁷⁷ It also has been our experience, in reviewing section 310(b)(4) petitions, that in many cases it is not possible for companies to quantify with confidence their non-WTO Member investment, particularly where the company is publicly traded or is owned in whole or in part by other publicly traded companies. SIA comments that eliminating the distinction would significantly reduce the burden of preparing section 310(b)(4) filings.⁷⁸ SIA notes that the burden of quantifying non-WTO Member investment is made even more difficult, if not impossible, when the Commission requires filers to identify even minute non-WTO investments.⁷⁹ We agree that eliminating the distinction will significantly reduce the burdens associated with filing petitions for declaratory ruling, particularly for publicly traded companies or companies that are owned in whole or in part by other publicly traded companies.

24. We also find that eliminating the distinction between WTO and non-WTO Member investment for purposes of our section 310(b) public interest reviews will not pose a risk of harm to competition in the U.S. market. Our experience since the *Foreign Participation Order* confirms the Commission’s finding in that order that, because common carrier wireless markets are, “for the most part, wholly domestic, there is no possibility of leveraging foreign bottlenecks in order to create advantages for some competitors in U.S. markets.”⁸⁰ And, we note that no commenter has argued that applying an open entry standard to non-WTO Member investment in U.S. common carrier and aeronautical licensees, as we apply it to WTO Member investment, will result in anticompetitive effects in the U.S. market.⁸¹

⁷⁵ The section 310(b)(4) petitions we have received since the 1998 implementation of the *Foreign Participation Order* have contained a showing that non-WTO ownership of the licensee’s U.S. parent company does not exceed 25 percent. No petitioner has asked us to approve non-WTO ownership of the U.S. parent company based on an ECO showing.

⁷⁶ See *First Report and Order*, 27 FCC Rcd at 9837, ¶ 10.

⁷⁷ See, e.g., USTelecom NPRM Reply at 5; Verizon NPRM Comments at 3; SIA NPRM Comments at 5-6.

⁷⁸ See SIA NPRM Comments at 5. The Commission asked that commenters provide for the record quantification of the costs and burdens currently associated with filing a section 310(b)(4) petition, complying with the limitations of the ruling, and the extent to which a change in policy would result in cost savings to U.S. carriers and consumers. It asked that commenters also address to what extent any costs and burdens have either deterred foreign investment or added significant transaction costs to the flow of such investments. *NPRM*, 26 FCC Rcd at 11718, ¶ 28. No commenters provided specific quantification of costs or burdens.

⁷⁹ See SIA NPRM Comments at 5-6.

⁸⁰ See *NPRM*, 26 FCC Rcd at 11718, ¶ 29 n.63 (quoting *Foreign Participation Order*, 12 FCC Rcd at 23940, ¶ 112). In the *NPRM*, the Commission asked whether it is prudent to presume that non-WTO Member investment in U.S. parent companies does not raise competitive concerns in the U.S. market and the circumstances, if any, that would allow the leveraging of market power in foreign telecommunications services or facilities into U.S. wireless markets. See *NPRM*, 26 FCC Rcd at 11718, ¶ 29.

⁸¹ SIA asserts that, because more nations have become WTO Members since the Commission adopted the distinction in 1997, any risk associated with encouraging foreign investment broadly is much smaller today. SIA NPRM Comments at 5.

25. While AT&T takes the view that maintaining the distinction between WTO and non-WTO investment “remains necessary to encourage non-WTO Member countries to open their telecommunications markets,”⁸² AT&T has also “recognized the potential benefits of aligning the market entry rules applicable to U.S. domestic wireless and wireline carriers, as well as of reducing the administrative burdens for applicants and Commission staff resulting from the current approach.”⁸³ Moreover, as noted above, even collectively the non-WTO and WTO Observer countries represent only about one percent of global GDP. We find particularly compelling the views of USTR on this trade question, which confirm our concern about the need to focus Commission resources on the most pressing international competitive concerns,⁸⁴ particularly in light of the costs and delays associated with continuing to maintain this distinction and the associated disincentives for needed investment in the increasingly important wireless broadband sector of our economy. In this regard, we note that eliminating the distinction between WTO and non-WTO Member investment for purposes of our section 310(b) public interest reviews will also reduce administrative costs and burdens associated with staff review of information that we find is no longer necessary to fulfill our statutory obligations under section 310(b). SIA also asserts that eliminating the distinction would not raise national security or law enforcement concerns because Executive Branch agencies would continue to review foreign investment.⁸⁵ We agree.

26. On balance, we find that the costs of maintaining the distinction between WTO and non-WTO Member investment in common carrier and aeronautical licensees outweigh any remaining benefits and therefore eliminate the distinction. Accordingly, we will treat non-WTO Member investment in common carrier licensees subject to section 310(b)(3) forbearance, and in the controlling U.S. parents of common carrier and aeronautical radio station licensees subject to section 310(b)(4), under the “open entry standard” we have applied to WTO Member investment. Moreover, as discussed in Section IV.B, we will continue to coordinate with the relevant Executive Branch agencies all petitions for declaratory ruling and license applications where the applicant has foreign ownership exceeding the limits in section 310(b)(3) and/or section 310(b)(4). We will also continue to accord deference to the agencies’ views on matters related to national security, law enforcement, foreign policy, and trade policy that may be raised by a particular transaction.⁸⁶ We do not adopt any change in policy that affects the Commission’s ability to condition or disallow foreign investment that may pose a risk of harm to important national policies.

27. The *NPRM* also sought comment on ways to reduce the costs and burdens of the Commission’s policy on non-WTO investment.⁸⁷ Because we have determined to treat all foreign investment similarly by eliminating the distinction between WTO and non-WTO Member investment in

⁸² AT&T *NPRM* Comments at 8-9.

⁸³ See Letter from James J.R. Talbot, General Attorney, AT&T, to Marlene H. Dortch, Secretary, FCC, IB Docket No. 11-133 (filed Feb. 21, 2013).

⁸⁴ See *NPRM*, 26 FCC Rcd at 11718, ¶ 30.

⁸⁵ SIA *NPRM* Comments at 5.

⁸⁶ See *supra* ¶ 13; see also *NPRM*, 26 FCC Rcd at 11721, ¶ 35.

⁸⁷ *Id.* at 11719, ¶ 31. The Commission sought comment on allowing U.S. parent companies filing section 310(b)(4) petitions to exclude from their calculations of non-WTO investment those equity and voting interests that are held by a single non-WTO investor or “group” of non-WTO investors in an amount of five percent or less. *Id.* at 11719-21, ¶¶ 31-34. We received comments supporting this approach and, as discussed below in Section IV.B, we are adopting a modified version of this approach that will exempt all foreign interests of five percent or less (subject to an exclusion for certain ten percent interests) from the requirement that licensees filing a petition for declaratory ruling request specific approval of their foreign investors. See *infra* ¶¶ 40-68, ¶¶ 79-87.

common carrier and aeronautical licensees, we do not need to consider in this section the various questions raised in the *NPRM* on this issue.⁸⁸

B. Revised and Codified Standards for Public Interest Determinations

1. Prior Approval of Foreign Ownership Under Section 310(b)(3) Forbearance and Section 310(b)(4)

28. In the *NPRM*, the Commission did not propose to modify the basic principles that govern the calculation of foreign equity and voting interests in common carrier and aeronautical licensees and their controlling U.S. parent companies for purposes of determining compliance with the foreign ownership limits in section 310(b) of the Act.⁸⁹ Commission policy requires that any equity or voting interest held by an individual other than a U.S. citizen or by a foreign government or an entity organized under the laws of a foreign government be counted in the application of the statutory limits.⁹⁰ The list of cognizable interests includes nearly all forms of equity and voting interests held in the licensee and its controlling U.S. parent.⁹¹ While the *NPRM* did not propose to modify these long-standing basic principles for calculation of foreign ownership interests, we did ask for comment on a limited set of issues related to the calculation of foreign ownership interests held in or through limited partnerships, limited liability companies, and registered limited liability partnerships.⁹² We address these issues in Section IV.C of this Second Report and Order.⁹³

29. The *NPRM* did not propose to change the requirement that common carrier and aeronautical radio station licensees file a petition for declaratory ruling under section 310(b)(4) of the Act to obtain Commission approval *before* direct or indirect foreign ownership of their controlling U.S. parent companies exceeds an aggregate 25 percent, measured as a percentage of the U.S. parents' equity and/or voting interests. The *NPRM* reiterated the Commission's long held view that the 25 percent benchmark may be exceeded only after the Commission affirmatively finds that the foreign ownership of a licensee's

⁸⁸ The *NPRM* also asked for comment on whether the Commission could simplify the principal place of business test used to determine whether an investing entity's equity and/or voting interests in a U.S. parent were properly treated as non-WTO investment; whether the Commission should instead eliminate the principal place of business test in favor of a different approach; and whether it was feasible and desirable to modify the ECO test to acknowledge and further encourage the efforts of non-WTO Member countries to open their markets to foreign investment and competition. *NPRM*, 26 FCC Rcd at 11721, ¶ 34. We received no comments specifically addressing these questions.

⁸⁹ *See id.* at 11721-22, ¶ 36, 11724, ¶ 42 n.85.

⁹⁰ *See Wilner & Scheiner I*, 103 F.C.C. 2d 511, 514-15 (1985) (*Wilner & Scheiner I*), *reconsidered in part*, 1 FCC Rcd 12 (1986) (*Wilner & Scheiner II*). *See also Applications of BBC License Subsidiary*, 10 FCC Rcd 10968, 10973-74, ¶¶ 22-25 (1995) (establishing the Commission's methodology for calculating foreign equity and voting interests in a licensee, under section 310(b)(3), and in the controlling U.S. parent of a licensee, under section 310(b)(4), where such foreign ownership interests are held through intervening entities).

⁹¹ In applying the statutory foreign ownership limits, the Commission has interpreted the term "capital stock," as it applies to non-corporate entities, to encompass the many alternative means by which equity and voting interests are held in these entities, including partnership interests, policyholders of mutual insurance companies, church members, union members, and beneficiaries of irrevocable trusts. *See Wilner & Scheiner I*, 103 F.C.C. 2d at 515-16, ¶ 9; *Applications of PrimeMedia, et al.*, Memorandum Opinion and Order, 3 FCC Rcd 4295 (1988).

⁹² *NPRM*, 26 FCC Rcd at 11738-40, ¶¶ 68-70. We will refer to "registered limited liability partnerships" as "limited liability partnerships" for purposes of this Second Report and Order and the rules adopted herein.

⁹³ *See infra* ¶¶ 117-126.

U.S. parent company in excess of that amount is in the public interest.⁹⁴ The *NPRM* proposed to codify this requirement, as it applies to common carrier and aeronautical radio station licensees, as part of any rules adopted in this proceeding.⁹⁵ In adopting our section 310(b)(3) forbearance approach, we also required that common carrier licensees subject to section 310(b)(3) forbearance seek and obtain Commission approval by filing a petition for declaratory ruling or similar request *before* foreign ownership of the licensee exceeds the 20 percent limit in section 310(b)(3).⁹⁶ Moreover, in assessing whether the section 310(b)(3) forbearance approach would meet the statutory requirements for forbearance, we observed that the approach would protect consumers because the Commission would give public notice of, and seek comment on, a petition for declaratory ruling or similar request asking for approval of proposed foreign equity and/or voting interests in a common carrier licensee over 20 percent. This notice and comment process would inform any Commission decision to grant a petition for declaratory ruling to exceed section 310(b)(3)'s 20 percent limit and allow us to assess potential harms to consumers.⁹⁷

30. We confirm the Commission's long-standing policy that the statute requires us to review and approve foreign ownership of licensees subject to section 310(b)(4) before that foreign ownership exceeds the 25 percent statutory limit.⁹⁸ The Departments state that the *NPRM*'s proposal to codify the prior approval process ensures their ability to identify, review, and comment on foreign ownership in common carrier and aeronautical applicants, licensees, and spectrum lessees that may be of national security or law enforcement concern.⁹⁹ Verizon asserts that, because the Commission has determined that foreign investment from WTO Member countries is presumptively in the public interest, the Commission may dispense with the need to engage in an individual review of foreign ownership interests from WTO Member countries.¹⁰⁰ It suggests that the Commission can rely on its initial licensing and

⁹⁴ See *NPRM*, 26 FCC Rcd at 11722, ¶ 37 & n.78, quoting *Application of Fox Television Stations, Inc.*, Memorandum Opinion and Order, FCC 95-188, 10 FCC Rcd 8452, 8475, ¶ 53 (1995) (*Fox I*) (“Accordingly, we hold that an applicant must specifically and directly inform the Commission that the ownership structure under consideration may exceed the foreign ownership benchmark, and that absent such explicit notification and an express finding by the Commission that allowing the applicant to exceed the benchmark is in the public interest, an applicant may not exceed the benchmark.”). See also *NPRM*, 26 FCC Rcd at 11710, ¶ 11 & n.22.

⁹⁵ *Id.* at 11722, ¶ 37.

⁹⁶ *First Report and Order*, 27 FCC Rcd at 9843, ¶ 28.

⁹⁷ *Id.* at 9839-40, ¶ 17.

⁹⁸ See *Fox I*, 10 FCC Rcd at 8474-77, ¶¶ 52-55 (stating that “[i]t is clear that section 310(b)(4) gives the Commission discretion with respect to alien ownership in excess of the statutory benchmark. It is equally clear that the statute requires that the Commission be made aware whenever foreign ownership could exceed the benchmark level, so that it can exercise that discretion” and citing to *Moving Phones Partnership L.P. v. FCC*, 998 F.2d 1051, 1057-58 (D.C. Cir. 1993), *cert. denied*, 511 U.S. 1004 (1994) and *Telemundo, Inc. v. FCC*, 802 F.2d 513, 516 (D.C. Cir. 1986)). See also *Galesburg Broadcasting Company*, FCC 91-131, 6 FCC Rcd 2210 (1991) (finding that the transfer of a majority of the voting stock in the U.S.-organized parent of the licensee to a trustee wholly owned by a Canadian bank without prior Commission approval “deprived the Commission of the opportunity to pass on the propriety of alien ownership which Section 310(b)(4) of the Act contemplates”).

⁹⁹ DOJ/DHS *NPRM* Comments at 2. The Department of Justice (DOJ) and Department of Homeland Security (DHS) filed joint comments. The Department of Defense (DOD) generally supports the positions of DOJ/DHS to the extent any changes to the process by which DOJ/DHS/DOD jointly review applications filed under section 310(b)(4) would negatively affect the ability of DOD to conduct reviews of those cases that impact DOD interests. See DOD *NPRM* Comments at 1.

¹⁰⁰ Verizon *NPRM* Comments at 8-12. See also CTIA *NPRM* Reply at 7-8 (supporting elimination of the petition for declaratory ruling requirement for foreign investment in excess of 25 percent from WTO Member countries); (continued....)

transfer/assignment processes, and Executive Branch processes, to ensure that foreign investment is consistent with national security, law enforcement, foreign policy, and trade policy concerns.¹⁰¹ For the reasons discussed below, we find that Verizon's argument is not persuasive and our long-standing policy remains necessary to the discharge of our obligations under section 310(b).

31. First, we note that the presumption that WTO Member investment is in the public interest is simply that – a *presumption* that such foreign investment does not pose a risk of anticompetitive harm that would justify denial. This presumption is rebuttable. Moreover, the Commission does not presume that foreign WTO Member investment poses no other concerns – *e.g.*, with respect to national security, law enforcement, foreign policy or trade policy.¹⁰² Rather, the Commission considers these additional concerns as part of its public interest analysis and independent of its review of competition issues.¹⁰³ As noted, the Commission accords deference to the expertise of Executive Branch agencies in identifying and interpreting issues of concern in the context of such foreign investment.¹⁰⁴

32. Second, an applicant may have no foreign ownership – or its foreign ownership may be below the section 310(b)(4) limit – when the applicant files for an initial license or files to acquire licenses by assignment or transfer of control, but may seek to increase its foreign ownership after grant of an initial license or following approval of an assignment or transfer of control. We disagree that our review of foreign ownership interests from WTO Member countries that would exceed the statutory limits should occur only in the context of these applications, as Verizon suggests.¹⁰⁵ We confirm that the public interest mandate set out in section 310(b)(4) requires that we engage in prior review and approval regardless of whether the foreign investment would occur when an application is filed or at some point after an application receives approval. As the Departments have noted, this is particularly relevant for national security and law enforcement concerns.¹⁰⁶

33. Finally, we are not persuaded by Verizon's suggestion that eliminating the requirement to file a petition for declaratory ruling for foreign ownership from WTO Member countries will not compromise the ability of the Commission and the relevant Executive Branch agencies to review potentially problematic foreign investment. Verizon asserts this is so because the Commission would still refer requests for initial licenses and renewals and applications for transfer of control and assignment of licenses to the Executive Branch and at all other times the CFIUS process and "other Executive Agency processes" would provide any necessary check to protect national security interests.¹⁰⁷ CFIUS¹⁰⁸ conducts

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USTelecom NPRM Reply at 4 (agreeing with Verizon that the Commission can dispense with individual review of investment from WTO Member countries, "thereby encouraging further investment by these entities").

¹⁰¹ Verizon NPRM Comments at 12-17; Verizon NPRM Reply at 4-7.

¹⁰² See *Foreign Participation Order*, 12 FCC Rcd at 23920-21, ¶ 65.

¹⁰³ *Id.*

¹⁰⁴ *Id.* at 23920, ¶ 63, 23921, ¶ 65.

¹⁰⁵ Verizon NPRM Comments at 12-14.

¹⁰⁶ As a procedural matter, we could adopt a policy of dispensing with standalone petitions for declaratory ruling when foreign ownership occurs at the time of a request for an initial license, renewal, transfer, or assignment. However, because we do not accept Verizon's premise that there is no statutory requirement to review foreign ownership at any time other than upon initial licensing, renewal, transfer, or assignment, we find that the better approach is to simplify and clarify the filing requirements by adopting the same procedures for all public interest reviews of foreign ownership under section 310(b)(4) and under section 310(b)(3) forbearance.

¹⁰⁷ Verizon NPRM Comments at 14-17; Verizon NPRM Reply at 5-6. See also Vodafone NPRM Reply at 13 (stating that the Executive Branch agencies' objectives and ability to review foreign investments would not be impacted by any rule changes or streamlined processes). Other than the CFIUS process, Verizon has not identified (continued....)

national security reviews of mergers, acquisitions, and takeovers by, or with, any foreign person that could result in foreign control of a U.S. business (a “covered transaction”).¹⁰⁹ This process, however, does not review start-up (or “greenfield”) investments.¹¹⁰ Moreover, our experience has been that, for telecommunications transactions, many parties will negotiate agreements to resolve national security and law enforcement concerns with the relevant Executive Branch agencies and then file with CFIUS when negotiations are nearly completed. This suggests that the two processes are complementary.¹¹¹

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the “other Executive Agency processes” that may be “independent” of Commission review, particularly where there is a change in foreign ownership but no application for a license, renewal, transfer of control or assignment. *See* Verizon NPRM Comments at 14; *see also id.* at 17 (referring to the Executive Branch agency process as “independent” of Commission review in those instances where there are requests for an initial license or renewal, or transfer of control or assignment applications). Verizon suggests that an additional option would be to adopt a notice requirement for changes in foreign ownership, in which a licensee would certify to the Commission that it had notified the relevant national security agencies. Verizon NPRM Reply at 6.

¹⁰⁸ “CFIUS” or the “Committee” is the Committee on Foreign Investment in the United States. The members of CFIUS include the heads of the following departments and offices: Department of the Treasury (chair); Department of Justice; Department of Homeland Security; Department of Commerce; Department of Defense; Department of State; Department of Energy; Office of the U.S. Trade Representative; Office of Science and Technology Policy. *See* <http://www.treasury.gov/resource-center/international/foreign-investment/Pages/cfius-members.aspx> (visited Apr. 17, 2013). The following offices also observe and, as appropriate, participate in CFIUS activities: Office of Management and Budget; Council of Economic Advisors; National Security Council; National Economic Council; Homeland Security Council. *See id.* The Director of National Intelligence and the Secretary of Labor are non-voting, *ex-officio* members of CFIUS. *Id.* Section 721 of Title VII of the Defense Production Act of 1950 (“section 721”), as amended by the Foreign Investment and National Security Act of 2007 (“FINSA”), Public Law 110-49, 121 Stat. 246, authorizes the President to review mergers, acquisitions, and takeovers by, or with, any foreign person that could result in foreign control of a U.S. business (which FINSA refers to as “covered transactions”) to determine the effects of such transactions on the national security of the United States. Section 721, as amended by FINSA, is codified at 50 U.S.C. App. 2170. The regulations implementing section 721, as amended by FINSA, are codified in 31 C.F.R. Part 800 (hereinafter referred to as the “CFIUS Regulations”).

¹⁰⁹ *See* 31 C.F.R. § 800.207. Where a covered transaction presents national security risks, FINSA provides the statutory authority for CFIUS, or the lead agency acting on behalf of CFIUS, to enter into mitigation agreements with parties to the transaction or to impose conditions on the transaction to address such risks. This authority enables CFIUS to mitigate any national security risk posed by a transaction rather than recommending to the President that the transaction be prohibited because it could impair U.S. national security. *See* Regulations Pertaining to Mergers, Acquisitions and Takeovers by Foreign Persons, 73 Fed. Reg. 70702, 70703 (Nov. 21, 2008) (*Merger Regulations Summary*). The CFIUS review process is based primarily on voluntary notices to CFIUS filed by parties to transactions. *Id.*, 73 Fed. Reg. at 70703. Section 800.401(f) of the CFIUS Regulations, 31 C.F.R. § 800.401(f), explicitly encourages parties to contact and engage with CFIUS before making a formal filing. *Merger Regulations Summary*, 73 Fed. Reg. at 70703. CFIUS is also authorized to review a transaction that has not been voluntarily notified. *See* 31 C.F.R. §§ 800.401(b), (c).

¹¹⁰ The term “transaction” as defined in section 800.224 of the CFIUS Regulations, 31 C.F.R. § 800.224, excludes start-up or “greenfield” investments. *See* 31 C.F.R. § 800.301(c), Example 3. *See also Merger Regulations Summary*, 73 Fed. Reg. at 70704.

¹¹¹ The Commission’s coordination of petitions and any related license applications with the relevant Executive Branch agencies provides the agencies the opportunity to negotiate security agreements with applicants or licensees that resolve national security (and any law enforcement) concerns prior to initiation of the 30-day CFIUS review period. *See, e.g., Verizon Communications, Inc., Transferor, and América Móvil, S.A. de C.V., Transferee, Applications for Authority to Transfer Control of Telecomunicaciones de Puerto Rico, Inc. (TELPRI)*, WT Docket No. 06-113, Memorandum Opinion and Order and Declaratory Ruling, 22 FCC Rcd 6195, Appendix B (Executive Branch Agreement) (2007) (*América Móvil Order*) (stating in Article 7 (FCC Condition and CFIUS Process) that (continued....))

34. In any event, it is the Commission to which section 310(b) assigns the responsibility to conduct public interest reviews of foreign ownership in excess of the statutory benchmark. While the Commission has exercised its discretion to rely substantially on the views of Executive Branch agencies for their expertise on matters of national security, law enforcement, foreign policy and trade policy in cases involving foreign investment in U.S. common carrier and aeronautical licensees, we do not believe it would be appropriate for us essentially to delegate this statutory responsibility to such agencies. At the same time, and in response to the comments we have received, this order substantially streamlines our exercise of that responsibility.

35. Vodafone asserts that its proposal to replace the declaratory ruling process with a “streamlined section 310(b)(4) notice procedure” for reviewing foreign investment in wireless licensees would not compromise national security, law enforcement, foreign policy, or trade policy interests.¹¹² This proposal would require a wireless licensee to submit a “section 310(b)(4) notice” to the Commission whenever it believed foreign ownership in its controlling U.S. parent would exceed 25 percent.¹¹³ Vodafone proposes that the Commission have a defined period of time, such as 30 days, in which to review the filing, refer the filing to the appropriate Executive Branch agencies, and act (or not act) on the filing.¹¹⁴ We find that Vodafone’s proposed notice procedure would not, as a practical matter, result in appreciable cost savings or reduced burdens on licensees, or expedite the existing review process. The proposal would require licensees to notify the Commission in advance of foreign investment and would provide the Commission and Executive Branch agencies the opportunity to conduct reviews. These are characteristics of the existing petition for declaratory ruling process. To the extent that the proposal may be intended to eliminate the need for the Commission to write a ruling approving the specific foreign investment identified in a petition for declaratory ruling, we find that these rulings provide clarity, for the petitioner, the Commission, and the public, as to the “approved” levels of foreign investment.¹¹⁵

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“In consideration for the execution of this Agreement, the [United States Government] Parties will not make any objection to CFIUS or the President concerning the Transaction.”).

¹¹² Vodafone NPRM Comments at 30-34; Vodafone NPRM Reply at 10-12 (stating that it wholly supports the Executive Branch’s interest in protecting the U.S.’s national security, law enforcement, trade and foreign policy interests); *see also id.* (asserting that its proposed “notice” regime is designed to preserve the Commission’s ability to determine whether and when additional scrutiny is needed, and that this proposal protects the Executive Branch’s ability to identify, interpret, and impose conditions regarding matters of national security, law enforcement, foreign policy, and trade policy). *See also* EABC NPRM Comments at 6-8 (supporting Vodafone’s proposal); Verizon NPRM Reply at 6 (“Any concern that the Executive Branch agencies receive sufficient notice of changes in foreign ownership could be addressed by adopting a notice requirement while eliminating the current, duplicative FCC process.”).

¹¹³ Vodafone NPRM Comments at 30. The “covered licensee” would identify any individual or entity that holds a direct or indirect interest of ten percent or more, or any “controlling” interest, in the U.S. parent, and indicate whether such foreign investors were from WTO Member countries. *Id.* Once the “covered licensee” received approval of an investment by a foreign entity, “it would not be required to provide further notice or information to the Commission regarding that entity, even if the licensee acquired new wireless licenses or changed the amount of its indirect interest in the licensee (within the scope of the initial notice).” Vodafone NPRM Reply at 11.

¹¹⁴ Vodafone NPRM Comments at 30-31. At the expiration of 30 days, the proposal contemplates one of the following actions: (1) automatic approval; (2) a Commission finding that section 310(b)(4) does not apply; (3) a Commission finding that the foreign investment poses a high risk to competition and cannot be granted; or (4) an announcement that Commission action will be delayed because of national security, law enforcement, foreign policy, or trade policy concerns expressed by the Executive Branch agencies. *Id.* at 31. *See also* Vodafone NPRM Reply at 11.

¹¹⁵ We note that petitions for declaratory ruling may not clearly specify the foreign interests for which licensees seek approval, requiring the submission of follow-up information. Moreover, a specific ruling provides licensees, the (continued....)

Furthermore, as discussed below, we also adopt rules that will reduce the need to file a petition for declaratory ruling in “every instance.”¹¹⁶

36. As urged by commenters in this proceeding, we are adopting rules that treat foreign investment under section 310(b)(4) and section 310(b)(3) forbearance consistently.¹¹⁷ In applying these rules to the class of common carrier licensees subject to section 310(b)(3) forbearance, we take notice of our finding in the *First Report and Order* that the prior review and approval process informs any Commission decision to grant a petition for declaratory ruling to exceed section 310(b)(3)’s 20 percent limit and allows us to assess any potential harms to consumers.¹¹⁸

37. For the reasons set forth above, we adopt the *NPRM* proposal to retain and codify the requirement that common carrier and aeronautical radio station licensees seek and obtain prior Commission approval of their U.S. parents’ foreign ownership under section 310(b)(4), and we codify the same requirement for common carrier licensees subject to section 310(b)(3) forbearance to obtain prior Commission approval before foreign ownership in the subject licensee exceeds 20 percent of its equity interests and/or 20 percent of its voting interests.¹¹⁹

2. Issuing Section 310(b)(3) and (b)(4) Rulings to Named Licensees

38. The Commission’s practice has been to issue section 310(b)(4) rulings in the name of the licensee(s) that are the subject of the petition for declaratory ruling. In the *NPRM*, the Commission proposed to change this practice and issue section 310(b)(4) rulings in the name of the controlling U.S.-organized parent of the subject licensee(s).¹²⁰ The Commission proposed that, where there are successive, controlling U.S. parents in the vertical ownership chain of the licensee, it would issue the ruling in the name of the lowest-tier, controlling U.S. parent.¹²¹ The Commission proposed this change for two reasons: first, to ensure that the Commission issues the foreign ownership ruling to the particular entity whose aggregate, direct and/or indirect foreign ownership would trigger the applicability of section 310(b)(4) to the extent it exceeds 25 percent, based on the company’s ownership structure at the time the ruling is granted; and second, to accommodate other aspects of the proposed modified framework.¹²² The

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Commission, and the public with greater certainty that, going forward, a particular foreign investment is in compliance with the statutory requirements.

¹¹⁶ See Vodafone *NPRM* Reply at 6 (seeking framework that reduces need for obtaining foreign ownership ruling “in every instance” where indirect foreign investment from WTO Member countries exceeds 25 percent). See, e.g., Section IV.B.6 (introducing new, foreign-organized entities into the previously approved vertical ownership chain).

¹¹⁷ See *First Report and Order*, 27 FCC Rcd at 9837, ¶ 10 (applying the same foreign ownership policies and procedures); see *id.* at 9844, ¶ 32 (commenters urged the Commission to simplify the section 310(b)(4) requirements and apply those revised requirements to the evaluation of foreign interests in a common carrier licensee held through U.S.-organized entities that do not control the licensee). See also *infra* Sections IV.B.2-IV.B.7 (applying other changes we adopt to the section 310(b)(4) policy framework to our analysis of petitions for declaratory ruling to exceed the 20 percent foreign equity and voting limits in section 310(b)(3)).

¹¹⁸ *First Report and Order*, 27 FCC Rcd at 9839-40, ¶ 17.

¹¹⁹ See *NPRM*, 26 FCC Rcd at 11710, ¶ 11 & n.22, 11722, ¶ 37 & n.78; *First Report and Order*, 27 FCC Rcd at 9837, ¶ 10.

¹²⁰ *NPRM*, 26 FCC Rcd at 11723, ¶ 39.

¹²¹ *Id.*

¹²² *Id.* As explained in Section IV.B.5 below, the Commission proposed that a U.S. parent’s section 310(b)(4) ruling automatically cover any of its subsidiaries or affiliates, whether existing at the time of the ruling or formed or acquired subsequently, provided that foreign ownership of the U.S. parent remains in compliance with the terms of its ruling. As discussed in Section IV.B.6 below, the Commission also requested comment on whether to allow new, (continued....)

Commission also stated that, because the purpose of its section 310(b)(4) review is to evaluate foreign ownership of the U.S. parent before it exceeds 25 percent, it was appropriate to issue the rulings in the name of the U.S. parent rather than the licensee.¹²³

39. Commenters generally supported this approach.¹²⁴ Some of these commenters also asked us to apply the section 310(b)(4) policies and procedures to foreign investment held in a common carrier licensee through intervening U.S.-organized entities that do not control the licensee.¹²⁵ In light of the section 310(b)(3) forbearance approach adopted in the *First Report and Order*, we find that the simplest approach is for the Commission to issue foreign ownership rulings in the name of the licensee regardless of whether the ruling authorizes the licensee to have foreign ownership in excess of the 20 percent limit in section 310(b)(3) or authorizes foreign ownership of the licensee's controlling U.S. parent to exceed the 25 percent benchmark in section 310(b)(4). Parties filing comments in response to the *Forbearance Public Notice* also sought consistency in the Commission's public interest review of foreign ownership under section 310(b)(3) forbearance and section 310(b)(4).¹²⁶ We find that continuing to issue our rulings in the name of the licensee, as we do now, will help to provide such consistency.¹²⁷

3. Approval of Named Foreign Investors

40. As discussed in Section IV.B.1 above, we do not in this order change Commission policy requiring that licensees obtain Commission approval before their aggregate direct or indirect foreign ownership exceeds the relevant statutory limits in section 310(b)(3) or section 310(b)(4).¹²⁸ Nor do we change our requirement that, in calculating compliance with those limits, licensees must count any equity or voting interest of whatever size held by a non-U.S. citizen or foreign entity, and must take reasonable

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foreign-organized controlling parent companies to be inserted into the approved vertical ownership chain above the controlling U.S. parent without prior Commission approval provided that foreign ownership of the U.S. parent complies in all other respects with the terms of its ruling.

¹²³ *NPRM*, 26 FCC Rcd at 11723, ¶ 40. While Commission practice has been to issue section 310(b)(4) rulings in the name of the subject licensee(s), the Commission has evaluated in its decisions the direct and indirect foreign ownership of the licensee's controlling U.S. parent company. See, e.g., *Mobile Satellite Ventures Subsidiary LLC and SkyTerra Communications, Inc.*, Order and Declaratory Ruling, FCC 08-77, 23 FCC Rcd 4436, 4441, ¶ 13 (2008) (*MSV-SkyTerra Order*).

¹²⁴ See, e.g., AT&T *NPRM* Comments at 10; SIA *NPRM* Comments at 3-4; T-Mobile *NPRM* Comments at 3; Verizon *NPRM* Comments at 5; Vodafone *NPRM* Comments at 6 n.25; CTIA *NPRM* Reply at 5; Sprint *NPRM* Reply at 3. Verizon, Vodafone, CTIA and Sprint ask that we modify the *NPRM* proposal and issue the section 310(b)(4) ruling in the name of the licensee's highest-tier controlling U.S. parent, rather than the lowest-tier U.S. parent, in order to "remove redundant and unnecessary filings for companies whose ultimate foreign ownership has previously been reviewed and approved by the Commission." Verizon *NPRM* Comments at 5; see also Vodafone *NPRM* Comments at 6 n.25; CTIA *NPRM* Reply at 5; Sprint *NPRM* Reply at 3. We find that the commenters' objective to remove unnecessary filings will be achieved by the "automatic extension" rule discussed in Section IV.B.5 below, which will extend a licensee's foreign ownership ruling to cover all of its subsidiaries and affiliates as defined in the new rules. See *infra* ¶¶ 88-96.

¹²⁵ See *supra* ¶¶ 16-17.

¹²⁶ See, e.g., AT&T *Public Notice* Comments at 1; USTelecom *Public Notice* Comments at 3-4; Verizon *Public Notice* Comments at 12; Vodafone *Public Notice* Comments at 1-2; DT/T-Mobile *Public Notice* Reply at 5.

¹²⁷ We address in Section IV.C below the content requirements for petitions for declaratory ruling, including joint petitions filed by affiliated applicants, licensees, and spectrum lessees. See *infra* ¶¶ 111-128.

¹²⁸ See *supra* ¶¶ 29-37.

steps, such as periodic random surveys of shareholders of public companies, to ensure that they are and remain in compliance with the applicable limits.¹²⁹

41. Under established procedures, the Commission requires petitions that seek approval to exceed the statutory limits to disclose the citizenship of all known and knowable foreign equity and voting interests in the licensee, whether direct or indirect, and of whatever size.¹³⁰ In the *NPRM*, the Commission asked for comment on several key changes to the Commission's current framework for authorizing ownership of a licensee's controlling U.S. parent by named foreign investors and by other potential foreign investors.¹³¹ The Commission's objectives were two-fold. First, it sought to limit the requirement to identify specific foreign owners (among the total foreign ownership for which the petition sought approval) to those of sufficient size that the Commission considered to be relevant to its section 310(b)(4) foreign ownership concerns applicable to common carrier and aeronautical licensees.¹³² Second, the Commission proposed ways of reducing the need for licensees and their controlling U.S. parents to return to the Commission, *after receiving an initial ruling*, to obtain prior approval for *subsequent changes* in foreign ownership, including increased interests by foreign investors that the Commission had already approved in the parent's initial ruling and interests to be acquired by new foreign investors.¹³³

42. We address below the proposals and other options raised in the *NPRM*, the comments we received, and the modified framework that will apply in authorizing foreign ownership of licensees and U.S. parent companies by named foreign investors. Briefly stated, we adopt a new framework that requires licensees seeking approval of aggregate foreign ownership in excess of the statutory limits to identify and seek further specific approval in their petitions only of those individual foreign interests that would exceed five percent of the controlling U.S. parent of a common carrier or aeronautical radio station licensee, under section 310(b)(4), and/or exceed five percent of a common carrier licensee, under our section 310(b)(3) forbearance approach, with an exception for certain interests in excess of five percent and up to ten percent. In addition, we will permit licensees to identify and seek specific approval of foreign interests of less than and including five percent.¹³⁴ At the same time, we will permit licensees, at

¹²⁹ See *supra* ¶ 28.

¹³⁰ See, e.g., *Vizada Services LLC and Vizada, Inc.*, Order and Declaratory Ruling, DA 10-357, 25 FCC Rcd 2029, 2036, ¶ 12, 2041-51 (Appendix B – Summary of Analysis) (Int'l Bur., 2010); *MSV-SkyTerra Order*, 23 FCC Rcd at 4442-43, ¶ 15, 4449-63 (Appendix B – Section 310(b)(4) Foreign Ownership Analysis); *Stratos Global Corporation, Transferor and Robert M. Franklin, Transferee*, WC Docket No. 07-73, Memorandum Opinion and Order and Declaratory Ruling, FCC 07-213, 22 FCC Rcd 21328, 21365-70, ¶¶ 91-101 (2007) (*Stratos Global Order*); *América Móvil Order*, 22 FCC Rcd at 6218-25, ¶¶ 52-68.

¹³¹ *NPRM*, 26 FCC Rcd at 11723, ¶ 41.

¹³² *Id.* at 11723-24, ¶¶ 41-42 & n.85.

¹³³ *Id.* at 11723, ¶ 41; see also *id.* at 11725-31, ¶¶ 43-54. Under its current framework, the Commission generally issues foreign ownership rulings that authorize the U.S. parent to accept, in addition to any foreign ownership interests approved specifically in the ruling, up to and including an additional, aggregate 25 percent equity interest and/or 25 percent voting interest from the approved foreign investors and from other foreign investors without prior Commission approval. This 25 percent aggregate allowance, however, is subject to certain limitations. As relevant to this discussion, the U.S. parent may not use the aggregate allowance to permit any single foreign investor to acquire an equity and/or voting interest in the U.S. parent that exceeds 25 percent. *Id.* at 11723, ¶ 41 n.84.

¹³⁴ That is, our standards for the level of individual foreign investor holdings for which we *require* specific approval do not preclude licensees from filing petitions seeking specific approval for a foreign investor's holdings *below* this level. We are providing in this order the opportunity for petitioners to seek and obtain approval for such smaller holdings, together with preclearance to increase those holdings substantially in the future. See *infra* ¶¶ 69-75.

the time of the initial ruling, to request prior approval for future changes in foreign ownership by these named foreign investors. Specifically, we will allow licensees to request specific approval for any of their named foreign investors to increase its equity and/or voting interest, at some future time, up to and including a non-controlling 49.99 percent equity and/or voting interest held directly or indirectly in the controlling U.S. parent (under section 310(b)(4)), or held indirectly in a licensee through an intervening U.S.-organized entity that does not control the licensee (under our section 310(b)(3) forbearance approach). We also will permit licensees to request specific approval for a foreign investor that holds, or proposes to acquire, a controlling interest in the U.S. parent of the licensee, but that does not or would not wholly own the U.S. parent at the time of the initial ruling, to increase its interests, at some future time, up to and including 100 percent of the U.S. parent's equity and voting interests, under section 310(b)(4).

43. This new framework is designed to reduce both the current complexities petitioners face in identifying and obtaining approval for their foreign interest holders and the need for licensees to return to the Commission to obtain prior approval for future changes in foreign ownership, including increased investments by foreign investors the Commission has already approved. These changes should provide greater flexibility to U.S. parents and licensees in attracting new investment and substantially reduce the current costs and burdens associated with filing multiple petitions with the Commission.

a. Investment Level Triggering Specific Approval of Named Foreign Investors

44. The Commission proposed, first, to require a petitioner to name and request specific approval in its section 310(b)(4) petition only for foreign individuals or entities that hold, or would hold upon closing of any transactions contemplated by the petition, a direct or indirect equity and/or voting interest in the U.S. parent in excess of 25 percent or a controlling interest. The Commission stated that, under this proposal, the petitioner would not be required to include a request for specific approval of a non-controlling foreign investor's interest of 25 percent or less.¹³⁵

45. Comments addressing this proposal were divided between those from filers representing commercial interests and those submitted by the Departments. Vodafone, AT&T, SIA, and Sprint expressed support for a requirement that petitions include requests for specific approval of only those foreign investors that hold at the time of filing, or would hold upon consummation of any transactions contemplated by the petition, an interest exceeding 25 percent of the U.S. parent's equity and/or voting interests.¹³⁶ Industry commenters generally agree with the assessment in the *NPRM* that U.S. parent companies face significant difficulties and costs in trying to ascertain the citizenship and principal places of business of their investors, which often hold their interests indirectly through multiple investment vehicles and holding companies.¹³⁷ USTelecom, for example, states that the ways in which a company

¹³⁵ *NPRM*, 26 FCC Rcd at 11724, ¶ 42. However, the Commission also proposed to require that the U.S. parent disclose in its section 310(b)(4) petition all of its ten percent or greater direct or indirect interest holders, regardless of citizenship. *Id.* at 11724, n.85. As discussed in Section IV.C, we are adopting that proposal here.

¹³⁶ See Vodafone *NPRM* Comments at 5-6. AT&T, SIA, and Sprint express their support for a 25 percent exclusion in connection with the Commission's proposal to issue declaratory rulings with a 100 percent aggregate allowance for future foreign investment, subject to the requirement that the petitioner obtain Commission approval before a foreign investor that has not received specific approval acquires an interest that exceeds 25 percent. See AT&T *NPRM* Comments at 10; SIA *NPRM* Comments at 7-8; Sprint *NPRM* Reply at 2. Because it does not support requiring petitions for declaratory ruling, Verizon does not address at what level specific approval should be required in a petition. See Verizon *NPRM* Comments at 8-17.

¹³⁷ See, e.g., USTelecom *NPRM* Reply at 5 (citing *NPRM*, 26 FCC Rcd at 11716, ¶ 22); Verizon *NPRM* Comments at 3; Intelsat *NPRM* Comments at 2; T-Mobile *NPRM* Comments at 2; AT&T *NPRM* Comments at 9 (noting burdens for U.S. companies associated with calculations of non-WTO investment).

must currently demonstrate ownership are unnecessarily complex and burdensome and suggests that “[r]ather than maintaining the tortuous process of identifying each ultimate shareholder, the Commission should simplify its process” by, for example, permitting the identification of a U.S. parent’s investors at a more general level, such as naming the parent’s investing mutual funds or the place of business of a general partner.¹³⁸

46. The Departments, by contrast, opposed the *NPRM*’s specific approval threshold of 25 percent for individual, named foreign investors.¹³⁹ The Departments expressed the view that eliminating specific approval of individual, named investors would deny the Departments the opportunity to review these acquisitions. In light of the Departments’ concerns with the *NPRM*’s 25 percent specific approval threshold, we adopt a modified approach to requiring that petitions for declaratory ruling include requests for specific approval of certain foreign investors. The specific approval requirements will apply to petitions filed by common carrier and aeronautical licensees that seek authority for foreign ownership of their controlling U.S. parent companies to exceed the aggregate 25 percent benchmark in section 310(b)(4) and to petitions filed by common carrier licensees subject to section 310(b)(3) forbearance that seek authority to exceed the aggregate 20 percent foreign ownership limit in section 310(b)(3). As explained below, our modified approach is designed to reduce the regulatory costs and burdens associated with foreign investment in common carrier and aeronautical licensees while continuing to ensure that the relevant Executive Branch agencies are afforded a meaningful opportunity to review proposed foreign investment for national security, law enforcement, and public safety concerns. We believe that the specific approval requirements adopted here will preserve a meaningful opportunity for the Departments to review foreign investments and, where appropriate, recommend denial or limitations on such approvals, by preserving the Departments’ opportunity to request from petitioners, and to evaluate prior to Commission action, additional information to inform the Departments’ views.¹⁴⁰

47. *Specific Approval Requirements.* We will require common carrier and aeronautical licensees to identify and request specific approval in their section 310(b)(4) petitions for any foreign individual or entity, or “group” of foreign individuals or entities,¹⁴¹ that holds or would hold directly, or indirectly through one or more intervening U.S.- or foreign-organized entities, more than five percent of the U.S. parent’s total outstanding capital stock (equity)¹⁴² and/or voting stock, or a controlling interest in

¹³⁸ USTelecom *NPRM* Reply at 5-6.

¹³⁹ See DOJ/DHS *NPRM* Comments at 3-5. The Departments stated that the names and related identifying information of individual foreign investors are essential for an adequate and complete public interest review. *Id.* at 5. They also stated that they “must receive full and complete information on the ownership of the applicants/license holders.” *Id.* at 2. However, the Departments did not oppose limiting the required disclosure of a company’s shareholders – whether U.S. or foreign – to five percent interest holders. The Commission proposed in the *NPRM* to require disclosure of all of a U.S. parent company’s ten percent interest holders, whether U.S. or foreign, consistent with the existing disclosure requirements that apply to most common carrier wireless applicants under Commission licensing rules. See *NPRM*, 26 FCC Rcd at 11735, ¶ 62. In commenting on this proposal, the Departments asked us to require disclosure of five percent interest holders, but not of lesser holdings. See DOJ/DHS *NPRM* Comments at 9-10.

¹⁴⁰ See DOJ/DHS Letter, *supra* note 19.

¹⁴¹ We discuss the term “group” in ¶ 68 below.

¹⁴² The Commission has consistently interpreted the term “capital stock” in section 310(b) to include interests held not only in corporations but also in non-corporate entities, such as partnerships and limited liability companies (LLCs). See, e.g., *Wilner & Scheiner I*, 103 F.C.C. 2d at 516; see also *supra* note 91.

the U.S. parent. We also adopt a five percent identification and specific approval requirement for common carrier licensees subject to section 310(b)(3) forbearance.¹⁴³

48. In certain limited circumstances described below, however, we will presumptively require identification and specific approval of a foreign investor's non-controlling interest only when it would exceed, directly or indirectly, ten percent of the equity and/or voting interests of a U.S. parent (for section 310(b)(4) petitions) or licensee (for petitions filed under our section 310(b)(3) forbearance approach). Under the new rules, we will presume, subject to rebuttal in a particular case, that a non-controlling foreign interest of ten percent or less in a U.S. parent or licensee is exempt from the specific approval requirements in the following circumstances:

- i) Where the relevant licensee, controlling U.S. parent, or entity holding a direct or indirect equity and/or voting interest in the licensee or U.S. parent, is a U.S. or foreign "public company," as defined in the rules,¹⁴⁴ *provided that* the foreign holder is an institutional investor that is eligible to report its beneficial ownership interests in the company's voting securities in excess of five percent (not to exceed ten percent) pursuant to Exchange Act Rule 13d-1(b) or a substantially comparable foreign law or regulation;¹⁴⁵
- (ii) Where the relevant licensee, controlling U.S. parent, or entity holding a direct or indirect

¹⁴³ Although we have decided to eliminate our WTO/non-WTO distinction, this approach is similar to the alternative proposal, for which the *NPRM* sought comment, to allow U.S. parents to exclude from their non-WTO calculations those equity and voting interests held by a single non-WTO investor or "group" in an amount that constitutes five percent or less of the U.S. parent's total capital stock (equity) and/or voting stock. *NPRM*, 26 FCC Rcd at 11719, ¶ 31, 11721, ¶ 34. As the Commission observed in that context, an equity and/or voting interest of five percent or less may be sufficiently non-influential as a general rule that it could be disregarded without posing a realistic potential to affect the core operations of the parent or licensee or, in turn, a risk of harm to competition, national security, law enforcement, foreign policy, or trade policy. *See id.* The Commission also asked whether the exclusion amount would be more properly set at ten percent, which is the current level at which the Commission requires disclosure of ownership interests in common carrier wireless licensees generally, or at some other level. *Id.* at 11721, ¶ 34, 11735, ¶ 62 & n.125. As is the case with the five percent specific approval rule adopted here, the *NPRM*'s five percent exclusion option was designed to reduce the burden of ascertaining citizenship of small investors based on their lack of potential influence. AT&T and USTelecom supported allowing U.S. parents to exclude five percent or lesser interests in calculating their level of non-WTO investment. *See AT&T NPRM Comments at 9-10; USTelecom NPRM Reply at 4.* No other commenter addressed this issue.

¹⁴⁴ *See infra* ¶ 58 and Appendix B (§ 1.990(d)).

¹⁴⁵ 17 C.F.R. § 240.13d-1(b). The "Exchange Act" referenced herein is the Securities Exchange Act of 1934, as amended, 15 U.S.C. §§ 78a *et seq.* An institutional investor reporting its beneficial ownership interests pursuant to Exchange Act Rule 13d-1(b) must certify in Schedule 13G that the institutional investor has acquired the voting securities of the company in the ordinary course of its business and not with the purpose nor with the effect of changing or influencing the control of the company. *See infra* ¶¶ 59-60. The following example illustrates how the ten percent exception applies in the case of a publicly traded U.S. parent: Assume that common carrier applicant ("Applicant") is preparing a petition for declaratory ruling to request Commission approval for foreign ownership of its controlling, U.S.-organized parent ("U.S. Parent") to exceed the 25 percent benchmark in section 310(b)(4). Applicant does not currently hold any FCC licenses. Shares of U.S. Parent trade publicly on the New York Stock Exchange. Based on a shareholder survey and a review of its shareholder records, U.S. Parent has determined that its aggregate foreign ownership on any given day may exceed an aggregate 25 percent, including a six percent common stock interest acquired by a foreign-organized mutual fund ("Foreign Fund") and reported to the SEC and the company pursuant to Exchange Act Rule 13d-1(b). Applicant has confirmed that Foreign Fund does not hold any other equity or voting interests in U.S. Parent. Applicant may, but is not required to, identify and request specific approval in its petition of Foreign Fund's six percent interest in U.S. Parent.

equity and/or voting interest in the licensee or U.S. parent, is a U.S. or foreign “privately held” corporation, as defined in the rules, *provided that* a shareholders’ agreement, or similar voting agreement, prohibits the foreign holder from becoming actively involved in the management or operation of the corporation, and limits the foreign holder’s voting and consent rights, if any, to the minority shareholder protections listed in the rules;¹⁴⁶

(iii) Where the relevant licensee, controlling U.S. parent, or entity holding a direct or indirect equity and/or voting interest in the licensee or U.S. parent is privately held and organized as a limited partnership, limited liability company (“LLC”), or limited liability partnership (“LLP”), *provided that* the foreign holder is “insulated” in accordance with the criteria specified in the rules.¹⁴⁷

We discuss the policy basis for the specific approval requirements in paragraphs 52-67 below.

49. The specific approval requirements will apply to both equity and voting interests, reflecting the statute’s concern, in section 310(b), with both foreign economic interests and foreign voting interests in licensees and their U.S. parent companies. Thus, we do not adopt Verizon’s suggestion that we modify our rules to focus only on voting power.¹⁴⁸ We emphasize again that licensees must include *all* of their foreign ownership interests in determining whether their aggregate foreign ownership is at or below the statutory limits in sections 310(b)(3) and 310(b)(4). As discussed in Section IV.B.1, Commission policy requires that any equity or voting interest held by an individual other than a U.S. citizen or by a foreign government or an entity organized under the laws of a foreign government be counted in the application of the statutory limits.¹⁴⁹ At the same time, once a petitioner has determined that it should file a petition under the new rules because its aggregate foreign ownership may exceed the statutory limits, it will not need to identify the citizenship or principal places of business of any of its five percent or lesser interest holders.

50. We believe our new rule strikes a reasonable balance between our twin objectives to reduce the regulatory costs and burdens associated with foreign investment in common carrier and aeronautical licensees – a concern held broadly by industry commenters – and to protect important interests related to national security, law enforcement, and public safety, as the Departments urge us to do. The new rule will require companies to request specific approval of only those foreign investors that the company should reasonably be able to identify and whose interests rise to the level that may be relevant to the actual concerns applicable to our section 310(b) review of foreign ownership in common carrier and aeronautical licensees. Further, because we will no longer distinguish between WTO and non-WTO foreign investment, companies will not be required to determine the principal places of business of their foreign investors.¹⁵⁰ We believe these changes will reduce substantially the costs and burdens imposed by our current policies.

¹⁴⁶ See *infra* ¶ 123 (discussing the minority shareholder protections). This presumption would not apply where a U.S. parent or licensee has actual knowledge of material involvement by the foreign interest holder, including, for example, efforts to influence control of the company.

¹⁴⁷ See *infra* ¶ 122 (discussing the required insulation criteria).

¹⁴⁸ Verizon NPRM Comments at 18.

¹⁴⁹ See *supra* ¶ 28.

¹⁵⁰ As noted below, we will require petitioners to identify and provide the citizenship and other information with respect to all investors (whether or not foreign) holding ten percent of more of the direct or indirect equity and/or voting interests in the licensee or its controlling U.S. parent. See *infra* ¶¶ 113-115.

51. As discussed below, our decision to require specific approval of foreign ownership interests exceeding five percent, subject to a presumptive exclusion for certain ten percent interests, is based on a number of considerations, including other statutory and regulatory requirements applicable to companies that hold, or may seek to acquire, common carrier or aeronautical licenses. The five percent and 10 percent thresholds should reduce the need for petitioners to collect and analyze ownership information other than in the normal course of business. On balance, and upon review of the record in this proceeding, we find that the specific approval requirements we adopt today are not unduly burdensome and are necessary to ensure we have the information we need to carry out our statutory duties under section 310(b) of the Act.

52. *The Five Percent Threshold for Specific Approval.* The Commission has long maintained, in the context of its media attribution rules, a five percent voting stock benchmark for broadcasters based on its finding that, as a general rule, a stockholder with a smaller interest does not have the ability to influence or control core decisions of the licensee, regardless of whether the licensee is a widely held or closely held company.¹⁵¹ We also find support for a five percent specific approval threshold, as applied to widely held companies, in section 13(d) of the Securities Exchange Act of 1934, as amended (the “Exchange Act”), which informed the Commission’s decision to adopt the five percent threshold for attribution of ownership interests in the mass media context.¹⁵²

53. In general, section 13(d) of the Exchange Act requires a person or “group” that becomes, directly or indirectly, the “beneficial owner” of more than five percent of a class of equity securities registered under section 12 of the Exchange Act to report the acquisition to the Securities and Exchange Commission (SEC).¹⁵³ The purpose of the disclosure requirements in section 13(d) of the Exchange Act is to ensure that investors are alerted to potential changes in control.¹⁵⁴ While the reporting requirements

¹⁵¹ *Reexamination of the Commission’s Rules and Policies Regarding the Attribution of Ownership Interests in Broadcast, Cable Television and Newspaper Entities*, MM Docket No. 83-46, Report and Order, FCC 84-115, 97 F.C.C. 2d 997, 1002-12, ¶¶ 6-29 (1984) (*1984 Attribution Order*) (establishing a five percent voting stock interest as the benchmark amount for attributing ownership of a broadcast licensee’s facilities to an individual corporate shareholder); 47 C.F.R. § 73.3555, Note 2a to § 73.3555 (codifying the five percent attribution standard). Prior to the *1984 Attribution Order*, the Commission had determined that for a “widely-held” corporation (fifty or more stockholders), an interest constituting one percent or more of the outstanding voting stock would be cognizable, whereas for a “closely-held” corporation (less than fifty stockholders), any voting interest would be cognizable. *See id.*, 97 F.C.C. 2d at 999, ¶ 3 (citing *Amendment of Multiple Ownership Rules*, Docket No. 8967, 18 F.C.C. 288 (1953)). *See also NPRM*, 26 FCC Rcd at 11720, ¶ 33.

¹⁵² *See 1984 Attribution Order*, 97 F.C.C. 2d at 1006-07, ¶ 16.

¹⁵³ *See* 15 U.S.C. § 78m(d)(1). Exchange Act Rule 13d-1(i) defines the term “equity security” as any equity security of a class which is registered pursuant to section 12 of that Act as well as certain equity securities of insurance companies and equity securities issued by closed-end investment companies registered under the Investment Company Act of 1940. The term “equity security,” however, does not include securities of a class of non-voting securities. 17 C.F.R. § 240.13d-1(i). Exchange Act Rule 13d-3 defines the term “beneficial owner” to include any person who, directly or indirectly, through any contract, arrangement, understanding, relationship, or otherwise, has or shares voting power, including the power to vote, or to direct the voting of, an equity security; and/or investment power, including the power to dispose, or to direct the disposition of, such security. 17 C.F.R. § 240.13d-3. Thus, the disclosure requirements in section 13(d) of the Exchange Act will not necessarily apply to persons that hold only the pecuniary interest in an equity security issued by a public company. As noted above, because section 310(b) applies to both voting rights and equity interests, our five percent exclusion extends only to those interests that do not exceed five percent of either voting rights or equity interests, calculated consistent with Commission rules. *See infra* Section IV.C, ¶¶ 117-126.

¹⁵⁴ *See Securities and Exchange Commission v. Savoy Industries, Inc.*, 587 F.2d 1149, 1166 (D.C. Cir., 1978), *cert. denied sub nom. Zimmerman v. Securities and Exchange Commission*, 440 U.S. 913 (1979), *cited in 1984* (continued....)

are expressly intended for the protection of a company's shareholders and for the informational purposes of issuers and participants in the stock market generally, they are directed at identifying interests with the potential for significant influence or control – the same interests at which the Commission has noted that its media attribution rules are directed.¹⁵⁵ In most cases, Exchange Act Rule 13d-1(a)¹⁵⁶ will obligate the acquiring person or group to file a Schedule 13D with the SEC, including the identity and citizenship of the direct and indirect beneficial owners of the equity securities and the purpose of the transaction – including whether it is to acquire control – within ten days after the acquisition that triggered the reporting requirement.¹⁵⁷ By contrast, the Exchange Act does not require beneficial owners of registered equity securities to report their acquisition of interests of five percent or less. We find that the absence of a reporting requirement under the Exchange Act for such interest holders supports adopting a specific approval requirement that excludes interests held by a foreign individual, entity, or “group” of foreign individuals or entities in an amount that does not exceed five percent of the equity and/or voting interests in a U.S. parent company (for petitions filed under section 310(b)(4)), or in a licensee (for petitions filed under our section 310(b)(3) forbearance approach).¹⁵⁸

54. The absence of a reporting requirement under the Exchange Act for beneficial owners of five percent or less of a class of voting securities also means that neither the identity nor citizenship of such smaller shareholders may be readily available to the issuing company. While such information is likely to be more readily ascertainable in closely held companies, we conclude that the five percent exclusion should apply regardless of whether shares of a licensee or U.S. parent, or of any entity holding a direct or indirect ownership interest in them, are widely held or closely held. As the Commission has previously concluded, “The holder of a small percentage of voting stock in a small company can be just as powerless and uninfluential as one in a large company, and often will be more so due to the greater occur[r]ence of larger shareholders.”¹⁵⁹ Based on the Commission's experience in the context of broadcast attribution, we find that we can exclude a closely held company's five percent or less interest holders from our prior approval requirements with little risk of overlooking a foreign investor that possesses a realistic potential for influencing or controlling a licensee.¹⁶⁰ Of course, in any case where a foreign investor would acquire a *de facto* controlling interest in a licensee or its U.S. parent company, the

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Attribution Order, 97 F.C.C. 2d at 1006-07, ¶ 16 n.18; *Regulations Governing Attribution of Broadcast and Cable/MDS Interests, Regulation and Policies Affecting Investment in the Broadcast Industry and Reexamination of the Commission's Cross Interest Policy*, MM Docket No. 94-150, Report and Order, FCC 99-207, 14 FCC Rcd 12559, 12567, ¶ 15 n.34 (1999) (*1999 Broadcast Attribution Order*), *recon. granted in part*, 16 FCC Rcd 1097 (2001) (*Broadcast Attribution Reconsideration Order*), *stayed*, 16 FCC Rcd 22310 (2001).

¹⁵⁵ See *1984 Attribution Order*, 97 F.C.C. 2d at 1006-07, ¶ 16; see also *1999 Broadcast Attribution Order*, 14 FCC Rcd at 12567-68, ¶ 15.

¹⁵⁶ 17 C.F.R. § 240.13d-1(a).

¹⁵⁷ See John C. Coffee, Jr. & Hillary A. Sale, *Securities Regulation* 721 (2009).

¹⁵⁸ We set the exclusion amount at five percent or less (not at less than five percent as under the media attribution rules) so that the exclusion amount is aligned with the reporting requirement under Exchange Act Rule 13d-1(a). We would not expect licensees or U.S. parents, however, to rely solely on the absence of a filing under Exchange Act Rule 13d-1 because that reporting requirement may not apply to all of the voting rights or equity interests held in the company. We anticipate that companies will still need to use their shareholder records, questionnaires, and other means to determine whether any foreign individual, entity, or “group” holds an equity and/or voting interest that requires specific approval under the new rules.

¹⁵⁹ *1984 Attribution Order*, 97 F.C.C. 2d at 1007, ¶ 18.

¹⁶⁰ *Id.* at 1007-08, ¶¶ 18-19 (finding that a five percent attribution benchmark “seems the most appropriate for those corporations heretofore considered ‘closely-held’” and that “few significant shareholders are likely to escape attribution”).

licensee must seek prior Commission approval of that interest regardless of the percentage of the foreign investor's equity or voting interests.

55. *The Ten Percent Limited Investment Exception.* We also believe, however, that the purposes of our section 310(b) review support a larger exclusion from our specific approval requirements for certain ten percent or lesser foreign interests held directly or indirectly in a U.S. parent (for section 310(b)(4) petitions) or licensee (for petitions filed under our section 310(b)(3) forbearance approach). We find it appropriate generally to exclude ten percent or lesser interests where the foreign investor does not hold its ownership interests with the purpose or effect of changing or influencing the control of the entity in which the foreign investor holds its interest, whether that entity is the licensee, the U.S. parent, or an intervening entity. As stated in paragraph 48, we will presume, subject to rebuttal in a particular case, that a foreign interest of ten percent or less that is held directly or indirectly in a U.S. parent (for section 310(b)(4) petitions) or licensee (for petitions filed under our section 310(b)(3) forbearance approach) is exempt from the specific approval requirements as meeting this standard so long as the foreign investor's interest satisfies the criteria specified in one of three categories, which are specific to the type of business entity in which the foreign investor holds its interest: specifically, a public company; a privately held corporation; or a privately held limited partnership, limited liability company, or limited liability partnership.

56. Our decision to adopt a ten percent limited investment exception is again informed by “ownership benchmarks utilized in other regulatory frameworks.”¹⁶¹ In the context of section 310(b) reviews of common carrier and aeronautical licensees, these include not only Exchange Act Rule 13d-1 but also the CFIUS regulations, which also apply to foreign investments in U.S. firms and govern a review process by Executive Branch agencies in assessing national security risks that is conducted in parallel with and substantially related to our analysis of foreign ownership in common carrier and aeronautical licensees under section 310(b). We have also considered the Commission's media attribution benchmarks. While they do not include an analogous ten percent limited investment exception, we take into account, as the Commission did in 1984 in developing those benchmarks, the very different factors underlying the attribution benchmarks and the application of section 310(b) to common carrier and aeronautical licensees. First, section 310(b) “differs significantly from our multiple ownership rules in its scope and effect.”¹⁶² Whereas the attribution benchmarks restrict ownership in more than a given number of media outlets by a single individual or entity, section 310(b) prescribes only an aggregate limit on the foreign ownership of covered licensees.¹⁶³ Its focus is therefore not on any specific individual foreign investor, at least not one holding less than the relevant statutory limit or benchmark. Second, “the Commission has historically taken a cautious approach” in “establishing appropriate attribution levels” for purposes of multiple ownership of broadcast facilities, in light of the importance of ensuring a “diversity of viewpoints from antagonistic sources.”¹⁶⁴ In contrast, the Commission's adoption of foreign ownership policies for common carrier and aeronautical licensees has involved a balancing, under the public interest standard of section 310(b), of potential trade, national security, or law enforcement concerns against enhanced opportunities for technological innovation and promotion of economic growth and potential job creation in the telecommunications sector.¹⁶⁵

¹⁶¹ *Id.* at 1006, ¶ 16. *See also supra* ¶¶ 52-54 (discussing the five percent specific approval threshold).

¹⁶² *Id.* at 1009, ¶ 22.

¹⁶³ *Id.*

¹⁶⁴ *Id.* at 1004, ¶ 11. While moving from a one percent to a five percent attribution standard was an effort to avoid being “unnecessarily restrictive” in this regard, it continued to be informed by “unique First Amendment concerns.” *Id.* at 1006, ¶ 16.

¹⁶⁵ *See supra* ¶¶ 12-14.

57. We review below the regulatory frameworks and underlying policies that have guided our decision to presumptively exclude from our specific approval requirements those foreign interests of ten percent or less held directly or indirectly in a U.S. parent or licensee where the foreign investor's interest satisfies the qualifying criteria for the type of business entity in which the foreign investor holds its interest. We establish specific qualifying criteria for three categories of business entities: (1) public companies; (2) privately held corporations; and (3) privately held limited partnerships, limited liability companies, and limited liability partnerships.

58. *Public Companies – Institutional Investors Holding in the Ordinary Course.* We adopt a rebuttable presumption that a non-controlling foreign interest of ten percent or less in a U.S. parent or licensee is exempt from the specific approval requirements where the relevant licensee, U.S. parent, or entity holding a direct or indirect equity and/or voting interest in the licensee or U.S. parent, is a U.S. or foreign “public company,” provided that the foreign holder is an institutional investor that is eligible to report its beneficial ownership of the company's equity securities in excess of five percent (not to exceed ten percent) pursuant to Exchange Act Rule 13d-1(b) or a substantially comparable foreign law or regulation. We find ample support for this presumption in Exchange Act Rule 13d-1(b), the CFIUS regulations, and in the record of this proceeding. We will define “public company” for this purpose as a U.S.- or foreign-organized company that has issued a class of equity securities for which beneficial ownership reporting is required by security holders and other beneficial owners under sections 13(d) or 13(g) of the Exchange Act and corresponding Exchange Act Rule 13d-1, 17 C.F.R. § 240.13d-1, or a substantially comparable foreign law or regulation.¹⁶⁶

59. Exchange Act Rule 13d-1(b) allows certain institutional investors to use an abbreviated “short-form” disclosure statement, known as Schedule 13G, to report their beneficial ownership in excess of five percent of a voting class of equity securities, including amounts in excess of ten percent, to the SEC, and to furnish the report to the issuer, when the investor acquires its shares “in the ordinary course of [its] business and not with the purpose nor with the effect of changing or influencing the control of the issuer....”¹⁶⁷ Where an institutional investor's beneficial ownership exceeds five percent, but not 10 percent, of a voting class of equity securities in a given calendar year, the Schedule 13G need not be filed until 45 days after the end of the calendar year (and only then if the investor or “group” continues to own more than five percent at year end).¹⁶⁸ Exchange Act Rule 13d-1(b) covers a broad range of institutional investors, such as registered brokers and dealers, banks, insurance companies, investment companies, investment advisers, employee benefit plans, and savings associations.¹⁶⁹

60. Exchange Act Rule 13d-1(b) – with its less onerous calendar year reporting provisions afforded institutional investors for acquisitions made in the ordinary course – supports a finding in this proceeding that such institutional investments are unlikely as a general rule to convey to their holders a realistic potential to control or influence control of a licensee or its U.S. parent. Such institutional investors must certify in the Schedule 13G that they have acquired their interest in the ordinary course of business and not with the purpose nor with the effect of changing or influencing the control of the issuer.¹⁷⁰ In these circumstances, we find that excluding the ten percent interests of such institutional investors from our specific approval requirement poses little risk that a foreign investor's interest that would be likely to raise national security, law enforcement or trade issues relevant to our section 310(b)

¹⁶⁶ See *infra* Appendix B (§ 1.990(d)).

¹⁶⁷ 17 C.F.R. § 240.13d-1(b).

¹⁶⁸ *Id.* § 240.13d-1(b)(2).

¹⁶⁹ *Id.* § 240.13d-1(b)(ii).

¹⁷⁰ *Id.* § 240.13d-102 (Schedule 13G).

analysis would escape our review.¹⁷¹ We also note that the majority of public companies' shares (particularly shares of the largest public companies) are owned by such institutional investors holding in the ordinary course.¹⁷² Thus, because of the extended reporting deadline applicable to such holdings, public companies may not be readily able to determine on a current basis, for the majority of their aggregate shareholdings, the identity or citizenship of shareholders that own interests of ten percent or less.

61. The ten percent exception that we adopt for institutional investors holding interests in public companies in the ordinary course is a limited one. If at any time there is a change in the purpose or effect of an institutional investor's shareholdings in a company, such that the investor holds its shares "with a purpose or effect of changing or influencing control of the issuer," the investor would immediately become subject to the requirement in Exchange Act Rule 13d-1(a) to report the acquisition within ten days.¹⁷³ In the case of a foreign institutional investor for which the petitioner has elected to avail itself of the ten percent exception, the petitioner would be obligated to amend its petition to request specific approval for that investor,¹⁷⁴ and to take other appropriate action to ensure continued compliance with our rules (such as the exercise of stock ownership restrictions to permit advance Commission approval of such investor prior to any point at which the ten percent exception no longer applies).¹⁷⁵ We also note that an institutional investor's reporting under Exchange Act Rule 13d-1(b) does not relieve a beneficial owner on whose behalf the institutional investor may be holding shares of its independent obligation to report its beneficial ownership under Exchange Act Rule 13d-1 to the extent it exceeds five percent of a voting class of the issuer's equity securities.¹⁷⁶ Such a beneficial owner generally would be

¹⁷¹ We recognize that an institutional investor may hold equity securities or otherwise have beneficial ownership of a public company and thus become subject to beneficial ownership reporting under Exchange Act Rule 13d-1, as well as beneficial ownership of, or economic interests in, the company that are not subject to such reporting. In such a case, we will allow aggregation of the investor's total equity interests and aggregation of its total voting interests in the company and treat them as exempt from our 5 percent specific approval requirement so long as the aggregate amount of the institutional investor's equity and/or voting interests does not exceed ten percent and the investor is eligible to certify under Exchange Act Rule 13d-1(b) that it has acquired its beneficial ownership interests in the ordinary course of business and not with the purpose nor with the effect of changing or influencing the control of the company. We note that, in calculating foreign equity and voting interests, the Commission does not consider convertible interests such as options, warrants and convertible debentures until converted, unless 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 approval. *See, e.g., Stratos Global Order*, 22 FCC Rcd at 21363, ¶ 84 (citing *Applications of NextWave Personal Communications, Inc.*, Memorandum Opinion and Order, DA 97-328, 12 FCC Rcd 2030, 2056, ¶ 46 (WTB 1997)); *BBC License Subsidiary L.P.*, Memorandum Opinion and Order, 10 FCC Rcd 10968, 10973, n.12 (1995) (citing *Univision Holdings, Inc.*, Order, 7 FCC Rcd 6672, 6674, ¶ 8 (1992), *recon. denied*, 8 FCC Rcd 3931 (1993)) ("We have ruled that convertible instruments are not relevant to our [section 310(b)] determinations until converted....").

¹⁷² *See* Ben W. Heineman, Jr. & Stephen Davis, *Are Institutional Investors Part of the Problem or Part of the Solution?*, Millstein Center for Corporate Governance and Performance and Committee for Economic Development, pp. 8-9, October 2011, *available at* http://millstein.som.yale.edu/sites/millstein.som.yale.edu/files/80235_CED_WEB.pdf (visited Apr. 17, 2013). *See also* Securities Regulation, *supra* note 157, at 39.

¹⁷³ 17 C.F.R. § 240.13d-1(e).

¹⁷⁴ *See* 47 C.F.R. § 1.65.

¹⁷⁵ These same obligations would also extend to petitioners seeking to avail themselves of the analogous ten percent exception applicable to interests held in privately held corporations or privately held limited partnerships, limited liability partnerships, or limited liability companies, described in paragraph 66 below.

¹⁷⁶ 17 C.F.R. § 240.13d-1(b)(1)(iii).

required to report its interest under Exchange Act Rule 13d-1(a) within ten days of acquiring it (assuming, for example, that the beneficial owner was not itself an institutional investor eligible to report its interest under Exchange Act Rule 13d-1(b)). In such event, the petitioner would be required to request specific approval for a foreign beneficial owner's interest to the extent it would exceed five percent of the equity and/or voting interests of the U.S. parent (for section 310(b)(4) petitions) or the licensee (for petitions filed under our section 310(b)(3) forbearance approach).

62. In adopting the ten percent exception for qualified institutional investor interests in public companies, we take note of the Commission's media attribution rules that apply a 20 percent (rather than a five percent) voting stock benchmark to a limited class of institutional investors which the Commission has found to be "passive" investors, specifically, bank trust departments, insurance companies and mutual funds.¹⁷⁷ The Commission has declined to broaden the category of passive investors for purposes of such attribution rules, finding insufficient evidence that other types of investors lack the interest and/or ability to actively participate in the affairs of the firms in which they invest.¹⁷⁸ By contrast, the ten percent exception that we adopt here applies more broadly to include all institutional investors enumerated in Exchange Act Rule 13d-1(b)(ii). However, the exception is expressly limited to those institutional investors that are eligible to report their ten percent or lesser holdings under Exchange Act Rule 13d-1(b) or a substantially comparable foreign law or regulation, which requires that the institutional investor certify to the regulator that the investor has acquired its interests in the ordinary course and not with the purpose or effect of changing or influencing control of the company.¹⁷⁹ These qualifying criteria will provide reasonable assurance that petitioners exclude from our general five percent prior approval requirement only those investments that pose no realistic potential to exert substantial influence over a licensee or its U.S. parent company. Given these safeguards, and the distinct policy objective of our public interest analysis under section 310(b) to balance trade, national security, and law enforcement concerns against the benefits of facilitating foreign investment in U.S. telecommunications companies, we find the "passive" institutional investor exception in the media attribution rules to be unnecessarily limited here. On the other hand, we have restricted our presumptive exclusion to a ten percent rather than 20 percent level, and only in circumstances where such institutional investors are entitled under Exchange Act rules to certify that they are not holding with the purpose or effect of changing or influencing control of the issuer, in light of the concerns raised by the Departments about the need to identify and approve specific investors at this level.

63. As noted in paragraph 58 above, we also find support for the ten percent exception in section 800.302(b) of the CFIUS regulations.¹⁸⁰ Because the purpose of the CFIUS review process is to address national security concerns raised by particular foreign investments in U.S. businesses, we have considered the CFIUS regulations in establishing the framework for our section 310(b) reviews of foreign investment in common carrier and aeronautical licensees and their U.S. parent companies. Section 800.302(b) provides that an acquisition of ten percent or less of the outstanding voting interest in a U.S. business by a foreign person is not a "covered transaction" and thus is not the type of transaction that is subject to review and investigation by CFIUS, provided that the foreign person holds the interest "solely for the purpose of passive investment" as defined in the regulations.¹⁸¹

¹⁷⁷ 47 C.F.R. § 73.3555, Note 2b to § 73.3555.

¹⁷⁸ See *1999 Broadcast Attribution Order*, 14 FCC Rcd at 12572-72, ¶ 25.

¹⁷⁹ As discussed below, the ten percent exception will also apply to investments in privately held companies, provided they satisfy the qualifying criteria contained in section 1.991 of the new rules.

¹⁸⁰ 31 C.F.R. § 800.302(b).

¹⁸¹ *Id.* As discussed in paragraph 33, which includes an overview of the CFIUS regulations, the CFIUS review process is based primarily on voluntary notices to CFIUS filed by parties to transactions. See *supra* note 109. (continued....)

64. Section 800.223 of the CFIUS regulations lays out the test for whether an interest is held solely for the purpose of passive investment.¹⁸² Under that test, an interest is held solely for the purpose of passive investment if the foreign person has no plan or intent to control the entity, neither possesses nor develops any purpose other than passive investment, nor takes any action that is inconsistent with an intent to hold the interest solely for the purpose of passive investment. The rule applies to all types of investors equally: it does not assume that certain types of institutions are passive investors.¹⁸³

65. The “carve out” in the CFIUS regulations¹⁸⁴ for passive foreign investments that constitute ten percent or less of an entity’s outstanding voting interests supports our finding here that we can presumptively exclude from the specific approval requirement those ten percent interests that satisfy our qualifying criteria without compromising the Commission’s ability to carry out its statutory duties under section 310(b) of the Act. We note that, to the extent the Departments need additional information about a particular licensee’s or U.S. parent’s ownership, they will have the opportunity, during their review of the petition, to request the information directly from the licensee and the U.S. parent.¹⁸⁵ We find that this approach will ensure that the Departments will have the information they need for their review, while reducing the costs and burdens imposed by requiring all petitioners to identify all of their direct and indirect foreign interest holders regardless of whether the Departments ultimately determine they need such information in the case of a particular licensee or U.S. parent.

66. *Investments in Privately Held Companies.* We further conclude that we should adopt an analogous ten percent exception to the general five percent specific approval requirement for ownership interests in privately held companies, regardless of whether the investing entity is an institutional investor. We will define a “privately held” company for this purpose as any company that is not a “public company” as defined under the new rules: that is, a U.S.- or foreign-organized company that has not issued a class of equity securities for which beneficial ownership reporting is required under Exchange

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Section 721 of title VII of the Defense Production Act of 1950, as amended, authorizes the President to review mergers, acquisitions, and takeovers by, or with, any foreign person which could result in foreign control of a U.S. business (referred to as a “covered transaction”) to determine the effects of such transactions on the national security of the United States. While the touchstone of CFIUS review is thus “control” of the U.S. business, section 800.204(a) of the CFIUS regulations “allows CFIUS wide discretion” in making the determination of control. *See* George S. Everly III, *Sovereign Wealth Funds and Shareholder Democratization: A New Variable in the CFIUS Balancing Act*, 25 Md. J. Int’l L. 374, 381 (2010) (*A New Variable in the CFIUS Balancing Act*). Section 800.204(a) of the CFIUS regulations defines “‘control’ in functional terms as the ability to exercise certain powers over important matters affecting an entity.” *See Merger Regulations Summary*, 73 Fed. Reg. at 70704; *see also id.* at 70706 (“The Committee approaches its analysis of whether a transaction could result in foreign control on a case-by-case basis, considering the level of ownership interest, the rights that emanate from such ownership, other rights held, restrictions on the exercise of such rights, and all other relevant facts and circumstances. . . . As a result of this approach, the regulations provide no ownership threshold or other bright lines above which CFIUS would find control in all circumstances.”).

¹⁸² 31 C.F.R. § 800.223.

¹⁸³ *See Merger Regulations Summary*, 73 Fed. Reg. at 70705.

¹⁸⁴ *See* George S. Everly III, *A New Variable in the CFIUS Balancing Act*, *supra* note 181, at 392.

¹⁸⁵ Under our current filing and processing procedures, Commission staff ensures that the appropriate Executive Branch agencies receive a copy of all petitions. The agencies contact petitioners directly, request any additional information the agencies deem necessary to their review, and, in particular cases, will engage in discussions and the negotiation of a security agreement or other arrangement, such as a letter of assurances, with the petitioner and affiliated entities. *See NPRM*, 26 FCC Rcd at 11740, ¶ 73 n.143. We will continue to coordinate all petitions filed under the new rules with the Executive Branch agencies.

Act Rule 13d-1 or a substantially comparable foreign law or regulation.¹⁸⁶ We find, as discussed below, that we can safely exclude interests of ten percent or less in such companies where the investor does not hold its interest with the purpose or effect of changing or influencing control of the company. We will presume, subject to rebuttal in a particular case, that a ten percent or lesser interest in a privately held company qualifies as meeting this standard for exclusion from the five percent specific approval requirement in the following circumstances:

(i) Where the relevant licensee, controlling U.S. parent, or entity holding a direct or indirect equity and/or voting interest in the licensee or U.S. parent, is a U.S. or foreign “privately held” corporation, as defined in the rules, *provided that* a shareholders’ agreement, or similar voting agreement, prohibits the foreign holder from becoming actively involved in the management or operation of the corporation, and limits the foreign holder’s voting and consent rights, if any, to the minority shareholder protections listed in the rules;¹⁸⁷

(ii) Where the relevant licensee, controlling U.S. parent, or entity holding a direct or indirect equity and/or voting interest in the licensee or U.S. parent is privately held and organized as a limited partnership, LLC, or LLP, if the foreign holder is “insulated” in accordance with the criteria specified in the rules.¹⁸⁸

67. We have established the qualifying criteria for the ten percent exception, as applied to ownership interests in privately held and public companies, to cover only ownership interests that do not present a realistic potential to control or influence control of the U.S. parent or licensee.¹⁸⁹ We emphasize that petitioners are responsible for ensuring that only ten percent interests that satisfy (and continue to satisfy) the qualifying criteria (or interests of five percent or less) are excluded from their requests for specific approval of foreign investors’ direct or indirect equity and/or voting interests in the U.S. parent (for petitions filed under section 310(b)(4)) or the licensee (for petitions filed under our section 310(b)(3) forbearance approach). Petitioners will need to determine first, which, if any, of the U.S. parent’s or licensee’s *direct* foreign investors requires specific approval because the foreign investor’s interest exceeds five percent of the equity and/or voting interests of the U.S. parent or licensee *and* does not qualify for the ten percent exception (either because the foreign investor’s interest exceeds ten percent or does not satisfy the applicable presumption). Petitioners will then need to determine, as to each direct investor (U.S.- and foreign-organized), whether the investing entity itself has *direct* foreign investors that require specific approval because the foreign investor’s *indirect* interest in the U.S. parent or licensee exceeds five percent and does not qualify for the ten percent exception (either because the foreign investor’s indirect interest in the U.S. parent or licensee exceeds ten percent or does not satisfy the

¹⁸⁶ See *infra* Appendix B (§ 1.990(d)).

¹⁸⁷ See *infra* ¶ 123 (discussing the minority shareholder protections). This presumption would not apply where a U.S. parent or licensee has actual knowledge of material involvement by the foreign interest holder, including, for example, efforts to influence control of the company.

¹⁸⁸ We will treat an interest as “insulated” only where the governance documents of the limited partnership, LLC, or LLP prohibit the interest holder from becoming actively involved in the management or operation of the partnership, LLC, or LLP and limit the interest holder’s consent rights to the minority investor protections listed in the rules. This presumption shall not apply if the U.S. parent or licensee has actual knowledge of material involvement by a limited partner or member of a limited partnership, LLC or LLP. See *infra* ¶ 122 (discussing the required insulation criteria).

¹⁸⁹ Consistent with our approach to attribution of ownership in the broadcast context, adopting the same percentage thresholds for requiring specific approval of foreign interests held in public and private companies will also simplify the rules and eliminate potentially discriminatory effects on the ability of privately held companies to attract foreign investment.

applicable presumption). As a practical matter, foreign interests held in a U.S.- or foreign-organized entity that itself holds an interest of five percent or less in the U.S. parent or licensee will not require identification or specific approval. Similarly, foreign interests held in a U.S.- or foreign-organized entity that itself holds an interest in the U.S. parent or licensee that satisfies the criteria for the ten percent exception will also satisfy the criteria for the ten percent exception and will not require specific approval.¹⁹⁰ Thus, once a petitioner identifies a qualified ten percent interest holder in the U.S. parent's or licensee's vertical ownership chain (whether the interest holder is a U.S.- or foreign-organized entity), the petitioner need not inquire further as to that holder's foreign ownership.¹⁹¹ We recommend that, in making the necessary investor inquiries (for example, by sending investors a questionnaire), petitioners obtain in writing (and retain for their records) information from their direct and, as necessary, indirect interest holders that will allow the petitioner to determine whether a foreign individual, entity or group holds a direct or indirect ownership interest in the respondent that requires specific approval.¹⁹² As

¹⁹⁰ As discussed in Section IV.C.1, however, we will require that all petitions for declaratory ruling identify any individual or entity, regardless of citizenship, that directly or indirectly holds or would hold, after effectuation of any planned ownership changes described in the petition, at least ten percent of the equity or voting interests or a controlling interest in the controlling U.S. parent (for section 310(b)(4) petitions) or licensee (for petitions filed under our section 310(b)(3) forbearance approach), in addition to any foreign individual or entity required to be identified under our specific approval requirements.

¹⁹¹ As an example, assume that U.S. Corp. files an application for a common carrier license. U.S. Corp. is wholly owned and controlled by U.S. Parent, which is a newly formed, privately held Delaware corporation in which no single shareholder has *de jure* or *de facto* control. A shareholders' agreement provides that a five-member board of directors shall govern the affairs of the company; five named shareholders shall be entitled to one seat and one vote on the board; and all decisions of the board shall be determined by majority vote. The five named shareholders and their respective equity interests are as follows: Foreign Entity A, which is wholly owned and controlled by a foreign citizen (5%); Foreign Entity B, which is wholly owned and controlled by a foreign citizen (10%); Foreign Entity C, a foreign public company with no controlling shareholder (20%); Foreign Entity D, a foreign pension fund that is controlled by a foreign citizen and in which no individual or entity has a pecuniary interest exceeding one percent (21%); and U.S. Entity E, a U.S. public company with no controlling shareholder (25%). The remaining 19 percent of U.S. Parent's shares are held by three foreign-organized entities as follows: F (4%), G (6%), and H (9%). Under the shareholders' agreement, voting rights of F, G, and H are limited to the minority shareholder protections listed in section 1.991 of the rules. Further, the agreement expressly prohibits G and H from becoming actively involved in the management or operation of U.S. Parent and U.S. Corp.

For purposes of preparing its section 310(b)(4) petition, U.S. Corp. does not need to inquire as to the ownership of, or request specific approval for, the interests held in U.S. Parent by Foreign Entities F, G, or H, because F holds no more than five percent of U.S. Parent's equity or voting interests; and the six and nine percent interests held respectively by G and H satisfy the presumptive criteria for the 10 percent exception. As required by the rules, U.S. Corp. files its section 310(b)(4) petition concurrently with its application. The petition identifies and requests specific approval for the ownership interests held in U.S. Parent by Foreign Entity A and its sole shareholder (5% equity and 20% voting interest); Foreign Entity B and its sole shareholder (10% equity and 20% voting interest), Foreign Entity C (20% equity and 20% voting interest), and Foreign Entity D and its fund manager (21% equity and 20% voting interest). Because each of Foreign Entity C and U.S. Entity E has determined that none of its shareholders holds a percentage of its equity or voting interests that, when multiplied by 20 percent or 25 percent, respectively, would constitute a greater-than-five percent equity or voting interest in U.S. Parent, U.S. Corp. does not need to make further inquiries as to the citizenship of either entity's shareholders. We discuss the methodology for calculating foreign interests held indirectly in licensees and their controlling U.S. parent companies, including use of the "multiplier," in Section IV.C.2 of this Second Report and Order.

¹⁹² We note that section 208 of the Act authorizes the Commission to inquire into the management of the business of all common carriers subject to the Act and to "obtain from such carriers and persons directly or indirectly controlling or controlled by, or under direct or indirect common control with, such carriers full and complete information necessary to enable the Commission to perform the duties and carry out the objects for which it was (continued....)

discussed in paragraph 126 below, we will rely on the petitioner's certification that it has identified in its petition all U.S. and foreign interest holders required to be disclosed based on its review of the Commission's rules, and that it has identified and requested specific approval for its direct and indirect foreign interest holders as required by the pertinent standards and criteria in the rules. A petitioner that relies on the ten percent exception for purposes of determining its direct or indirect foreign investors that require identification and specific approval will need to file a new petition for prior approval if, after grant of its initial ruling, a previously unapproved foreign investor would no longer qualify for the ten percent exception.¹⁹³

68. *Definition of a "Group."* We will treat two or more interest holders as a "group" when the investors have agreed to act together for the purpose of acquiring, holding, voting, or disposing of their equity and/or voting interests in the relevant licensee, controlling U.S. parent, or entity holding a direct or indirect equity and/or voting interest in the licensee or U.S. parent.¹⁹⁴ We will also subject any individual or entity that, directly or indirectly, creates or uses a trust, proxy, power of attorney, or any other contract, arrangement, or device with the purpose or effect of divesting itself, or preventing the vesting, of an equity interest or voting interest in the U.S. parent or licensee as part of a plan or scheme to evade the application of our foreign ownership rules and policies under section 310(b) to enforcement action by the Commission, including an order requiring divestiture of the investor's direct or indirect interests in the licensee and/or U.S. parent.¹⁹⁵ The Departments support adopting a broad definition of "group" to "ensure as complete and accurate a review as possible and help prevent companies or investors from engaging in questionable arrangements to avoid otherwise required reviews."¹⁹⁶ No other commenter addressed this issue. We agree with the Departments and find that treating two or more investors as a "group" when they have agreed to act in concert is a necessary and reasonable measure to ensure that our foreign ownership policies are not purposely evaded. While we will not require licensees to file with the Commission any such arrangements affecting ownership or voting rights, we expect petitions relying on the foregoing exceptions to our identification and specific approval requirements to be supported by diligent efforts to comply with this requirement, and we reserve the right to seek production of any documents that may relate to any such arrangements.

b. The Non-Controlling 49.99 Percent Approval Option for Named Foreign Investors

69. In the *NPRM*, the Commission proposed to provide the U.S. parent with the option of requesting specific approval in its section 310(b)(4) petition for any named foreign investor to increase its equity and/or voting interest in the U.S. parent from existing levels (or levels that would exist upon

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created." 47 U.S.C. § 208. *See also, e.g.,* 47 U.S.C. §§ 308(b), 403. We reserve the right to request, at any time, information as to the direct and indirect foreign ownership of licensees.

¹⁹³ *See supra* note 175 and accompanying text.

¹⁹⁴ SEC Rule 13d-5 takes a similar approach to defining the parameters of a "group" for purposes of implementing sections 13(d) and (g) of the Exchange Act, 15 U.S.C. § 78m(d) & (g). *See* 17 C.F.R. § 240.13d-5(b)(1).

¹⁹⁵ *Cf. Order to Show Cause Directed Against Mario J. Gabelli*, Order to Show Cause, 7 FCC Rcd 5594 (1992) (cease and desist order proceeding directed against investment in violation of multiple ownership rules). SEC Rule 13d-3 contains a similar provision to address any plan or scheme to evade the reporting requirements of section 13(d) or (g) of the Exchange Act. *See* 17 C.F.R. § 240.13d-3(b). We will codify this provision in section 1.994 of the rules as one of the routine terms and conditions of our foreign ownership rulings.

¹⁹⁶ DOJ/DHS *NPRM* Comments at 8. The Departments addressed this issue in the context in which it was raised in the *NPRM*, which asked whether the Commission should treat two or more non-WTO investors as a "group" in the circumstances described in the *NPRM*, which we adopt and will apply broadly to all investors, regardless of citizenship, to implement the foreign ownership policies of this Second Report and Order.

closing of any related transactions) up to a non-controlling 49.99 percent equity and/or voting interest.¹⁹⁷ The purpose of this proposal was to eliminate the need for U.S. parent companies to return to the Commission to allow an already-approved foreign investor to increase its minority investments incrementally. The Commission stated that it would not, as a general matter, require the petitioner to demonstrate that the foreign investor has a contractual right or obligation, or that it has any plan to acquire additional interests in the U.S. parent. However, the Commission proposed to reserve the right to require petitioners to submit supplemental information as to any matter that Commission staff, in its discretion, deems relevant to our public interest determination.¹⁹⁸ The Commission did not propose to limit the number of named foreign investors for which the parent could request approval of non-controlling 49.99 percent interests – even if the aggregate of such interests would exceed 100 percent.¹⁹⁹

70. Industry commenters addressing this issue express support for the proposal²⁰⁰ or recommend that we adopt additional measures to reduce further the need for licensees to file multiple petitions.²⁰¹ The Departments raised the concern that *de facto* transfers of control would escape review if we adopted the non-controlling 49.99 percent approval option.²⁰² They also noted that, even without *de facto* control, “a primary stakeholder can nonetheless exert influence or obtain access sufficient to raise potential national security, law enforcement, or public safety concerns.”²⁰³ SIA and CTIA observed that

¹⁹⁷ *NPRM*, 26 FCC Rcd at 11725, ¶ 43. The *NPRM* provided the following example to illustrate how the non-controlling 49.99 percent approval option would work: Assume that the U.S. parent of a common carrier applicant files a section 310(b)(4) petition for declaratory ruling that includes a request to approve a 15 percent equity and voting interest held in the U.S. parent by foreign citizen A. The petition also requests authority for foreign citizen A to acquire additional interests, up to and including a non-controlling 49.99 percent equity and voting interest. Upon the completion of coordination with relevant Executive Branch agencies and in the absence of any countervailing public interest concerns, the Commission grants the petition, including the request to allow A to acquire additional interests, up to and including a non-controlling 49.99 percent interest in the U.S. parent. Two years after the grant, A acquires additional shares of the licensee’s U.S. parent from another shareholder, which results in A holding a non-controlling 35 percent equity and voting interest in the U.S. parent. Because the section 310(b)(4) ruling included specific approval for A to acquire up to and including a non-controlling 49.99 percent interest in the parent, A could complete its acquisition without the U.S. parent incurring the regulatory expense and delay associated with filing a new section 310(b)(4) petition.

¹⁹⁸ The *NPRM* noted, as an example, that Commission staff may find it necessary to request additional information in circumstances where the record in a particular proceeding raises a question as to whether an equity investment may result in an unauthorized transfer of control of a wireless licensee. The Commission also noted that the “49.99 percent approval option” would not apply to non-WTO investors in the U.S. parent company if we ultimately determined in this proceeding to retain the current distinction between WTO and non-WTO Member investment, which prohibits U.S. parent companies from accepting non-WTO investment that exceeds an aggregate 25 percent. *NPRM*, 26 FCC Rcd at 11725, ¶ 43 nn.89-90. In light of our decision to eliminate that distinction, there is no need for any such non-WTO exception.

¹⁹⁹ *Id.* at 11725, ¶ 43.

²⁰⁰ *See, e.g.*, AT&T *NPRM* Comments at 10; Vodafone *NPRM* Comments at 5-6; SIA *NPRM* Comments at 6; CTIA *NPRM* Reply at 6.

²⁰¹ *See* Verizon *NPRM* Comments at 7-8; CTIA *NPRM* Reply at 7-8; USTelecom *NPRM* Reply at 5; Sprint *NPRM* Reply at 3-4.

²⁰² DOJ/DHS *NPRM* Comments at 6. The Departments expressed concern that, because the proposed option, if adopted, would allow U.S. parent companies to request 49.99 percent approval for any number of foreign investors, they “would not know which foreign owners actually might come to hold a 49.99 percent interest. Thus, because this proposal potentially deprives the Departments of an effective public interest review, the Commission should not adopt it.” *Id.* at 7.

²⁰³ *Id.* at 6.

regardless of whether a transfer of control is *de facto* or *de jure*, the parties must comply with the transfer of control requirements of section 310(d).²⁰⁴ SIA also notes that our section 310(b)(4) rulings already provide licensees the flexibility to acquire an additional, aggregate 25 percent foreign ownership from specifically approved (and new) foreign investors.²⁰⁵

71. Upon consideration of the record, we adopt the proposed non-controlling 49.99 percent approval option with certain modifications to accommodate our forbearance decision in the *First Report and Order*. The rules will allow common carrier and aeronautical licensees to request specific approval for any named foreign investor to increase its equity and/or voting interest held directly or indirectly in the licensee's controlling U.S. parent from existing levels (or levels that would exist upon closing of any transactions contemplated by the petition) up to and including a non-controlling 49.99 percent equity and/or voting interest. Similarly, the rules will permit common carrier licensees subject to section 310(b)(3) forbearance to request specific approval for any named foreign investor to increase its equity and/or voting interest in the licensee, held through intervening U.S. entities that do not control the licensee, from existing levels (or levels that would exist upon closing of any transactions contemplated by the petition) up to and including a non-controlling 49.99 percent equity and/or voting interest in the licensee. As the *NPRM* proposed, the rules will permit the licensee to request such approval for named foreign investors to acquire on a going-forward basis up to and including a non-controlling 49.99 percent interest – even if the aggregate of such interests would exceed 100 percent.²⁰⁶

72. To preserve a meaningful opportunity for the Departments to conduct their “public interest” reviews, Commission staff will continue to coordinate all petitions for declaratory ruling with the relevant Executive Branch agencies and defer action on such petitions when requested by the agencies. This will enable the Departments to review applications, request additional information from petitioners to inform the Departments' views and, where appropriate, to recommend denial of, limitations on, or conditions to such approvals.²⁰⁷ For example, under the current rules, the Departments sometimes

²⁰⁴ SIA NPRM Comments at 6; CTIA NPRM Reply at 6.

²⁰⁵ See SIA NPRM Comments at 6.

²⁰⁶ For example, assume that Applicant files a petition for declaratory ruling at the same time that it files an application for an initial common carrier radio license. Applicant files its petition under our section 310(b)(3) forbearance approach because its aggregate foreign ownership (45%), which is held through U.S.-organized entities that do not control the Applicant, exceeds the 20 percent limit in section 310(b)(3). The remaining 55 percent of Applicant's ownership interests is held directly in the Applicant by U.S. citizens. In its petition, Applicant requests specific approval for the 15 percent equity and voting interests that are held indirectly in Applicant by each of three foreign individuals (Foreign Citizen A, Foreign Citizen B, and Foreign Citizen C) not acting as a group, each of which, in turn, holds its interests through a U.S.-organized entity that it wholly owns (A Corp., B Corp., and C Corp., respectively, each of which holds a 15 percent equity and voting interest directly in Applicant). Applicant also requests specific approval to allow each of the three foreign individuals to increase its indirect equity and voting interests in the Applicant from 15 percent up to and including a non-controlling 49.99 percent equity and/or voting interest. Upon the completion of coordination with relevant Executive Branch agencies and in the absence of any countervailing public interest concerns, the Commission grants the petition, including the request to allow each of the approved foreign individuals to acquire additional indirect interests in the Applicant, up to and including a non-controlling 49.99 percent interest, through U.S.-organized entities that do not control the Applicant. Under such a ruling, the three approved foreign individuals could not, as a practical matter, each hold a non-controlling 49.99 percent equity and voting interest indirectly in the Applicant at the same time (*e.g.*, through the acquisition of additional interests by their respective wholly-owned, U.S. subsidiaries), given that the sum of the capital stock interests of the U.S. subsidiaries would exceed 100 percent of Applicant's total capital stock (*i.e.*, $49.99\% \times 3 = 149.97\%$). However, the three U.S. subsidiaries could each acquire, for example, up to a non-controlling 33.33 percent interest in the Applicant without the Applicant's returning to the Commission to seek prior approval.

²⁰⁷ See DOJ/DHS Letter, *supra* note 19.

recommend conditioning approvals on compliance with security agreements. The Departments might also request limiting the pre-approval grant to less than 49.99 percent interest. As noted elsewhere, we will continue to accord deference to the expertise of the Executive Branch agencies on issues related to national security, law enforcement, foreign policy, and trade policy.

73. We find that existing statutory requirements of section 310(d) of the Act and the Commission's enforcement powers under the Act²⁰⁸ address the Departments' concern that *de facto* transfers of control would escape review if we adopted the non-controlling 49.99 percent approval option.²⁰⁹ As SIA and CTIA note, Commission precedent requires parties to comply with the transfer of control requirements of section 310(d) regardless of whether a transfer of control is *de facto* or *de jure*.²¹⁰ Additionally, there is no record evidence that the flexibility currently afforded licensees under our section 310(b)(4) rulings – *i.e.*, to acquire an additional, aggregate 25 percent foreign ownership from specifically approved (and new) foreign investors – has adversely affected the ability of the Commission or of the relevant Executive Branch agencies to maintain effective oversight of increased interests in licensees and/or their U.S. parents by foreign investors whose identities the licensee disclosed in its initial petition.²¹¹ Moreover, the Commission's licensing rules require that most common carrier wireless applications disclose the identity of any person or entity that holds, directly or indirectly, a ten percent or greater voting interest in the applicant.²¹²

74. With regard to the Departments' concern that, even without *de facto* control, “a primary stakeholder can nonetheless exert influence or obtain access sufficient to raise potential national security, law enforcement, or public safety concerns,”²¹³ we determine that the non-controlling 49.99 percent approval option would require the petitioner to specify the maximum percentages of equity and voting interests for which it seeks approval for a particular named investor to acquire in the future. We find that this requirement will provide the Commission and the relevant Executive Branch agencies the opportunity to review whether any particular foreign interest may present an unacceptable level of influence or allow the investor to obtain access sufficient to raise potential national security, law enforcement, or public safety concerns.²¹⁴

²⁰⁸ See, e.g., 47 U.S.C. §§ 312(a), 312(b), 401, 501-03.

²⁰⁹ DOJ/DHS NPRM Comments at 6.

²¹⁰ SIA NPRM Comments at 6; CTIA NPRM Reply at 6. See *supra* note 27 (discussing Commission case precedent on *de facto* and *de jure* control).

²¹¹ See SIA NPRM Comments at 6.

²¹² *Id.* (“The FCC, moreover, would retain the ability to ascertain foreign ownership after the initial investment, as licensees must provide ownership information in applications for new licenses and renewals.”). See also *infra* note 296 and accompanying text.

²¹³ DOJ/DHS Comments at 6.

²¹⁴ See *id.* We note the Departments' recommendation that, if we adopt the non-controlling 49.99 percent approval option, we should limit the option to foreign investors with an actual intent to acquire the additional interests within 18 months of the filing of the company's section 310(b)(4) petition and that that intent be indicated in the petition. See *id.* at 7. The Departments' alternative approach would “allow the Departments to consider any issues raised by a large minority ownership interest in a licensee that actually expects that the transaction or transactions will take place in the near term rather than at some unspecified time in the future, or not at all.” *Id.* SIA opposed the Departments' recommended approach as limiting flexibility and undercutting the goal of promoting investment. SIA NPRM Comments at 6 n.15. Because we will continue to coordinate all petitions with the relevant Executive Branch agencies, we anticipate that licensees will request pre-approval for increased interests by particular named foreign investors only where the carrier has a reasonable expectation of needing such approval, in order to secure timely action on its petition.

75. Separately, Verizon proposed that we approve all reviewed foreign investors to hold up to and including 100 percent of a licensee's ownership interests, rather than distinguishing between controlling and non-controlling interests.²¹⁵ Verizon argues that “[a]ll material changes in the ownership of a licensee would continue to be reported in transfer of control applications, which will provide adequate opportunity for public comment and Commission review under Section 310(d) of the Communications Act.”²¹⁶ We do not adopt Verizon's proposal as it would require the Commission to make a speculative and premature determination, in acting on a licensee's petition for declaratory ruling, as to whether a named foreign investor's acquisition of a controlling interest in the licensee at some unspecified point in time would or would not raise public interest concerns with respect to potential effects on competition, national security, law enforcement, foreign policy, or trade policy. We also find that this approach would be impractical and inconsistent with our statutory obligation to engage in a meaningful review of foreign investment in U.S. licensees. Moreover, even assuming, as Verizon appears to suggest, that the Commission could, as a legal matter, subsequently reverse its section 310(b) public interest findings in a section 310(d) transfer of control proceeding involving the same foreign investor, we are concerned that the prior findings under section 310(b) could be viewed as pre-judging the merits of the foreign investor's subsequent transfer of control application, should the investor file such an application. These considerations outweigh any incremental cost savings that may accrue to licensees and other parties to an acquisition from eliminating the need to file a petition at the same time as a transfer of control application.

c. The 100 Percent Approval Option for Controlling Foreign Investors

76. The Commission noted in the *NPRM* that it is not uncommon for a petition to be filed in connection with an application for consent to transfer control of a licensee where a named foreign investor (the “transferee”) proposes to acquire a controlling interest in the U.S. parent company of the licensee at a level that constitutes less than 100 percent of the U.S. parent's total capital stock or voting stock.²¹⁷ In some cases, the grant of the section 310(b)(4) ruling by its terms limits the foreign transferee's equity and voting interests in the U.S. parent to the precise levels proposed in the transfer of control application.²¹⁸ As a result, the U.S. parent must return to the Commission for additional prior approval under section 310(b)(4) should the transferee later seek to increase its direct or indirect equity or voting stake in the U.S. parent. Similar to the “non-controlling 49.99 percent approval option” discussed in Section IV.B.3.b above, the *NPRM* proposed to provide foreign transferees with the option of seeking approval at the outset, in the section 310(b)(4) petition that is filed in connection with the transfer application, to acquire in the future up to 100 percent of the equity and/or voting interests in the licensee's U.S. parent company.²¹⁹

²¹⁵ See Verizon NPRM Comments at 7-8. See also Sprint Nextel NPRM Reply at 3-4 (supporting Verizon's proposal to eliminate the need for a filing under section 310(b)(4) that is “duplicative” of the filing required under section 310(d)); CTIA NPRM Reply at 6 (stating that we should carefully consider Verizon's proposal to approve foreign investment greater than 49.99 percent, and that the section 310(d) process would continue to provide a meaningful opportunity for public comment and Commission review).

²¹⁶ Verizon NPRM Comments at 7-8.

²¹⁷ *NPRM*, 26 FCC Rcd at 11726, ¶ 45.

²¹⁸ See, e.g. *Global Crossing Transfer Order*, 18 FCC Rcd at 20328-29, ¶ 35 (approving under sections 310(b)(4) and 310(d) the acquisition of a 61.5 percent indirect controlling ownership interest in licensed subsidiaries of Global Crossing by Singapore-organized ST Telemedia; and denying under section 310(b)(4) ST Telemedia's request for approval to make additional “unlimited” indirect investments in the licensed subsidiaries).

²¹⁹ *NPRM*, 26 FCC Rcd at 11726, ¶ 45.

77. Industry commenters that addressed this issue support the 100 percent approval option proposed in the *NPRM*.²²⁰ The Departments stated that allowing Commission pre-approval of up to 100 percent ownership would mean that the Departments might often have to assess the national security or law enforcement concerns that could arise with complete foreign ownership, even though no such ownership might be intended or occur.²²¹ In such cases, the Departments would need to “consider a wide range of hypothetical scenarios and potentially execute security agreements, or add provisions to agreements, to address those hypothetical scenarios, thus resulting in greater burden to applicants than the current regulation.”²²² We believe that this rule will preserve the Departments’ ability to conduct public interest reviews because Commission staff will continue to coordinate all petitions with the relevant Executive Branch agencies, including petitions that request pre-approval for increased interests by a named controlling foreign investor, would defer acting on such petitions when requested by the agencies, and would accord deference to the agencies’ recommendations to deny, limit or condition approval on compliance with security agreements. In order to better inform their views, the Departments may continue to request separately from petitioners such additional information as may be necessary.²²³ Under this new rule, the Departments might also recommend in a particular case that we limit preapproval for controlling foreign investors to a level below 100 percent to address potential national security or law enforcement concerns. We anticipate that a licensee will request pre-approval for increased interests in its U.S. parent by a controlling foreign investor only where the licensee and its controlling U.S. parent have a reasonable expectation of needing such approval, in order to secure timely action on the petition. Such requests already are filed with the Commission and codifying the foregoing approach will provide clarity as to Commission practice.

78. Based on our review of the record, we adopt the 100 percent approval option for foreign investors that seek to hold a controlling interest in the controlling U.S. parent of a common carrier or aeronautical radio licensee. We clarify that the rule, as adopted, will apply only to section 310(b)(4) petitions filed in connection with applications for an initial license or spectrum leasing arrangement as well as applications for consent to assign or transfer control of a license or spectrum leasing arrangement.²²⁴ Thus, where the controlling U.S. parent of the licensee or spectrum lessee named in the application is controlled (in the case of an initial application), or would be controlled (in the case of a transfer/assignment application) by a foreign individual, entity or “group,” the new rules will allow the petitioner to include a request for the controlling foreign investor or group to hold up to and including 100 percent of the U.S. parent’s equity and voting interests, directly or indirectly, to the extent the controlling foreign investor’s equity and/or voting interests at the time of filing the petition and application are less than 100 percent.

4. The Aggregate Allowance for Unnamed Foreign Investors

79. The Commission sought comment in the *NPRM* on whether it should, as a general rule, issue section 310(b)(4) rulings to allow the licensee’s U.S. parent to have, on a going-forward basis, 100

²²⁰ See, e.g., AT&T *NPRM* Comments at 10; SIA *NPRM* Comments at 6; Vodafone *NPRM* Comments at 5.

²²¹ See DOJ/DHS *NPRM* Comments at 4.

²²² *Id.*

²²³ See DOH/DHS Letter, *supra* note 19.

²²⁴ In other words, this rule will apply only with respect to proposed controlling foreign interests in the U.S. parent that controls, or would control, the licensee. As discussed above, for petitions filed under our section 310(b)(3) forbearance approach, we will permit the petitioner to request advance approval for foreign individuals or entities named in the petition to increase their ownership interests in the licensee, held through U.S.-organized entities that do not control the licensee, up to and including a non-controlling 49.99 percent interest. See *supra* ¶ 71.

percent aggregate foreign ownership, including by foreign investors for which the petitioner did not request specific approval. Such a ruling would be subject to the condition that no single foreign investor or “group” of foreign investors would be allowed to acquire, directly or indirectly, an ownership interest that exceeds 25 percent of the parent’s equity interests or 25 percent of its voting interests, or a controlling interest, without the Commission’s prior approval.²²⁵

80. As explained in the *NPRM*, the current 25 percent allowance generally has operated as a ceiling on the aggregate percentage of change in the foreign ownership of the U.S. parent that is permitted after issuance of a section 310(b)(4) ruling.²²⁶ The Commission’s purpose in including the 25 percent allowance in section 310(b)(4) rulings has been to accommodate ownership interests in a licensee’s controlling U.S. parent for which it is unable to obtain citizenship information and foreign investments made in the U.S. parent after issuance of the ruling. The 25 percent allowance, however, may not afford U.S. parent companies, or their controlling or minority stakeholders (particularly publicly traded companies), sufficient flexibility to market or permit the resale of their equity securities; may create an unnecessary impediment to foreign investment; and may be unnecessary to protect against potential harms to competition or other relevant public interest concerns. The *NPRM* asked commenters to address any burdens the current 25 percent allowance may impose on U.S. licensees and whether we could mitigate any such burdens by increasing the allowance in a manner that would not compromise our statutory obligations under the Act.²²⁷ It also sought comment on whether adopting a 100 percent allowance, subject to a lower ceiling on interests held by a single foreign investor, would achieve parity in treatment of U.S. parent companies whether they are owned in whole or in part by U.S. public companies or by foreign public companies which are substantially owned, on any given day, by foreign citizens and entities.²²⁸

81. Industry commenters addressing this issue uniformly support a 100 percent aggregate allowance subject to a 25 percent limit on investments or acquisitions by a single foreign investor or “group.”²²⁹ SIA argues that such an allowance for new foreign investment strikes a fair balance between the need to provide flexibility and the Commission’s need to review proposed investments in appropriate circumstances.²³⁰ SIA and Vodafone, among others, assert that foreign investments below 25 percent can be addressed in security agreements reached with the Executive Branch.²³¹ SIA agrees with the statement in the *NPRM* that there is no evidence that the 100 percent allowance, which we have applied previously in certain rulings subject to a 25 percent ceiling on interests by a single foreign investor, has presented any problems or generated objections in the context of any particular proceedings.²³² The Departments

²²⁵ See *NPRM*, 26 FCC Rcd at 11726-27, ¶¶ 46-47.

²²⁶ *Id.* at 11727, ¶ 47.

²²⁷ *Id.*

²²⁸ *Id.*

²²⁹ See, e.g., AT&T *NPRM* Comments at 10; Vodafone *NPRM* Comments at 6 & n.24; SIA *NPRM* Comments at 7-8; Sprint *NPRM* Reply at 2-3. According to SIA, the current 25 percent aggregate allowance does not provide companies – particularly (but not solely) publicly traded companies – with sufficient flexibility and hinders investment. See SIA *NPRM* Comments at 7 (stating that the Commission should apply the *NPRM*’s 100 percent aggregate allowance to U.S. parents that are either wholly owned or partially owned by foreign companies, in order to provide a level playing field with respect to their opportunities to attract investment).

²³⁰ See SIA *NPRM* Comments at 7 (stating there is no need for further review where a single foreign investor or group acquires an insubstantial interest and that a 25 percent trigger for prior review of such interests is consistent with section 310(b)(4)).

²³¹ See, e.g., SIA *NPRM* Comments at 8; Vodafone *NPRM* Reply at 15-16.

²³² See SIA *NPRM* Comments at 7-8 (citing *NPRM*, 26 FCC Rcd at 11729, ¶ 50).

opposed a 100 percent aggregate allowance based on their concern that it could hinder their ability to conduct a thorough public interest review.²³³ We have carefully considered the concerns of industry commenters and the Departments and we adopt, with certain modifications, a 100 percent allowance to accommodate foreign investment in a licensee and/or its U.S. parent for which the licensee did not receive specific approval in an initial foreign ownership ruling. As we concluded in adopting the specific approval requirements for initial petitions, we believe a properly balanced approach to permitting foreign ownership after grant is to allow, in addition to the foreign interests specifically approved in a licensee's initial ruling, unlimited foreign ownership of the licensee and any controlling U.S. parent subject to prior approval requirements for any additional foreign equity and/or voting interest that would exceed five percent, with the exception of ten percent or lesser interests that satisfy the criteria for exclusion from the five percent specific approval requirement.²³⁴ We will codify the 100 percent allowance in section 1.994 of the rules as one of the routine terms and conditions of our foreign ownership rulings.

82. We believe that this approach strikes an appropriate balance between the competing interests. To preserve a meaningful opportunity for the Departments to conduct their "public interest" reviews, Commission staff will continue to coordinate all petitions for declaratory ruling with the relevant Executive Branch agencies and defer action on such petitions when requested by the agencies. This will enable the Departments to review applications, request additional information from petitioners to inform the Departments' views and, where appropriate, to recommend denial of, limitations on, or conditions to such approvals.²³⁵ For example, under the current rules, the Departments sometimes recommend conditioning approvals on compliance with security agreements. Under the new rule, the Departments might also recommend in a particular case that we limit preapproval to an aggregate level below 100 percent to address potential national security or law enforcement concerns.

83. Section 1.994 will provide that, in addition to the foreign ownership interests approved specifically in the licensee's section 310(b)(4) ruling, the controlling U.S. parent named in the ruling (or a U.S.-organized successor-in-interest formed as part of a *pro forma* reorganization) may be 100 percent owned directly, or indirectly through one or more U.S.- or foreign-organized entities, on a going-forward basis (*i.e.*, after issuance of the ruling) by other foreign investors without prior Commission approval. The aggregate allowance for unnamed investors will be subject to the requirement that the licensee seek and obtain Commission approval before any foreign individual, entity, or "group" not previously approved acquires, directly or indirectly, more than five percent of the U.S. parent's outstanding capital

²³³ See DOJ/DHS NPRM Comments at 5. The Departments' comments expressed their concern that substantial ownership interests acquired in a licensee's U.S. parent by a new foreign investor after the Commission has issued a section 310(b)(4) ruling – including a new foreign investor's acquisition of an interest below 25 percent – might present public interest concerns warranting prior review and possible disallowance or modification of the parent's existing security agreement or similar arrangement with the Executive Branch agencies. See *id.* (citing NPRM, 26 FCC Rcd at 11729, ¶ 50); see also *id.* at 10 ("depending on the structure of the ownership, company owners between five and ten percent may have the potential to exert influence on company operations sufficient to raise possible law enforcement or national security concerns"). The Departments also raised the concern that issuing rulings with a 100 percent allowance for foreign investors for which the parent did not request specific approval in a petition could permit a foreign investor or "group" to avoid review by delaying the legal steps necessary to effectuate the entire ownership interest until after the Commission has granted a petition. *Id.* at 5 ("The proposal would allow new investors/owners to obtain a potential 25 percent ownership interest without FCC and Executive Branch knowledge or opportunity to review the transaction for associated public interest concerns.").

²³⁴ See *supra* ¶¶ 47-67. A controlling foreign interest in a licensee's controlling U.S. parent would require prior approval under section 310(b)(4) and section 310(d). 47 U.S.C. §§ 310(b)(4), 310(d).

²³⁵ See DOJ/DHS Letter, *supra* note 19.

stock (equity) and/or voting stock (or more than ten percent, where the criteria for exclusion are satisfied), or a controlling interest.²³⁶

84. Similarly, for common carrier licensees that have received a ruling under our section 310(b)(3) forbearance approach, section 1.994 will provide that, in addition to the foreign ownership interests approved specifically in the licensee's ruling, the licensee may be 100 percent owned on a going forward basis by other foreign investors holding interests in the licensee through U.S.-organized entities that do not control the licensee without prior Commission approval. The aggregate allowance for unnamed investors will be subject to the requirement that the licensee seek and obtain Commission approval before any foreign individual, entity, or "group" not previously approved acquires directly, or indirectly through one or more U.S.-organized entities that do not control the licensee, more than five percent of the licensee's outstanding capital stock (equity) and/or voting stock. The five percent prior approval requirement will not apply to any foreign individual, entity, or "group" that acquires an equity and/or voting interest of ten percent or less, provided that the interest satisfies the criteria for exclusion from the five percent specific approval requirement.²³⁷

85. We believe that setting the threshold limit lower than 25 percent for pre-approval of single foreign investor holdings is more consistent with the Departments' concerns and with the most analogous existing measures of foreign influence and control. As noted above, the Departments have expressed concern as a general matter that a 25 percent or lesser interest may provide the interest holder with the ability to exert substantial influence or *de facto* control over a U.S. parent and licensee, depending on the relative holdings of, and relationships among, the company's shareholders.²³⁸ For the reasons stated above, we believe that establishing approval requirements for ownership interests in excess of five percent (or, in limited cases, ten percent) more appropriately responds to the Departments' concerns and is consistent with measures of potential influence in analogous regulatory contexts. We acknowledge that security agreements have and could be conditioned on the licensee providing notice of ownership changes to the signatory agencies, but observe that the Executive Branch agencies that review

²³⁶ See *supra* ¶¶ 47-67. As an example, assume the same facts as in note 191, *supra*. As required by the rules, U.S. Corp.'s section 310(b)(4) petition identifies and requests specific approval for the ownership interests held in its U.S. parent ("U.S. Parent") by Foreign Entity A and its sole shareholder (5% equity and 20% voting interest); Foreign Entity B and its sole shareholder (10% equity and 20% voting interest), Foreign Entity C (20% equity and 20% voting interest), and Foreign Entity D (21% equity and 20% voting interest) and its fund manager (20% voting interest). The Commission's ruling specifically approves these foreign interests. The ruling also provides that, on a going-forward basis, U.S. Parent may be 100 percent owned in the aggregate, directly or indirectly, by other foreign investors, provided that U.S. Corp. obtains Commission approval before any previously unapproved investor acquires an equity and/or voting interest that exceeds five percent (with the exception of qualifying interests of ten percent or less). In this case, foreign entities F, G, and H would each be considered a previously unapproved foreign investor (along with any "new" foreign investors) because their interests in U.S. Parent were not subject to our prior approval requirements, and U.S. Corp. did not otherwise choose to request prior approval for their interests in its initial petition. U.S. Corp. would also need Commission approval before Foreign Entities A, B, C, or D increase their respective interests in U.S. Parent and before Foreign Entity D appoints a new fund manager that is a non-U.S. citizen. See also *infra* Appendix B (§ 1.994(a), Example 1, which provides further detail as to changes in direct and indirect foreign ownership of U.S. Parent that would require prior Commission approval).

²³⁷ Foreign interests held directly in a licensee may not exceed an *aggregate* 20 percent of its equity and/or voting interests. See *supra* ¶ 9; see also *First Report Order*, 27 FCC Rcd at 9842, ¶ 24 (stating that section 310(b)(3) forbearance "does not apply to foreign interests held in a common carrier licensee where there is no intervening U.S.-organized entity between the licensee and the foreign owner" and that foreign interests held directly in the licensee "will continue to be bound by section 310(b)(3) and our precedent thereunder").

²³⁸ See *supra* note 233 and accompanying text.

petitions for declaratory ruling do not enter into a security agreement or similar arrangement with every petitioner.

86. The *NPRM* also asked, if the Commission were to adopt a 100 percent aggregate allowance, whether it should include the allowance in every section 310(b)(4) ruling regardless of whether, under the proposed rules, the petitioner is required to, or, if not, otherwise chooses to, request specific approval for any named foreign investors.²³⁹ No commenter addressed this issue. We find that licensees may find it necessary or desirable to file a petition to exceed the foreign ownership limits in sections 310(b)(3) and/or (b)(4) in circumstances where no foreign investor holds or proposes to acquire at the time of filing an interest that would require specific approval under the new rules – particularly where the licensee or U.S. parent is, or is owned in whole or in part, by a public company. Accordingly, the new rules will permit licensees to file petitions for declaratory ruling requesting approval to exceed the foreign ownership limits in section 310(b)(3) and/or section 310(b)(4) in circumstances where the licensee is not required to, and otherwise does not choose to, request specific approval for any named foreign investor. The standard terms and conditions in section 1.994 of the new rules, including the 100 percent aggregate allowance, will apply to Commission grant of such petitions unless the Commission finds it necessary to specify otherwise in a particular ruling.

87. We emphasize that, under the new rules, licensees that have received a foreign ownership ruling will still have an obligation to monitor and stay ahead of changes in foreign ownership to ensure that the licensee obtains Commission approval before such a change renders the licensee out of compliance with its ruling(s) or our rules.²⁴⁰ Thus, as is the case under our current regulatory framework, licensees, their controlling parent companies, and other entities in the licensee’s vertical ownership chain may also need to place restrictions in their bylaws or other organizational documents to enable the licensee to ensure such continued compliance with the terms of its ruling. As we noted in the *NPRM*, stock ownership restrictions are a common means of ensuring compliance with the foreign ownership limitations in section 310(b) of the Act and other federal statutory provisions that restrict foreign ownership of U.S. companies and assets.²⁴¹

²³⁹ *NPRM*, 26 FCC Rcd at 11727, ¶ 47.

²⁴⁰ For example, assume that the Commission issues a section 310(b)(4) ruling that specifically approves 100 percent ownership of Licensee’s U.S. Parent by a publicly traded foreign corporation (“Foreign Parent”). Six months later, one of Foreign Parent’s shareholders – itself a foreign corporation – plans to acquire additional shares that would increase its equity and voting interests in Foreign Parent and, indirectly, in U.S. Parent, from 4 percent to a non-controlling 12 percent equity and voting interest. To the extent Licensee has not previously received specific approval for the foreign corporation to hold an equity and/or voting interest in U.S. Parent of at least 12 percent, Licensee would be required to file a new petition to obtain Commission approval before the foreign corporation acquires the additional shares.

²⁴¹ See *NPRM*, 26 FCC Rcd at 11724, ¶ 42 (citing *Applications of Kentucky Central Television, Inc., Lexington, Ky.*, Memorandum Opinion and Order, FCC 66-362, 5 F.C.C. 2d 33 (1966); Leonard Egan and James B. Ellis II, *Federal Restrictions in the United States Maritime Industries*, § 18.10, Manual of Foreign Investment in the United States, 3rd Edition, J. Eugene Marans *et al.*, eds., Thomson West (2009-2010 Supplement) (stating that, in order to comply with the statutory citizenship requirements for ownership of vessels operating in the coastwise trade, “[s]everal public companies have made the necessary amendments to their certificates of incorporation and arrangements with their transfer agents whereby their stockholders represent whether they are such citizens and no transfers of citizen-owned stock are permitted that would make the noncitizen percentage exceed a set threshold”); Finkelstein, Stock Transfer Restrictions Upon Alien Ownership Under Section 202 of the Delaware General Corporation Law, 38 Bus. Law. 573 (1982-1983)). No commenter addressed the question in the *NPRM* whether a need for stock ownership restrictions would present any new issues for U.S. common carrier and aeronautical radio licensees.

5. Expanding Beyond Carrier-Specific Rulings

88. As explained in the *NPRM*, the Commission issues foreign ownership rulings to cover only the licensee(s) named in the underlying petition.²⁴² An affiliated entity generally is not permitted to rely on a ruling issued to a parent, subsidiary or sister company for purposes of filing an application for a license or for consent to acquire a license by assignment from another carrier, or for purposes of entering into a spectrum leasing arrangement. The affiliated entity must submit its own petition for declaratory ruling.²⁴³ Similarly, in circumstances where a licensee is the subject of a transfer of control application under section 310(d) of the Act, the fact that the Commission has previously approved the transferee's foreign ownership in the context of an earlier proceeding does not relieve the transferee of the obligation to obtain section 310(b)(4) approval in the name of the licensees in which it proposes to acquire a controlling interest.²⁴⁴

89. In the *NPRM*, the Commission proposed to address the potential delays and administrative costs associated with carrier-specific rulings by issuing section 310(b)(4) rulings in the name of the U.S. parent of the licensee that is the subject of the petition and providing for automatic extension of the U.S. parent's ruling to cover any subsidiary or affiliate of the U.S. parent, whether existing at the time of the ruling or formed or acquired subsequently.²⁴⁵

90. Industry commenters generally support the automatic extension of the U.S. parent's ruling to cover its subsidiaries and affiliates as proposed in the *NPRM*.²⁴⁶ The Departments stated in their comments that adoption of the automatic extension rule would affect adversely their ability to evaluate whether a newly-formed or acquired subsidiary or affiliate might present new national security or law enforcement concerns that did not exist previously, when the licensee first received its ruling. The Departments provided as an example of their concern that "an acquired subsidiary might have existing contracts with the U.S. Government, while the U.S. parent, which purchased the entity, may never have had such contracts."²⁴⁷ They stated that the presence of such contracts could raise public interest concerns that the Departments would have been unable to predict or evaluate absent the opportunity to evaluate the newly-formed or acquired subsidiary.²⁴⁸

²⁴² See *NPRM*, 26 FCC Rcd at 11731-32, ¶ 55; see also *id.* at 11715, ¶ 21.

²⁴³ *Id.* at 11731-32, ¶ 55, 11715, ¶ 21.

²⁴⁴ *Id.*

²⁴⁵ *Id.* at 11732, ¶ 56.

²⁴⁶ See SIA *NPRM* Comments at 3-4 ("The Commission should clarify that parent company rulings cover subsidiaries and affiliates that are in existence at the time of the ruling, as well as those that are subsequently formed or acquired, provided that the U.S. parent remains in compliance with the terms of its foreign ownership ruling. Any additional Section 310(b)(4) review would be duplicative and unnecessary as those entities are under common ownership and control with the U.S. parent."); T-Mobile *NPRM* Comments at 3 (noting that the Commission has long permitted wholly-owned subsidiaries to operate under the international section 214 authority of their parent companies without obtaining a new authorization, citing 47 C.F.R. § 63.21(h)). See also CTIA *NPRM* Reply at 5; Sprint *NPRM* Reply at 3; Verizon *NPRM* Reply at 9; Vodafone *NPRM* Reply at 16.

²⁴⁷ DOJ/DHS *NPRM* Comments at 6.

²⁴⁸ *Id.* Verizon and Vodafone argued in their reply comments that potential government contracts issues are more efficiently addressed either in the contracting process or at the time of the initial licensure of, or investment in, a particular contractor. See Verizon *NPRM* Reply at 9 (stating that directed reporting conditions could be written into the contract or specific notice requirements imposed on a case-by-case basis); Vodafone *NPRM* Reply at 16 (stating that the contract itself could require the designated contractor to give notice to, or seek consent from, the applicable (continued....))

91. We believe that this proposal should still preserve a meaningful opportunity for the Departments to review applications for national security and law enforcement concerns in the context of our Title III licensing proceedings under sections 308 and 310(d) of the Act, provided that foreign ownership of the licensee and its subsidiaries and affiliates that are relying on the licensee's foreign ownership ruling remains within the parameters of the ruling. Specifically, after Commission issuance of a public notice accepting a subsidiary's or affiliate's application for filing (*e.g.*, an application filed under section 308 for a new common carrier license), we would defer action at the request of the Departments until they have had an opportunity to request further information from the applicants to inform the Departments' views, and request, as may be appropriate, that we limit our approval or condition grant of the application on a security agreement.²⁴⁹ Furthermore, before a licensee acquires control of a new subsidiary with existing licenses, the licensee will still be required to file an application to obtain our prior consent to the transfer of control under section 310(d), which will then be forwarded to the Departments for their review, opportunity to request additional information from the applicants to inform the Department's views, and comment prior to Commission action. We recognize, however, that there may be some instances (*e.g.*, where a new subsidiary is inserted into the chain of ownership of the licensee as part of a *pro forma* internal reorganization) in which the Departments will be unable to engage in prior review of the changed circumstances, but believe that the impact of such internal reorganizations should be negligible given that the ultimate foreign ownership levels will not have changed beyond the parameters of the licensee's ruling.

92. We therefore adopt the automatic extension rule proposed in the *NPRM*, with certain modifications. Under the modified automatic extension rule, we will issue foreign ownership rulings under our section 310(b)(3) forbearance approach and/or section 310(b)(4) to cover all of the petitioning licensee's subsidiaries and affiliates, whether existing at the time the ruling is issued or formed or acquired subsequently, provided that foreign ownership of the licensee and its subsidiaries and affiliates that are relying on the licensee's ruling remains within the parameters of the ruling and our new rules, as described below. We emphasize that the new rules will require that all affiliated entities that contemporaneously hold, or are filing applications for, common carrier or aeronautical licenses or common carrier spectrum leasing arrangements, and that would have foreign ownership exceeding the limits in section 310(b)(3) and/or section 310(b)(4), be named as joint petitioners in a petition for declaratory ruling seeking approval for the affiliated entities' foreign ownership. To the extent an affiliated entity does not contemporaneously hold, or is not filing an application for, a covered license or spectrum leasing arrangement, it need not be named as a joint petitioner. If the entity later files a covered application — after issuance of a ruling to an affiliate — the automatic extension rule will permit the entity to rely on the affiliate's ruling for purposes of filing its own applications.²⁵⁰ However, as noted

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U.S. government agency before consummating a transfer of control of the designated contractor and require the designated contractor to meet certain ownership reporting obligations on a periodic basis”).

²⁴⁹ See DOJ/DHS Letter, *supra* note 19.

²⁵⁰ As an example of how the automatic extension rule would work, assume that a common carrier earth station licensee (“Licensee”) has previously received a section 310(b)(4) ruling that approves the 100 percent foreign ownership of its U.S. Parent (“U.S. Parent A”) by a foreign-organized company (“Foreign Company”). Subsequently, Foreign Company establishes a new, U.S.-organized subsidiary (“U.S. Parent B”) to hold all of the shares of another U.S.-organized subsidiary (“New U.S. Subsidiary”). The proposed automatic extension rule would permit New U.S. Subsidiary to apply for a common carrier earth station license without filing a section 310(b)(4) petition requesting approval of U.S. Parent B's 100 percent ownership by Foreign Company, provided that any changes in the direct or indirect foreign ownership of Licensee since issuance of its ruling are permissible under the terms of the ruling and our new rules (*e.g.*, the requirement of identification and prior approval of any new foreign investor with interests that would exceed the relevant five or ten percent limit). The proposed rules would instruct New U.S. Subsidiary to cite to Licensee's ruling in the application and attach a certification signed by Licensee and (continued....)

above, those applications will continue to be subject to review and comment by the Executive Branch agencies.

93. The *NPRM* proposed to define “subsidiary or affiliate,” for purposes of issuing section 310(b)(4) rulings, as “any entity that is wholly owned and controlled by, or is under 100 percent common ownership and control with,” the U.S. parent of the licensee.²⁵¹ We find a requirement of 100 percent common ownership to be unnecessarily restrictive in light of our determination to tailor our reviews and the associated expense and delay only to those foreign holdings that implicate potential concerns under section 310(b). We will define “subsidiary” as any entity in which the licensee holds, directly or indirectly, more than 50 percent of the total voting power of the outstanding voting stock of the entity, where no other individual or entity has *de facto* control.²⁵² We will define “affiliate” as any entity that is under common control with the licensee, again defined by reference to the holder, directly or indirectly, of more than 50 percent of total voting power, where no other individual or entity has *de facto* control. Once a licensee has received a foreign ownership ruling, any “subsidiary” or “affiliate” of the licensee, as so defined, will not be required to file a petition for declaratory ruling in connection with its own common carrier or aeronautical license applications, but can instead rely on the licensee’s ruling, provided that the foreign ownership of the licensee and its subsidiary or affiliate complies with the terms and conditions of the licensee’s foreign ownership ruling and our new rules. Thus, for the reasons discussed in Section IV.B.4 above, compliance will require that the licensee and any subsidiary or affiliate obtain Commission approval before any previously unapproved foreign investor acquires an ownership interest in the licensee or subsidiary/affiliate in excess of the five percent (or ten percent) limits established in the new rules. We will codify the “automatic extension” rule in section 1.994 as one of the standard terms and conditions of our foreign ownership rulings. We will require the subsidiary or affiliate to state in its application the name of the affiliated licensee that has received a ruling(s), provide a citation to the ruling(s), and attach to the application a certification, signed by the applicant and licensee (or by a controlling parent company), stating that the applicant and licensee are in compliance with the terms and conditions of the licensee’s foreign ownership ruling(s) and the requirements of our rules.

94. We find that adopting the automatic extension rule will eliminate the filing of duplicative petitions for declaratory ruling while preserving the opportunity for Executive Branch review and mitigation, to the extent necessary, before the Commission issues a common carrier or aeronautical license to a subsidiary or affiliate of a licensee that has already received a foreign ownership ruling. As explained below, even where the filing of a petition for declaratory ruling will no longer be required, the relevant Executive Branch agencies will continue to receive public notice of section 308 license applications and section 310(d) transfer/assignment applications filed by a subsidiary or affiliate. The rules that we adopt here will preserve the agencies’ ability to review and file comments on, including petitions to condition or limit grant of, those applications prior to Commission action.

95. We note, first, that the modified automatic extension rule will eliminate the current requirement that commonly owned and controlled entities each file a petition for declaratory ruling at the same time that the entity files an application for an initial common carrier or aeronautical license, for consent to acquire such a license by assignment from another carrier, or for consent to lease spectrum

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New U.S. Subsidiary stating that their foreign ownership complies with Licensee’s foreign ownership ruling and the rules adopted in this Second Report and Order.

²⁵¹ *NPRM*, 26 FCC Rcd at 11732, ¶ 56.

²⁵² We will define “voting stock” to mean an entity’s corporate stock, partnership or membership interests, or other equivalents of corporate stock that, under ordinary circumstances, entitles the holders thereof to elect the entity’s board of directors, management committee, or other equivalent of a corporate board of directors.

from another carrier.²⁵³ In all of these situations, the subsidiary or affiliate acquiring a license or entering into a spectrum leasing arrangement will need to be controlled by, or under common control with, a licensee in order to rely on that licensee's ruling. Even if the subsidiary or affiliate has government contracts that are not otherwise covered by an existing security agreement – e.g., between the relevant Executive Branch agencies and a company that controls both the licensee and its subsidiary or affiliate – the Departments will have the opportunity to raise any concerns and to negotiate an agreement or modifications to an existing agreement in the section 308 licensing proceeding or section 310(d) assignment proceeding.²⁵⁴ Second, the automatic extension rule will eliminate the requirement that, where a licensee has received a ruling under section 310(b)(3) forbearance and/or under section 310(b)(4), the licensee (in the former case) or its U.S. parent (in the latter case) must nonetheless file a new petition for declaratory ruling to accompany its application for consent to acquire control of another common carrier licensee (or an aeronautical licensee in the latter case only) pursuant to section 310(d) of the Act. The Departments, in either case, will have the opportunity to raise any concerns with respect to the proposed acquisition of the new company – which may have government contracts to which the licensee or U.S. parent is not a party – and to negotiate an agreement or modifications to an existing agreement in the section 310(d) transfer of control proceeding.²⁵⁵

96. However, in order to fully preserve such opportunities, we will maintain the current requirement that applicants with foreign ownership exceeding the section 310(b) limits will qualify for the Commission's "immediate approval" procedures, adopted in the *Secondary Markets* proceeding, only

²⁵³ Some assignments may be part of an internal restructuring and *pro forma* in nature: for example, where a licensee's U.S. parent forms a new, wholly-owned subsidiary to hold some of the licensee's assets, including its common carrier licenses. Other assignments may involve a substantial assignment: for example, where the licensee's U.S. parent forms a new, wholly-owned subsidiary to acquire licenses from an unaffiliated, third-party carrier. See, e.g., 47 C.F.R. § 1.948(c) (requiring prior approval of assignments and transfers of control of wireless radio services with the exception that applications may be filed post-closing in certain circumstances where the transaction is non-substantial (*pro forma*)). We note that, to the extent a common carrier licensee subject to section 310(b)(3) forbearance has received a ruling approving its foreign ownership in excess of 20 percent, neither it nor any subsidiary or affiliate may rely on that ruling for purposes of an application to acquire aeronautical licenses, because our forbearance authority does not extend to such licenses. See *supra* note 31.

²⁵⁴ In addition, we note that security agreements generally contain (and can be negotiated to include) provisions that bind existing and subsequently formed entities over which the named companies have *de facto* or *de jure* control. See, e.g., *America Movil Order*, 22 FCC Rcd 6195, Appendix B (Executive Branch Agreement) (defining in Article 1 the term "Domestic Companies" to include TELPRI and "all existing and post-Agreement subsidiaries, divisions, departments, branches and other components of TELPRI, or any other entity over which TELPRI has *de facto* or *de jure* control..."). The Commission also routinely conditions the grant of any license or assignment or transfer of control thereof on "compliance with the commitments set forth in the Executive Branch Agreement." *Id.* at 6227-28, ¶¶ 76, 78.

²⁵⁵ The Commission has previously held that, regardless of the applicability of sections 310(a) and 310(b), the Commission considers, pursuant to sections 308 and 310(d) of the Act, national security, law enforcement, foreign policy and trade policy concerns when analyzing an application in which foreign ownership is involved. See e.g., *Intelsat Holdings, Ltd., Transferor, and Serafina Holdings Limited, Transferee, Consolidated Application for Consent to Transfer Control of Holders of Title II and Title III Authorizations*, IB Docket No. 07-181, Memorandum Opinion and Order, FCC 07-220, 22 FCC Rcd 22151, 22160, ¶ 26 (2007); *Constellation, LLC, Carlyle PanAmSat I, LLC, Carlyle PanAmSat II, LLC, PEP PAS, LLC, and PEOP PAS, LLC, Transferors, and Intelsat Holdings, Ltd., Transferee, Consolidated Application to Transfer Control of PanAmSat Licensee Corp. and PanAmSat H-2 Licensee Corp.*, IB Docket No. 05-290, Memorandum Opinion and Order, FCC 06-85, 21 FCC Rcd 7368 (2006); *Amendment of the Commission's Regulatory Policies to Allow Non-U.S. Licensed Space Stations to Provide Domestic and International Satellite Service in the United States*, Report and Order, 12 FCC Rcd 24094, 24170-71, ¶¶ 178-79 (1997).

where the applicant itself has already received a service-specific and geographic-specific ruling that covers the spectrum leasing arrangements or licenses that are the subject of the application, and where there has been no change in foreign ownership since that ruling.²⁵⁶ Thus, applications for consent to a spectrum leasing arrangement or for consent to a transfer or assignment of licenses or spectrum leasing arrangements filed by a licensee's subsidiaries or affiliates will not be eligible for immediate approval. We make no change to the Commission's rules in this respect because the immediate approval procedures do not provide an opportunity for Commission or Executive Branch review prior to grant of an eligible application.²⁵⁷ These applications are granted upon filing and, thus, there is no public notice of the application or opportunity for the filing of comments or oppositions.²⁵⁸

6. Introducing New Foreign-Organized Entities into the Vertical Ownership Chain

97. The Commission sought comment in the *NPRM* on whether we should permit, without prior Commission approval, the insertion of new, controlling foreign-organized companies at any level in the vertical ownership chain above the U.S. parent that has received a foreign ownership ruling, provided that any new foreign-organized company(ies) are under 100 percent common ownership and control with the controlling foreign parent for which the U.S. parent has received prior Commission approval.²⁵⁹ It is our experience that the controlling U.S. parent of a licensee may itself have one or more controlling foreign-organized parent companies situated above it in the vertical chain of ownership. As a result of internal reorganizations, new foreign-organized parent companies may be added to the vertical chain of ownership over time. In the *NPRM*, the Commission noted that it would appear reasonable to allow these internal reorganizations to proceed without requiring that the U.S. parent return to the Commission, after receiving an initial ruling, for specific approval under section 310(b)(4). The Commission also requested comment on whether to permit a U.S. parent company's approved, non-controlling foreign investors to insert new, foreign-organized companies into their vertical chains of ownership without the U.S. parent having to return to the Commission for prior approval, provided that the new foreign company is under 100 percent common ownership and control with the approved foreign investor.²⁶⁰

98. As noted above, in the *First Report and Order* in this proceeding, we adopted a section 310(b)(3) forbearance approach for the class of common carrier licensees subject to section 310(b)(3)

²⁵⁶ See generally *Second Order on Reconsideration*, 23 FCC Rcd at 15082, ¶ 3 (summarizing the immediate approval policies adopted in the *Secondary Markets Second Report and Order*, 19 FCC Rcd 17503). See also *Second Order on Reconsideration*, 23 FCC Rcd at 15084-85, ¶ 7 (declining to address T-Mobile USA's argument on reconsideration that the immediate approval procedures should apply where the applicant is, or would become, a wholly-owned direct or indirect subsidiary of a U.S. parent whose foreign ownership the Commission has already approved).

²⁵⁷ For the same reasons, a subsidiary's or affiliate's notification to the Commission of a "spectrum manager" leasing arrangement, which does not require the filing of an application, will not be eligible for "immediate processing." See *Secondary Markets Second Report and Order*, 19 FCC Rcd at 17525-28, ¶¶ 46-50 (adopting immediate processing procedures for qualifying spectrum manager leasing arrangements).

²⁵⁸ Applications granted under the immediate approval procedures, however, are subject to the Commission's reconsideration procedures. See 47 C.F.R. §§ 1.948(j)(2)(iii) (assignments/transfers of control); 1.9030(e)(2)(iii) (long-term *de facto* transfer leasing arrangements); 1.9035(e)(3) (short-term *de facto* transfer leasing arrangements). Notifications of spectrum manager leasing arrangements that are filed pursuant to the Commission's immediate processing procedures are also subject to reconsideration. *Id.* § 1.9020(e)(2)(iii).

²⁵⁹ *NPRM*, 26 FCC Rcd at 11733, ¶ 57.

²⁶⁰ *Id.*

forbearance.²⁶¹ We deferred consideration of applicable rules to this Second Report and Order.²⁶² As we consider whether and how to apply our proposal to permit the insertion of new, foreign-organized companies into the vertical ownership chain above controlling U.S. parents of common carrier and aeronautical radio station licensees, under section 310(b)(4), we also consider whether and how to permit the insertion of new, foreign-organized companies in the vertical ownership above the intermediary U.S.-organized entities that do not control common carrier licensees subject to section 310(b)(3) forbearance.

99. Industry commenters on the *NPRM* support adopting a rule for section 310(b)(4) public interest reviews permitting, without prior Commission approval, the insertion of new, controlling foreign-organized companies at any level in the vertical ownership chain above the U.S. parent that has received a foreign ownership ruling, provided that any new foreign-organized company(ies) are under 100 percent common ownership and control with the controlling foreign parent for which the U.S. parent has received prior Commission approval.²⁶³ Commenters on the *Forbearance Public Notice* support applying the same rules to the class of common carrier licensees subject to section 310(b)(3) forbearance as we apply to common carrier and aeronautical radio station licensees under section 310(b)(4).²⁶⁴ The Departments do not oppose allowing the insertion of new foreign-organized companies into the vertical ownership chains above U.S. parents or their non-controlling foreign investors, “but strongly believe that the U.S. parent companies should be required to notify the Commission of the changes in ownership within 30 days.”²⁶⁵

100. Based on our review of the record, we will issue foreign ownership rulings to permit, without prior Commission approval, the insertion of new, controlling foreign-organized companies in the vertical ownership chain above the controlling U.S. parent of a common carrier or aeronautical radio station licensee, under section 310(b)(4), or above a U.S.-organized entity that does not control the common carrier licensee, under section 310(b)(3) forbearance. Authorization under this rule will require any new foreign-organized companies to be under 100 percent common ownership and control with the controlling foreign parent of the licensee’s controlling U.S. parent, under section 310(b)(4), or with the controlling foreign parent of the U.S.-organized entity that does not control the licensee, under section 310(b)(3) forbearance, for which the licensee has received prior approval.²⁶⁶

²⁶¹ *First Report and Order*, 27 FCC Rcd 9837, ¶ 10.

²⁶² *Id.* at 9844, ¶ 33.

²⁶³ Verizon NPRM Comments at 6; AT&T NPRM Comments at 10; DOJ/DHS NPRM Comments at 9; T-Mobile NPRM Comments at 3; SIA NPRM Comments at 2-3; CTIA NPRM Reply at 6.

²⁶⁴ Vodafone Public Notice Comments at 8-9; Verizon Public Notice Comments at 13; DT/T-Mobile Public Notice Reply at 5.

²⁶⁵ DOJ/DHS NPRM Comments at 9.

²⁶⁶ For a section 310(b)(4) example, assume that a U.S.-organized corporation (“U.S. Corp. A”) holds a controlling, 56 percent equity and voting interest in a common carrier licensee (“Licensee”). U.S. Corp. A is wholly owned by a foreign-organized company (“Foreign Company I”) that is, in turn, wholly owned by a foreign citizen. The remaining 44 percent of Licensee’s equity and voting interests are held by another U.S.-organized corporation (“U.S. Corp. B”). U.S. Corp. B is wholly owned by a U.S. citizen. Licensee has received a section 310(b)(4) ruling approving Foreign Company I’s 56 percent controlling interest in Licensee’s U.S. parent, U.S. Corp. A. After issuance of the section 310(b)(4) ruling, Foreign Company I forms a wholly-owned, foreign-organized subsidiary (“Foreign Company II”) to hold all of Foreign Company I’s shares in U.S. Corp. A. The insertion of Foreign Company II into the vertical ownership chain above U.S. Corp. A would not require prior Commission approval.

For a section 310(b)(3) forbearance example involving the same Licensee, assume the same vertical ownership chain, except that a foreign citizen wholly owns U.S. Corp. B. Licensee has received, in addition to its section 310(b)(4) ruling, a ruling under our section 310(b)(3) forbearance approach approving the foreign citizen’s 44 percent indirect interest in Licensee, held through the foreign citizen’s wholly-owned, U.S.-organized subsidiary, (continued....)

101. We will also issue foreign ownership rulings to permit, without prior Commission approval, the insertion of new, non-controlling foreign-organized companies in the vertical ownership chain above the controlling U.S. parent of a common carrier or aeronautical radio station licensee, under section 310(b)(4), or above a U.S.-organized entity that does not control the common carrier licensee, under section 310(b)(3) forbearance. Authorization under this rule will require any new, foreign-organized companies to be under 100 percent common ownership and control with a previously approved foreign investor.²⁶⁷ Commenters on the *NPRM* support adopting such a rule for section 310(b)(4) public interest reviews,²⁶⁸ and commenters on the *Forbearance Public Notice* support applying the same rules to the class of common carriers subject to section 310(b)(3) forbearance as we apply to common carrier and aeronautical radio station licensees under section 310(b)(4).²⁶⁹ In addition, to the extent a licensee subject to section 310(b)(3) forbearance obtains specific approval in its ruling of a foreign investor's *direct* ownership interest in the licensee (subject to the 20 percent aggregate limit on direct foreign investment), we will permit the licensee to insert, without prior Commission approval, a new foreign-organized entity in the vertical ownership chain of the approved foreign investor, provided that any new foreign-organized entity is under 100 percent common ownership and control with the approved foreign investor.²⁷⁰

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U.S. Corp. B. Two years after Licensee receives its ruling approving foreign citizen's indirect interest in Licensee, foreign citizen forms a foreign-organized company ("Foreign Company III") to hold all of its shares of U.S. Corp. B. The insertion of Foreign Company III above U.S. Corp. B. would not require prior Commission approval.

²⁶⁷ For a section 310(b)(4) example, assume U.S.-organized corporation ("U.S. Corp. A") holds a controlling 56 percent equity and voting interest in a common carrier licensee ("Licensee"). U.S. Corp. A. is minority-owned (30 percent) by a foreign-organized company ("Foreign Company I") that is, in turn, wholly owned by a foreign citizen. The remaining 44 percent of Licensee's equity and voting interests are held by another U.S.-organized corporation ("U.S. Corp. B"). U.S. Corp. B is wholly owned by a U.S. citizen. Licensee has received a section 310(b)(4) ruling approving Foreign Company I's 30 percent non-controlling interest in Licensee's U.S. parent, U.S. Corp. A. After issuance of the section 310(b)(4) ruling, Foreign Company I forms a wholly-owned, foreign-organized subsidiary ("Foreign Company II") to hold all of Foreign Company I's shares in U.S. Corp. A. The insertion of Foreign Company II into the vertical ownership chain above U.S. Corp. A would not require prior Commission approval.

For a section 310(b)(3) forbearance example involving the same Licensee, assume the same vertical ownership chain, except that a foreign citizen owns a non-controlling 49 percent interest in U.S. Corp. B (which holds 44 percent of Licensee's equity and voting interests). Licensee has received a ruling under our section 310(b)(3) forbearance approach approving the foreign citizen's 22 percent indirect interest in Licensee, held through U.S. Corp. B (49% x 44% = 22%). Two years after Licensee receives its ruling approving foreign citizen's indirect interest in Licensee, foreign citizen decides to form a foreign-organized company ("Foreign Company III") to hold all of its shares of U.S. Corp. B. Licensee would not require prior Commission approval for the insertion of Foreign Company III above U.S. Corp. B.

²⁶⁸ Verizon NPRM Comments at 6; AT&T NPRM Comments at 10; DOJ/DHS NPRM Comments at 9; T-Mobile NPRM Comments at 3; SIA NPRM Comments at 2-3; CTIA NPRM Reply at 6.

²⁶⁹ Vodafone Public Notice Comments at 8-9; Verizon Public Notice Comments at 13; DT/T-Mobile Public Notice Reply at 5.

²⁷⁰ As discussed in Sections IV.B.3.a and IV.B.4 above, a common carrier licensee filing a petition for declaratory ruling to exceed the aggregate 20 percent foreign ownership limit in section 310(b)(3) must identify and request specific approval in its petition of any foreign individual, entity, or "group" that holds or would hold directly, or indirectly through one or more U.S.-organized entities that do not control the licensee, more than five percent of the licensee's outstanding capital stock or voting stock (with an exception for certain interests in excess of five percent and up to ten percent). Foreign interests held directly in the licensee, however, may not exceed an aggregate 20 percent of the licensee's equity and/or voting interests. See *supra* ¶ 9 and note 236 (citing *First Report Order*, 27 FCC Red at 9842, ¶ 24).

102. We find it reasonable to allow these internal reorganizations to proceed without requiring the licensee to return to the Commission, after receiving an initial ruling, for specific approval to insert the new, foreign-organized company in the previously approved vertical ownership chain. The new, foreign-organized company will remain under 100 percent common ownership and control with the previously approved foreign investor. Under other circumstances, the Commission has acknowledged that non-substantial changes in corporate organization merit streamlined treatment.²⁷¹ We caution, however, that while as noted above we have previously streamlined or forborne in many situations from enforcement of the separate requirement under section 310(d) for prior Commission approval of such internal reorganizations that do not involve “a substantial change in ownership or control,”²⁷² our action in this Second Report and Order extends only to our requirements in enforcing the foreign ownership restrictions of section 310(b) and does not eliminate any continuing section 310(d) approval requirements.

103. In the *NPRM*, the Commission also asked whether, if it determined to allow post-ruling changes in foreign ownership, the U.S. parent company should be required to notify the Commission about the changes in ownership and, if so, whether 30 days would be a reasonable timeframe within which to require the U.S. parent to notify the Commission.²⁷³ As noted, the Departments support requiring notice to the Commission of ownership changes within 30 days.²⁷⁴ Verizon asserts that insertion of new foreign entities into the approved vertical chain of ownership should not be subject to a notice requirement.²⁷⁵ T-Mobile states that the Commission need not require notification when notifications for the reorganization would have been filed under section 214 and section 310(d) filing requirements for *pro forma* changes in ownership or control.²⁷⁶

104. We adopt a requirement, in section 1.994, that licensees file a letter to the attention of the Chief, International Bureau, within 30 days after introduction of a new, foreign-organized entity in the vertical ownership chain above the controlling U.S. parent, under section 310(b)(4), or above the licensee,

²⁷¹ See, e.g., *Federal Communications Bar Association's Petition for Forbearance from Section 310(d) of the Communications Act Regarding Non-Substantial Assignments of Wireless Licenses and Transfers of Control Involving Telecommunications Carriers*, Memorandum Opinion and Order, FCC 98-18, 13 FCC Rcd 6293 (1998) (forbearing from prior review of transfers and assignments of certain wireless licenses that do not cause a substantial change in control of the licensee as provided in section 309(c)(2)(B) of the Act); *1998 Biennial Regulatory Review-Review of International Common Carrier Regulations*, IB Docket No. 98-118, Report and Order, FCC 99-51, 14 FCC Rcd 4909 (1999) (adopting streamlined processing of non-substantial assignments and transfers of control of international section 214 authorizations). Corporate reorganizations of wireless telecommunications carriers that constitute non-substantial assignments or transfers of control generally no longer require prior Commission approval under section 310(d) of the Act. See 47 C.F.R. § 1.948(c) (assignments and transfers of control of wireless radio services licenses); *but see id.* § 25.119 (generally requiring prior approval for assignments and transfers of control of satellite radio service licenses). They do not alter the ultimate parent of the licensee, and, as noted in paragraph 99 above, the Departments do not oppose eliminating the section 310(b) approvals for them subject to a notice requirement, which we here adopt. See *infra* ¶¶ 103-104.

²⁷² See *supra* note 271. See also 47 U.S.C. §§ 160(a), 309(c)(2)(B), 310(d). The *NPRM* did not propose any changes to service-specific licensing rules that may require licensees to obtain prior approval or notify the Commission of *pro forma* transfers of control pursuant to section 310(d) of the Act. *NPRM*, 26 FCC Rcd at 11733, ¶ 57 n.119.

²⁷³ *Id.* at 11733, ¶ 58.

²⁷⁴ DOJ/DHS *NPRM* Comments at 9. See also *supra* ¶ 99.

²⁷⁵ Verizon *NPRM* Reply at 6 n.19 (stating that, to the extent the Executive Branch agencies think notifications are necessary for changes in foreign ownership that occur within the same corporate family as approved previously, they can stipulate as such in a security agreement).

²⁷⁶ T-Mobile *NPRM* Comments at 4 n.11.

under our section 310(b)(3) forbearance approach, certifying that the new, foreign-organized entity complies with our 100 percent common ownership and control requirement and referencing the underlying ruling by the International Bureau Filing System (IBFS) File No. and FCC Record citation, if available. We believe that it is important to maintain complete and current records of approved foreign ownership, including the insertion of new, foreign-organized entities in the approved vertical ownership chain above the controlling U.S. parent, under section 310(b)(4), or above the licensee, under our section 310(b)(3) forbearance approach. We will not require such separate notification if the ownership change is instead the subject of a *pro forma* application or *pro forma* notification already filed with the Commission via the Universal Licensing System (ULS) (for wireless licensees) or IBFS (for satellite radio licensees).²⁷⁷

7. Service- and Geographic-Specific Rulings

105. The Commission asked for comment in the *NPRM* whether to retain the general practice of issuing rulings on a service-specific and geographic-specific basis.²⁷⁸ The Commission observed that section 310(b)(4) rulings typically cover only the particular wireless service(s) referenced in the petition for declaratory ruling, and that the scope of the ruling may also be limited to the geographic service area of the licenses or spectrum leasing arrangements referenced in the petition.²⁷⁹ As a result, although the ruling authorizes the foreign ownership of the licensee, the licensee is required to file additional petitions for declaratory ruling to “extend” its existing ruling to cover licenses or spectrum leasing arrangements in different services and/or in different geographic service areas. The Commission noted in the *NPRM* the Commission’s previous finding, in the *Secondary Markets Second Report and Order*, that service-specific and geographic-specific rulings might require carriers to make multiple filings for section 310(b)(4) approval, resulting in increased transaction costs and regulatory delay.²⁸⁰

106. In the *NPRM*, the Commission sought input on the public interest costs and benefits of issuing section 310(b)(4) rulings on a service-specific and geographic-specific basis. The Commission also requested that commenters advocating a change in policy include specific proposals as to the appropriate service and geographic limitations of section 310(b)(4) rulings, if any.²⁸¹

107. Industry commenters support eliminating the Commission’s general practice of issuing rulings on a service-specific and geographic-specific basis, while the Departments supported continuing the practice.²⁸² T-Mobile argues, for example, that requiring a company to file, and Commission personnel to process, petitions for each new service and/or location the company intends to serve would negate the efficiencies of the *NPRM* proposals to streamline and simplify the section 310(b)(4) process.²⁸³

²⁷⁷ See, e.g., 47 C.F.R. §§ 1.948, 25.119.

²⁷⁸ *NPRM*, 26 FCC Rcd at 11731-32, ¶¶ 55-56.

²⁷⁹ For example, in the case of a petition filed by an existing licensee, the section 310(b)(4) ruling may cover only the particular wireless service (e.g., Personal Communications Service) authorized under the petitioner’s existing license(s) and only within the geographic service area of the license(s).

²⁸⁰ See *NPRM*, 26 FCC Rcd at 11734, ¶ 60 (citing *Secondary Markets Second Report and Order*, 19 FCC Rcd at 17515, ¶ 22).

²⁸¹ See *NPRM*, 26 FCC Rcd at 11734-35, ¶ 61.

²⁸² See AT&T *NPRM* Comments at 10; SIA *NPRM* Comments at 3; T-Mobile *NPRM* Comments at 4-5; Verizon *NPRM* Comments at 6-7; Vodafone *NPRM* Comments at 31. See also CTIA *NPRM* Reply at 8; USTelecom *NPRM* Reply at 6; Verizon *NPRM* Reply at 8.

²⁸³ See T-Mobile *NPRM* Comments at 4-5 (stating that “a new ruling should not be required each time a company acquires a different type of wireless service license or a license that covers a new geographic area, particularly if the license will be used for augmenting or expanding the company’s current business”).

According to T-Mobile, the fact that a company with previously-approved foreign ownership is “acquiring a license for a different type of wireless service or a license in a different market would not have a material impact on the Commission’s prior analysis or conclusions.”²⁸⁴ T-Mobile also states that requiring new rulings would unreasonably discriminate against foreign-owned companies, which would face needless delay in acquiring new licenses and deploying services.²⁸⁵ AT&T supports providing “blanket” section 310(b)(4) approval that authorizes the licensee to enter into future spectrum leasing arrangements and acquire new licenses by assignment and transfer of control without seeking additional section 310(b)(4) approvals.²⁸⁶

108. The Departments expressed concern that allowing carriers to change services and service areas without prior Commission approval would prevent them from evaluating accurately whether public interest concerns might be raised by the provision of expanded services,²⁸⁷ and that “[w]hile de minimis changes ... would be unlikely to affect the Departments’ analysis, the Commission’s proposal is quite broad, and could be interpreted to permit a licensee to change completely its line of business and geographic area of coverage....”²⁸⁸ We believe that eliminating the practice of issuing service- and geographic-specific rulings should still preserve a meaningful opportunity for the Departments to review applications for national security and law enforcement concerns prior to Commission action, because we will continue to issue public notice of applications filed by licensees that have received a section 310(b) foreign ownership ruling under the new rules, including applications that would be required to be filed under other provisions of the Act (*e.g.*, section 308) authorizing the expansion of the licensee’s authorized services and/or service areas. In such cases, the Departments will continue to have the opportunity to review such applications prior to Commission action, to request additional information from the applicants to inform the Departments’ views, and to request that we deny, limit or condition grant of the applications for the expansion of the licensee’s authorized services and/or service areas.²⁸⁹

109. We will eliminate the current practice of issuing rulings on a service-specific and geographic-specific basis. This change in practice will apply to petitions filed under our section 310(b)(3) forbearance approach and under section 310(b)(4). We find that the Commission and the Departments will have sufficient opportunities during the Title III licensing process to consider whether a licensee’s proposed expansion of service or coverage area raises concerns with respect to national security, law

²⁸⁴ *Id.* at 5. See also Verizon NPRM Reply at 8 (asserting that the Departments’ concerns can and should be addressed “by more limited and narrowly-tailored means” than requiring “duplicative filings from every entity with foreign ownership”).

²⁸⁵ See T-Mobile NPRM Comments at 4-5 (stating that “[th]e plain language of Section 310(b)(4) requires only that the Commission make a public interest determination to allow foreign ownership in amounts greater than 25 percent, and does not require service-specific and geographic-specific rulings”); USTelecom Reply at 6 (accord).

²⁸⁶ See AT&T NPRM Comments at 10. Under current policy enunciated in the *Secondary Markets* proceeding, the Commission will entertain petitions that seek “blanket” approval under section 310(b)(4) to allow the petitioning licensee to enter into future spectrum leasing arrangements and acquire new licenses by assignment and transfer of control without seeking additional section 310(b)(4) approvals. See *Secondary Markets Second Report and Order*, 19 FCC Rcd at 17515, ¶ 22. In order to discourage the filing of speculative petitions, however, the Commission stated that it will entertain petitions for such “blanket” rulings only in conjunction with a spectrum leasing or assignment/transfer application that would be covered by the requested ruling. *Id.*

²⁸⁷ DOJ/DHS NPRM Comments at 2-3. The Departments note that an expansion of service into a new geographic service area might include military or other government facilities with national security or law enforcement equities at stake.

²⁸⁸ *Id.* at 3.

²⁸⁹ See DOJ/DHS Letter, *supra* note 19.

enforcement, foreign policy and trade policy due to the licensee's foreign ownership. As we found in adopting the "automatic extension rule" – so that a licensee's ruling will also cover, on a going-forward basis, any of its subsidiaries or affiliates (as defined in the new rule) – the Departments will have the opportunity to raise any concerns with respect to a licensee's acquisition of new licenses during the section 308 licensing proceeding or, in the case of the acquisition of licenses by assignment or transfer of control, during the section 310(d) proceeding.²⁹⁰

110. We will maintain the current requirement, adopted in the *Secondary Markets* proceeding, that applicants with foreign ownership exceeding the section 310(b) limits will qualify for the Commission's "immediate approval" procedures only where the applicant is able to certify in its application that it has already received a service-specific and geographic-specific ruling that covers the spectrum leasing arrangements or licenses that are the subject of the application and that there has been no change in its foreign ownership in the meantime.²⁹¹ Thus, unless an applicant has already received a foreign ownership ruling for the same wireless service in the same geographic service area specified in its application for consent to a spectrum leasing arrangement, or for consent to a transfer or assignment of licenses or spectrum leasing arrangements (*e.g.*, the application involves a request only for additional spectrum in the same service(s) and the same area(s)), the application will not be eligible for immediate approval.²⁹² We make no change to the Commission's rules in this respect because, as discussed above,²⁹³ the immediate approval procedures do not provide an opportunity for Commission or Executive Branch review prior to grant of an eligible application. These applications are granted upon filing and, thus, there is no public notice of the application or opportunity for the filing of comments or oppositions.²⁹⁴

C. Contents of Petitions for Declaratory Ruling

1. Information on Disclosable Interest Holders and Foreign Investor Interests

111. The Commission proposed in the *NPRM* to require that all section 310(b)(4) petitions for declaratory ruling contain the name, address, citizenship, and principal business(es) of any individual or entity, regardless of citizenship, that directly or indirectly holds or would hold, after effectuation of any planned ownership changes described in the petition, at least ten percent of the equity or voting interests in the controlling U.S. parent of a common carrier or aeronautical radio station licensee or a controlling

²⁹⁰ See *supra* Section IV.B.5, ¶¶ 88-96.

²⁹¹ As discussed above, *supra* ¶ 96, eligibility for the immediate approval procedures adopted in the *Secondary Markets* proceeding requires that a spectrum lessee or assignee/transferee be able to certify in its application either that: (1) it does not have foreign ownership exceeding the 25 percent limit in section 310(b)(4); or (2) it has previously obtained a declaratory ruling that covers the same type of service and geographic coverage area, and that there has been no change in foreign ownership in the meantime. See generally *Second Order on Reconsideration*, 23 FCC Rcd at 15082, ¶ 3 (summarizing the immediate approval policies adopted in the *Secondary Markets Second Report and Order*, 19 FCC Rcd 17503). See also 47 C.F.R. § 1.948(j)(2)(i)(C).

²⁹² For example, a licensee's application for consent to a spectrum leasing arrangement with another licensee would not be eligible for immediate approval in the following circumstances: Assume the licensee has received an initial section 310(b)(4) ruling under the new rules. The common carrier licenses it held at the time it received the ruling authorized the provision of Personal Communications Services (PCS) in several cities along the mid-Atlantic coast. Because licensee's spectrum leasing application, if granted, would authorize it to operate using the leased spectrum in several cities along the coast of California and in Hawaii, its application would not be eligible for immediate approval.

²⁹³ See *supra* ¶ 96.

²⁹⁴ As noted above, however, applications granted under the immediate approval procedures are subject to the Commission's reconsideration procedures. See *supra* note 258.

interest.²⁹⁵ The *NPRM* explained that this proposed ten percent ownership threshold would mirror the ownership disclosure requirements that currently apply to most common carrier applicants under the Commission's licensing rules.²⁹⁶ The Commission also asked whether a lower disclosure threshold, such as an interest that exceeds five percent, may be appropriate.²⁹⁷ The *NPRM* also proposed to require similar ownership information for each foreign entity for which the petition seeks specific approval.²⁹⁸

112. The Departments requested that we adopt a five percent disclosure requirement, stating that “[i]dentifying owners between five and ten percent provides a greater opportunity to ensure that unaffiliated foreign investors are not acting in concert with each other.”²⁹⁹ They also stated that, depending on a company's ownership structure, “company owners between five and ten percent may have the potential to exert influence on company operations sufficient to raise possible law enforcement or national security concerns.”³⁰⁰ Industry commenters oppose a lower threshold.³⁰¹ Verizon, however, suggested that we require disclosure of only those investors with voting power in a licensee. Verizon argues that “an individual or entity's equity interest in a company is not meaningful as a measure of control because without voting power, the entity has limited – if any – authority to influence decisions.”³⁰²

113. To ensure that the disclosure requirement in the context of foreign ownership of common carrier and aeronautical radio station licensees is consistent with the ownership disclosure requirements that currently apply to most common carrier applicants under the Commission's licensing rules, we adopt

²⁹⁵ See *NPRM*, 26 FCC Rcd at 11735, ¶ 62.

²⁹⁶ *NPRM*, 26 FCC Rcd at 11735, ¶ 62. See 47 C.F.R. §§ 1.919, 1.948, 1.2112(a) (specifying, *inter alia*, ownership disclosure requirements for Wireless Radio Services applicants), FCC Form 175 (Application to Participate in an FCC Auction), & FCC Form 602 (Ownership Disclosure Information for the Wireless Telecommunications Services, Schedule A). With respect to Satellite Radio Services, applicants for new satellite space station licenses must disclose their ten percent interest holders, while applicants for new satellite earth station licenses must file discrete ownership information only to the extent they have foreign ownership in excess of the 25 percent benchmark in section 310(b)(4). Applications to assign or transfer control of space and earth station licenses must also include discrete ownership information for the assignee/transferee. See FCC Form 312 (Application for Satellite Space and Earth Station Authorizations, Main Form – Questions 34 & 40; Schedule A – Question A8.). Applicants for aeronautical fixed and aeronautical en route station licenses are required to provide ownership information only to the extent they have foreign ownership in excess of the 25 percent benchmark in section 310(b)(4). See 47 C.F.R. § 87.19; FCC Form 601 (Main Form – Question 48b).

²⁹⁷ *NPRM*, 26 FCC Rcd at 11736, ¶ 62 & n.126.

²⁹⁸ *Id.* at 11736, ¶ 63.

²⁹⁹ DOJ/DHS *NPRM* Comments 10.

³⁰⁰ *Id.*

³⁰¹ See, e.g., T-Mobile *NPRM* Comments at 6 (stating that the vast majority of companies already track and report this information as part of the wireless licensing process, that complying with a lower reporting threshold would be unnecessarily burdensome, especially for widely held companies, and that it would offer no corresponding benefits); Verizon *NPRM* Comments at 18 (asserting that a five percent threshold could greatly increase the number of entities from which information must be gathered and reported without providing any meaningful information to the Commission). See also SIA *NPRM* Comments at 9-10 (asking the Commission to refrain from requiring disclosure of non-controlling interests held in widely-held publicly traded companies, pension funds, and investment funds, except where a single non-U.S. investor or group of investors would have an ownership or voting interest in the licensee of 25 percent or more).

³⁰² Verizon *NPRM* Comments at 18; see also USTelecom *NPRM* Reply at 4 (urging the Commission to consider Verizon's proposal as a means to streamline the foreign ownership review process and thereby increase foreign investment potential).

the ten percent disclosure threshold proposed in the *NPRM*. Specifically, all section 310(b)(4) petitions for declaratory ruling must contain the name, address, citizenship, and principal business(es) of any individual or entity, regardless of citizenship, that directly or indirectly holds or would hold, after effectuation of any planned ownership changes described in the petition, at least ten percent of the equity or voting interests in the controlling U.S. parent of a common carrier or aeronautical radio station licensee or a controlling interest. We also require that petitions for declaratory ruling filed by common carrier licensees subject to section 310(b)(3) forbearance contain the same information for such interests in the common carrier licensee. Petitioners will also be required to provide the percentage of equity and voting interest held or to be held by each such “disclosable interest holder” (to the nearest one percent). It is our view that this ownership information is necessary for the Commission to verify the principal stakeholders and ultimate control of the U.S. parent company of a common carrier or aeronautical licensee, in the case of section 310(b)(4) review, and in a common carrier licensee, in the case of petitions filed under our section 310(b)(3) forbearance approach, and that requiring its submission would impose a minimal burden on petitioners.³⁰³

114. We do not adopt a lower, more stringent ownership disclosure threshold, such as a five percent threshold as requested by the Departments. We find that adopting a ten percent disclosure threshold is reasonable, and observe that, under a separate provision of the rules, licensees will be required to identify and seek specific approval for foreign investors holding interests greater than five percent (subject to an exception for certain ten percent interests).³⁰⁴ We find that this specific approval requirement for foreign investors addresses the Departments’ concern that we should require petitioners to disclose all five percent interest holders, regardless of citizenship. For this reason, we believe this proposal should preserve a meaningful opportunity for the Departments to review applications for national security and law enforcement concerns. We also do not adopt Verizon’s suggestion that we require disclosure of only those investors with voting power in a licensee. We are not convinced on the basis of this record that we should limit our disclosure requirements to include only those investors that possess voting rights in a company. Such an approach would depart from Commission precedent that reads section 310(b) to evince Congress’ separate concern with the scope of foreign equity interests in a licensee and its parent company regardless of whether they confer control. In addition, we are concerned that non-voting equity investors may have the interest and ability in a particular case to actively participate in the affairs of companies in which they invest.³⁰⁵

115. We will require petitions to include a percentage estimate of the licensee’s and/or U.S. parent’s aggregate direct and indirect foreign equity and voting interests, a general description of the methods used to determine the percentages, and a statement addressing the circumstances that prompted the filing of the petition for declaratory ruling and demonstrating that the public interest would be served by grant of the petition. The rules will also require petitioners to describe the ownership and control structure of the U.S. parent, under section 310(b)(4), and of the common carrier licensee, under our section 310(b)(3) forbearance approach, including an ownership diagram and identification of the real

³⁰³ T-Mobile, for example, states that a ten percent information disclosure requirement is reasonable. T-Mobile NPRM Comments at 5-6.

³⁰⁴ See *supra* Section IV.B.3.a.

³⁰⁵ For example, in adopting the equity/debt plus (EDP) rule in the context of the mass media attribution rules, the Commission observed, *inter alia*, that preferred stockholders which do not have voting rights in an entity “might exert significant influence through contractual rights or other methods of access to a licensee,” such as negotiating for the right to select the persons who will run for the board of directors. See *Broadcast Attribution Reconsideration Order*, 16 FCC Red at 1104, ¶ 14 (citing 1999 *Broadcast Attribution Order*, 14 FCC Red at 12582-83, ¶ 48).

party-in-interest disclosed in any companion licensing or spectrum leasing applications.³⁰⁶ Many applicants and licensees already provide ownership diagrams in their petitions and applications. This practice has proven to be useful to Commission staff in clarifying relationships among different entities and individuals holding ownership interests, particularly in applicants or licensees that have a complex organizational structure. We find that requiring an ownership diagram will impose a minor burden on petitioners which will be more than offset by the significant benefits that will accrue to the Commission in processing petitions as expeditiously as possible.

116. We also adopt the proposal in the *NPRM* that section 310(b)(4) petitions include ownership information for each foreign individual or entity for which the petition seeks specific approval: specifically, their names, citizenship, principal businesses, and the percentage of equity and/or voting interest held or to be held by the foreign investor (to the nearest one percent).³⁰⁷ This same requirement will apply to petitions for declaratory ruling filed by common carrier licensees subject to section 310(b)(3) forbearance. Where the named foreign investor is a corporation or other business entity, the petition shall identify each of the named foreign investor's direct or indirect ten percent interest holders, specifying each by name, citizenship, principal businesses, and percentage of equity and/or voting interest held in the named foreign investor.³⁰⁸ We find that this ownership information is necessary for the Commission to verify the identity and ultimate control of the foreign investor for which the petitioner seeks specific approval.³⁰⁹

2. Methodology for Calculating Disclosable Interests and Foreign Investor Interests

117. In support of the ownership disclosure rules discussed above, we codify in sections 1.992 and 1.993 of the new rules our established methodology for calculating a petitioner's disclosable interest holders, in order to make that methodology more readily available to the public. We will also require that petitioners requesting specific approval for named foreign investors use the same methodology to calculate the foreign investors' equity and voting interests in the controlling U.S. parent of a common carrier and aeronautical licensee, under section 310(b)(4), and in a common carrier licensee subject to section 310(b)(3) forbearance. The rules reflect the established Commission methodology for determining the level of foreign equity and voting interests that are held directly and/or indirectly in the U.S. parent of a common carrier or aeronautical licensee that is the subject of a section 310(b)(4) petition.³¹⁰ We also clarify here, however, the insulation standard for limited partners of a common

³⁰⁶ See *NPRM*, 26 FCC Rcd at 11736, ¶ 62. See also DOJ/DHS *NPRM* Comments at 10 (supporting the *NPRM* proposal to require a description of the control structure of the U.S. parent, including an ownership diagram and/or identification of the real party-in-interest disclosed in any companion licensing or spectrum leasing applications).

³⁰⁷ See *NPRM*, 26 FCC Rcd at 11736, ¶ 63.

³⁰⁸ See *id.* No commenter objected to this proposal. The Departments supported the proposal but requested that we adopt a five percent disclosure threshold. DOJ/DHS *NPRM* Comments at 10. Given our decision to require that licensees seek specific approval for a foreign investor or "group" that would itself hold an interest of greater than five percent in a licensee or its U.S. parent (subject to an exception for certain ten percent interests), we find it unnecessary and unduly burdensome to require petitioners to disclose the foreign investor's five percent interest holders. See *supra* ¶¶ 44-68.

³⁰⁹ See *NPRM*, 26 FCC Rcd at 11736, ¶ 63. See also DOJ/DHS *NPRM* Comments at 10 (concurring that this information is necessary to verify the identity and ultimate control of the foreign investors for which the petitioner seeks approval). We find that the Commission's statutory obligation to pass upon the propriety of foreign investment under section 310(b)(3) and section 310(b)(4) amply justifies this information collection. See *NPRM*, 26 FCC Rcd at 11736, ¶ 63 n.127.

³¹⁰ *Foreign Ownership Guidelines*, 19 FCC Rcd at 22627-31 (Section E - Use of the "Multiplier"). See also *NPRM*, 26 FCC Rcd at 11736-37, ¶¶ 64-66.

carrier or aeronautical licensee or its U.S. parent, or of any intermediate entity in their vertical chains of ownership, that is organized as a limited partnership.³¹¹ We also clarify the appropriate methodology for calculating voting interests held in U.S. parent companies of common carrier or aeronautical licensees through intervening limited liability companies, and in a common carrier licensee through intervening limited liability companies.³¹² We discuss each of these issues below.

118. The rules we codify today for calculating interests were established in the Commission's case law. In *Wilner & Scheiner* and its progeny, the Commission set forth a standard for calculating both foreign equity interests and foreign voting interests held in a licensee under section 310(b)(3), and in a licensee's U.S. parent under section 310(b)(4), where such interests are held through intervening entities.³¹³ In calculating foreign equity interests, the Commission uses a multiplier to dilute the percentage of each investor's equity interest 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.³¹⁴ The resulting product yields the *pro rata* equity holdings of the investors in the licensee, under section 310(b)(3), or in the controlling U.S. parent company, under section 310(b)(4), separate from the voting power associated with the investors' shareholdings.³¹⁵

119. By contrast, in calculating foreign voting interests, the multiplier is not applied to any link in the vertical ownership chain that constitutes a controlling interest in the company positioned in the next lower tier.³¹⁶ In circumstances where voting interests are held through one or more intervening partnerships, the multiplier is not applied to dilute a general partnership interest or uninsulated limited partnership interest held by a foreign individual or entity. A general partner is considered to hold the same voting interest as the partnership holds in the company situated 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

³¹¹ *See id.* at 11736, ¶ 64.

³¹² *Id.*

³¹³ *Id.* at 11736-37, ¶¶ 65-66 (citing *Wilner & Scheiner I*, 103 F.C.C.2d 511; *Wilner & Scheiner II*, 1 FCC Rcd 12; *BBC License Subsidiary L.P.*, Memorandum Opinion and Order, 10 FCC Rcd 10968, 10973-74, ¶¶ 22-25 (1995) (*BBC License Subsidiary*)).

³¹⁴ *See NPRM*, 26 FCC Rcd at 11737, ¶¶ 65 (citing *BBC License Subsidiary*, 10 FCC Rcd at 10973-74, ¶¶ 24-25). For example, where a foreign entity holds a 20 percent equity and voting interest in Company A and Company A, in turn, holds a 40 percent equity interest in Company B, but has voting control of Company B, the percentage of Company B's equity capital supplied by Company A is 40 percent even if Company A controls Company B. The Commission has found that, in these circumstances, the percentage of that 40 percent equity capital reasonably attributable to the foreign investor is proportionate to the foreign investor's contribution to Company A, and use of the multiplier (20% x 40% = 8%) properly discounts the investor's participation in Company B. *See BBC License Subsidiary*, 10 FCC Rcd at 10973-74, ¶¶ 23-25 (overruling *Wilner & Scheiner II* insofar as it established a method of calculating foreign equity ownership or contributed capital interests which directly tracked the method used to determine foreign voting interests).

³¹⁵ *NPRM*, 26 FCC Rcd at 11737, ¶¶ 65 (citing *BBC License Subsidiary*, 10 FCC Rcd at 10973-74, ¶ 25).

³¹⁶ *NPRM*, 26 FCC Rcd at 11737, ¶ 66. Thus, in the example in note 314 above, the 20 percent foreign voting interest in Company A, which has voting control of Company B, would flow entirely to the next tier, and be attributed to Company B. Counting all of Company A's foreign interest is appropriate because, as the Commission has found, "actual control over the business ... is unlikely to be significantly attenuated through intervening companies." *BBC License Subsidiary*, 10 FCC Rcd at 10973, ¶ 23. *See also Wilner & Scheiner I*, 103 F.C.C. 2d at 522, ¶ 19.

same voting interest as the partnership holds in the company in the next lower tier of the vertical ownership chain.³¹⁷

120. Where a foreign investor holds an ownership interest indirectly in the U.S. parent company of a common carrier or aeronautical licensee through an intervening limited partnership, and the investor is effectively insulated from active involvement in partnership affairs, the U.S. parent may apply the multiplier in calculating the foreign investor's voting interest in the U.S. parent under section 310(b)(4).³¹⁸ Thus, in such a case, the foreign investor's voting interest will be calculated as equal to its equity interest in the U.S. parent.³¹⁹ Similarly, where the U.S. parent of a common carrier or aeronautical licensee is itself organized as a limited partnership, an insulated limited partner's voting interest in the U.S. parent will be calculated as equal to the limited partner's equity interest in the parent. A limited partner will be treated as insulated where the petitioner can demonstrate that the limited partner is effectively insulated "from active involvement in partnership affairs."³²⁰

121. The *NPRM* requested comment on whether the insulation standard used to calculate limited partnership interests in U.S. parents of common carrier and aeronautical licensees "is sufficient to

³¹⁷ *NPRM*, 26 FCC Rcd at 11737, ¶ 66 (citing *Intelsat, Ltd., Transferor, and Zeus Holdings Limited, Transferee*, Order and Authorization, IB Docket No. 04-366, DA 04-4034, 19 FCC Rcd 24820, 24829-30, ¶¶ 23-34 (Int'l Bur./WTB/OET 2004) (*Intelsat-Zeus*); *Applications of XO Communications, Inc.*, Memorandum Opinion, Order and Authorization, IB Docket No. 02-50, DA 02-2512, 17 FCC Rcd 19212, 19221 ¶ 22 (Int'l Bur./WTB/WCB 2002) (*XO Communications*); and decisions cited in the *Foreign Ownership Guidelines*, 19 FCC Rcd at 22628-29). As the Commission has recognized in the context of adopting its mass media attribution rules, "[t]he partners in a limited partnership, through contractual arrangements, largely have the power themselves to determine the rights of the limited partners. As a consequence, certain limited partners may be insulated from material involvement in partnership affairs whereas other limited partners may actually have the power to participate in the control of the company." *Reexamination of the Commission's Rules and Policies Regarding the Attribution of Ownership Interests in Broadcast, Cable Television and Newspaper Entities*, Memorandum Opinion and Order, MM Docket No. 83-46, FCC 86-410, 1 FCC Rcd 802, 803-04, ¶ 9 (1986) (footnotes omitted). *See also id.*, 1 FCC Rcd at 804, ¶ 10 (stating that "unlike the powers of a voting stockholder, the powers of a limited partner are not necessarily dependent upon the extent of his or her equity holdings").

³¹⁸ *NPRM*, 26 FCC Rcd at 11738, ¶ 67 (citing *Intelsat-Zeus*, 19 FCC Rcd at 24829-30, ¶ 24; *XO Communications*, 17 FCC Rcd at 19221, ¶ 22, 19222-23, ¶ 25; *Foreign Ownership Guidelines*, 19 FCC Rcd at 22628-29).

³¹⁹ For example, assume that U.S. Parent Corporation wholly owns and controls a common carrier licensee ("Licensee"). U.S. individuals hold 80 percent of U.S. Parent Corporation's total capital stock and voting stock, with the remaining 20 percent held by foreign individuals. U.S. Limited Partnership plans to acquire a 20 percent interest in U.S. Parent Corporation from an existing U.S. shareholder. All of U.S. Limited Partnership's constituent partners are U.S. individuals, with the exception of one foreign limited partner that holds a 40 percent partnership interest. Licensee files a petition for declaratory ruling in advance of closing to obtain Commission approval for foreign ownership of U.S. Parent Corporation to exceed the 25 percent benchmark in section 310(b)(4). Assuming U.S. Parent Corporation demonstrates in its petition that the foreign limited partner's interest in U.S. Limited Partnership is effectively insulated, the foreign limited partner's post-closing equity and voting interest in U.S. Parent Corporation would be calculated, using the multiplier, to be 8 percent (40% x 20% = 8%). If U.S. Parent Corporation is unable to make an insulation showing, the multiplier would not apply in calculating the foreign limited partner's voting interest in U.S. Parent Corporation. As a result, the foreign limited partner would be deemed to hold, post-closing, a 20 percent voting interest in U.S. Parent Corporation (*i.e.*, the same voting interest as U.S. Limited Partnership would hold).

³²⁰ *XO Communications*, 17 FCC Rcd at 19221, ¶ 22. While a licensee has flexibility in the manner in which it chooses to demonstrate insulation, the Commission assumes effective insulation of a foreign limited partner for purposes of calculating compliance with the section 310(b) foreign ownership limits if the licensee or applicant demonstrates that the foreign limited partner conforms to the specific insulation criteria for exemption from attribution under the media ownership attribution rules. *Id.* n.66.

support a presumption that an insulated limited partner will not be materially involved in managing partnership affairs.”³²¹ It also sought comment on whether the same principles should govern our consideration of limited liability companies (“LLCs”) and limited liability partnerships (“LLPs”). We did not receive any comments on either of these issues. In the absence of any such comments, we do not believe it is appropriate to revise our current insulation standard, which applies to limited partnership interests held in a common carrier or aeronautical licensee or its U.S. parent, or in any intermediate entity in their vertical chains of ownership.

122. However, we take this opportunity to clarify the insulation, or “active involvement,” standard. We will treat an interest as insulated only where the governance documents of the limited partnership prohibit the limited partner from becoming actively involved in the management or operation of the partnership and limit the limited partner’s voting or consent rights to the investor protections in section 1.993 of the new rules. Notwithstanding the inclusion of such limitations, a petitioner shall not treat a limited partner as insulated if the U.S. parent or licensee has actual knowledge of material involvement by the limited partner. We will maintain current policy that treats an insulated limited partner as having a voting interest in the limited partnership that is equal to its equity interest. No commenter addressed whether we should change this aspect of current policy and afford an insulated limited partner treatment akin to that of a holder of non-voting stock in a corporation.³²²

123. The *NPRM* also asked whether the Commission should codify a list of investor protections which would not, in themselves, result in a limited partner being deemed an uninsulated limited partner.³²³ No commenter addressed this issue. We find that the matters listed in the *NPRM* are properly considered usual and customary investor protections, and we incorporate these matters in the new rules for calculating equity and voting interests held in or through a limited partnership.³²⁴ These matters will consist of the following: (1) the power to prevent the sale or pledge of all or substantially all of the assets of the limited partnership or a voluntary filing for bankruptcy or liquidation; (2) the power to prevent the limited partnership from entering into contracts with majority investors or their affiliates; (3) the power to prevent the limited partnership from guaranteeing the obligations of majority investors or their affiliates; (4) the power to purchase an additional interest in the limited partnership to prevent the dilution of the partner’s *pro rata* interest in the event that the limited partnership issues additional instruments conveying interests in the partnership; (5) the power to prevent the change of existing legal rights or preferences of the limited partners, as provided in the limited partnership agreement or other operative agreement; (6) the power to vote on the removal of a general partner in situations where the general partner is subject to bankruptcy, insolvency, reorganization, or other proceedings relating to the

³²¹ *NPRM*, 26 FCC Rcd at 11738-39, ¶ 68.

³²² *Id.* at 11738-39, ¶ 68 (requesting comment on this issue).

³²³ *Id.* at 11739, ¶ 69.

³²⁴ These matters are consistent with the minority investor protections the Commission has found permissible in the context of its mass media attribution rules. The Commission has generally permitted nonattributable investors to hold certain minority investor protection rights, including the right to approve certain corporate matters that would alter, fundamentally, the nature and value of their investments. *See, e.g., Paxson Management Corporation and Lowell W. Paxson (Transferors) and CIG Media LLC (Transferee)*, Memorandum Opinion and Order, FCC 07-233, 22 FCC Rcd 22224, 22231, ¶ 19 (2007) (“Approval rights permitted in the past have included such fundamental corporate matters as issuance of stock; amendments to the certificate of incorporation; acquisition or disposition of assets constituting more than 10% of the company’s market or book value; merger, sale, liquidation, bankruptcy or winding-up of any entity; and certain transactions outside the ordinary course of business.”) (citations omitted). As discussed in Section IV.B.3.a, we adopt substantially the same list of investor protections for purposes of the ten percent exception from our specific approval requirements as applied to foreign interests held directly or indirectly in a privately held corporation. *See supra* ¶ 66.

relief of debtors; adjudicated insane or incompetent by a court of competent jurisdiction (where the general partner is a natural person); convicted of a felony; or otherwise removed for cause, as determined by an independent party; (7) the power to prevent the amendment of the limited partnership agreement or other organizational documents of the partnership with respect to the matters described above. Under the new rules, the Commission may consider, on a case-by-case basis, whether investor protections other than those listed in the rule should be permissible in the context of a particular licensee's petition for declaratory ruling.

124. We will apply to LLCs and LLPs the same principles that we are adopting for the calculation of voting interests in limited partnerships.³²⁵ Thus, for example, where a foreign investor holds an interest indirectly in the U.S. parent of a common carrier or aeronautical licensee through an intervening LLC, and the investor is effectively insulated from active involvement in the affairs of the LLC, the U.S. parent may apply the multiplier in calculating the foreign investor's voting interest as well as its equity interest in the U.S. parent.³²⁶ An ownership interest in an LLC or LLP will be treated as insulated where the governance documents of the LLC or LLP prohibit the interest holder from becoming actively involved in the management or operation of the LLC or LLP and limit the holder's voting or consent rights to the investor protections in section 1.993 of the new rules.³²⁷ Notwithstanding the inclusion of such limitations, a petitioner shall not treat the interest holder as insulated if the U.S. parent or licensee has actual knowledge of material involvement by the interest holder.

125. As discussed in the *NPRM*, the Commission's broadcast attribution rules treat LLCs and LLPs in the same manner as limited partnerships.³²⁸ The Commission found in its *1999 Broadcast Attribution Order* that LLCs were comparable to limited partnerships in terms of organization flexibility and that, even where a company elected a "corporate form" of governance, owners of the enterprise were still afforded sufficient discretion under state law to retain some level of operational control on their own part.³²⁹ The Commission thus declined to differentiate its treatment of LLCs based on whether their management form is centralized or decentralized. It also concluded in the *1999 Broadcast Attribution Order* that it would treat LLPs in the same manner as limited partnerships and LLCs.³³⁰ We similarly find no basis in the record of this proceeding to differentiate between these alternative forms of business

³²⁵ *NPRM*, 26 FCC Rcd at 11739, ¶ 70.

³²⁶ For example, assume that U.S. Parent Corporation wholly owns and controls a common carrier licensee ("Licensee"). A foreign individual holds a 40 percent, non-managing membership interest in U.S. LLC, which plans to acquire 20 percent of the total capital stock and voting stock of U.S. Parent Corporation from an existing U.S. shareholder. (U.S. individuals hold all other membership interests in U.S. LLC.) Existing foreign shareholders would continue to hold an aggregate 20 percent of the equity and voting interests in U.S. Parent Corporation. Licensee files a petition for declaratory ruling in advance of closing to obtain Commission approval for foreign ownership of U.S. Parent Corporation to exceed the 25 percent limit in section 310(b)(4). Assuming the foreign LLC member's interest in U.S. LLC is properly insulated, the foreign member's post-closing equity and voting interest in U.S. Parent Corporation would be calculated, using the multiplier, to be 8 percent (40% x 20% = 8%). If the foreign LLC member's interest in U.S. LLC is not properly insulated, the multiplier would not apply in calculating the foreign member's voting interest in the U.S. parent. As a result, the foreign member would be deemed to hold, post-closing, a 20 percent voting interest in the U.S. parent (*i.e.*, the same voting interest as U.S. LLC).

³²⁷ *See supra* ¶¶ 122-123.

³²⁸ *NPRM*, 26 FCC Rcd at 11739, ¶ 70 (citing *1999 Broadcast Attribution Order*, 14 FCC Rcd 12559, 12619-20, ¶¶ 138-140 (1999), *recon. granted on other grounds*, 16 FCC Rcd 1097 (2001), *stayed*, 16 FCC Rcd 22310 (2001)).

³²⁹ *Id.* at 11739, ¶ 70.

³³⁰ *Id.*

association for purposes of calculating voting interests held in common carrier and aeronautical licensees and their U.S. parent companies.³³¹

126. We additionally find that it is reasonable for the Commission to rely on a petitioner's certification that it has calculated the ownership interests disclosed in its petition based upon its review of the Commission's rules and that the interests disclosed satisfy each of the pertinent standards and criteria required by the rules.³³² As noted in the *NPRM*, the Commission relies on certifications of compliance with its rules in numerous licensing and related contexts, including compliance with the foreign ownership limitations in section 310(b), reporting of disclosable interest holders under common carrier licensing rules, and disclosure of attributable interests under the media ownership rules.³³³ SIA supports use of a certification, which it states is a "well-established practice, and avoids imposing additional burdens on filers (to proactively produce evidence of compliance) and Commission staff (to review such evidence to confirm compliance, even in circumstances where compliance is not in doubt).³³⁴ No commenter opposed reliance on certifications. We will therefore include in section 1.991 of the rules a provision allowing petitioners to certify to compliance with our ownership disclosure rules in their petitions for 310(b)(3) forbearance review and section 310(b)(4) review.

3. Other Content Requirements

127. As discussed in paragraph 92 above, the rules will require applicants, licensees, and spectrum lessees to file a joint petition for declaratory ruling where the entities are under common control and contemporaneously hold, or are contemporaneously filing applications for, common carrier or aeronautical licenses or spectrum leasing arrangements. Where the joint petitioners have different disclosable interest holders and/or request specific approval for different foreign investors, such information should be set out separately for each joint petitioner.³³⁵ In addition, section 1.991 of the rules will require all petitioners to state whether they request a ruling under our section 310(b)(3) forbearance policy and/or under section 310(b)(4).

128. We have also modified section 1.991, as proposed in the *NPRM*, to eliminate the requirement that petitions list all of a petitioning licensee's or lessee's call signs and spectrum leasing file numbers. T-Mobile observes that some wireless companies hold hundreds or even thousands of wireless licenses and asserts that complying with this requirement would impose substantial burdens on them

³³¹ Where the petitioner is organized as an LLC or an LLP and demonstrates in its petition that it is governed in a manner similar to a corporation, we will entertain the request of a petitioner that we treat the LLC or LLP in the same manner as a corporation. Such a request must be accompanied by a copy of the governance documents of the LLC or LLP and a description of the members' respective voting rights and roles in managing the affairs of the company.

³³² See *NPRM*, 26 FCC Rcd at 11740, ¶ 71.

³³³ *Id.* at 11740, ¶ 71 & n.142 (citing, as examples, FCC Form 312, Application for Satellite Space and Earth Station Authorizations, Main Form – Questions 29-33 (foreign ownership certification); FCC Form 601, Application for Radio Authorization: Wireless Telecommunications Bureau, Public Safety and Homeland Security Bureau, Main Form – Questions 44-48 (foreign ownership certification); FCC Form 602, FCC Ownership Disclosure Information for the Wireless Telecommunications Services, Main Form – p. 1 (requiring certification of applicant's disclosable interest holders); FCC Form 301, Application for Construction Permit for Commercial Broadcast Station, p. 2, Section II, Legal (requiring certification that the application satisfies each of the pertinent standards and criteria set forth in the application instructions and worksheets, including identification of all parties to the application and compliance with the foreign ownership limitations in section 310 of the Act)).

³³⁴ See SIA *NPRM* Comments at 10.

³³⁵ Joint petitioners may have different disclosable interest holders because, although they would be under 100 percent common control, they may not share 100 percent common ownership.

without producing any tangible benefits.³³⁶ We agree that it is unnecessary to require the listing of call signs and spectrum leasing file numbers and have eliminated this provision from the rules.

D. Filing and Processing of Petitions for Declaratory Rulings

129. The Commission proposed in the *NPRM* to continue to place section 310(b)(4) petitions on public notice as accepted for filing after International Bureau staff has reviewed the petition for completeness; ensure that the appropriate Executive Branch agencies receive a copy of the petition; and act on the petition after the agencies have completed their review and in light of any comments or objections that the agencies or other interested parties file for the record.³³⁷ The Commission stated that it would continue to act on section 310(b)(4) petitions by public notice or formal written order, and, unless otherwise specified in the ruling, the ruling would be issued subject to the standard terms and conditions adopted in this proceeding and codified in the Commission's rules.³³⁸ At the same time, the Commission sought comment on whether the Commission should extend its current "streamlined" processing procedures to include a broader range of section 310(b)(4) petitions.³³⁹ The Commission also asked whether there may be additional ways to accelerate the section 310(b)(4) review process.³⁴⁰

130. In the *Foreign Participation Order*, the Commission adopted "streamlined" processing procedures for certain types of section 310(b)(4) petitions, including any petition for declaratory ruling that it would not serve the public interest to deny (1) a Title III common carrier license to a particular entity; (2) permission for an existing common carrier radio licensee to exceed 25 percent indirect foreign ownership; and (3) permission to increase a licensee's level of non-controlling indirect foreign ownership when permission to exceed 25 percent has already been granted.³⁴¹ The Commission stated that it would not streamline petitions that also involve an assignment of license or a transfer of control or any initial licensing applications, which involve service-specific rules and other portions of Title III of the Act.³⁴² Commission staff retained the discretion to deem a petition ineligible for streamlined processing either because it raises market power concerns or because an Executive Branch agency raises concerns with respect to issues within its expertise.³⁴³ The Commission observed in the *NPRM* that, as a practical

³³⁶ T-Mobile *NPRM* Comments at 6, citing to the *NPRM*'s Appendix, proposed 47 C.F.R. § 1.991(b)(1). T-Mobile states that "[i]t would be more reasonable to simply require the disclosure of the parent company's licensee subsidiaries and affiliates to which the Section 310(b)(4) ruling would apply" and that "interested parties would have sufficient information to search the Commission's Universal Licensing System for the licenses and leases held." *Id.* at 6-7.

³³⁷ *NPRM*, 26 FCC Rcd at 11740, ¶ 73. Typically, the Executive Branch agencies contact the petitioner directly, request any additional information the agencies deem necessary to their review, and, in particular cases, engage in discussions and the negotiation of a security agreement or other arrangement, such as a letter of assurances, with the petitioner and affiliated entities. These procedures are not subject to notice and comment or modification in this proceeding. *Id.* at 11740, n.143.

³³⁸ *Id.* at 11740, ¶ 73.

³³⁹ *Id.* at 11741, ¶ 75. Streamlined petitions have a 14-day public notice period and, unless a formal opposition is filed or the petition is removed from streamlined processing at the discretion of Commission staff, they are granted automatically, effective on the 15th day after public notice. Petitions that are not eligible for streamlined processing have a 28-day public notice period. Non-streamlined petitions and petitions that are removed from streamlined processing within the 14-day public notice period are granted by public notice or order. *See id.* at 11741, ¶ 74 n.144.

³⁴⁰ *Id.* at 11741, ¶ 76.

³⁴¹ *Foreign Participation Order*, 12 FCC Rcd at 24033, ¶ 323.

³⁴² *Id.*

³⁴³ *Id.* at 24033, ¶ 324.

matter, very few section 310(b)(4) petitions are eligible for streamlined processing under the standards established in the *Foreign Participation Order* because most petitions are filed in connection with an application for an initial license or to assign or transfer control of a license, or in connection with a spectrum leasing arrangement.³⁴⁴

131. Many industry commenters ask that we extend our streamlined processing procedures and further modify our procedures to reduce the period of time between the filing of a petition and Commission action on it. SIA supports extending the current streamlined procedures to all section 310(b)(4) petitions, with further review permitted in the event the Executive Branch raises national security concerns.³⁴⁵ Vodafone recommends, as part of its proposed “notice framework,” that all notices of foreign ownership be deemed automatically approved 30 days after receipt, unless the Commission blocks the investment or indicates that Commission action will be delayed because of concerns raised by the Executive Branch.³⁴⁶ USTelecom asks that we establish a specific timeline, such as 90 days, for Executive Branch review.³⁴⁷ The Departments ask that any extension of the streamlined procedures be accompanied by “an extended timeframe which would allow the Departments adequate time, as necessary, to seek further information from petitioners and to properly evaluate that information.”³⁴⁸ The Departments state that they otherwise may not be able to meet shorter deadlines despite their best efforts.³⁴⁹

132. We are concerned that the proposed changes offered by industry commenters would compromise the ability of the Commission and relevant Executive Branch agencies to engage in a meaningful review of petitions for national security and law enforcement concerns and to remedy those concerns as needed. We find that several considerations weigh in favor of retaining the Commission’s current approach to streamlining section 310(b)(4) petitions and extending that approach to petitions filed under our section 310(b)(3) forbearance approach. First, we anticipate that adoption of the rules set out in this Second Report and Order will reduce the number of petitions that licensees will need to file after issuance of an initial ruling and reduce the amount of information required to be submitted in petitions.³⁵⁰

³⁴⁴ *NPRM*, 26 FCC Rcd at 11741, ¶ 75.

³⁴⁵ SIA *NPRM* Comments at 9 (stating that this change will “provide filers and investors with a greater level of predictability regarding the Section 310(b)(4) process, and will ease an unnecessary administrative burden on Commission staff”).

³⁴⁶ See Vodafone *NPRM* Comments at 30-31. See also *supra* Section IV.B.1, ¶ 35. Vodafone emphasizes that the Commission should not block an investment, or delay action, except on grounds recognized in the *Foreign Participation Order*. Vodafone *NPRM* Comments at 31 (citing *Foreign Participation Order*, 12 FCC Rcd at 23898, ¶ 13 (stating that the Commission reserves the right to block an investment in the exceptional case where the Commission finds the investment poses a very high risk to competition) and *id.* at 23920-21, ¶¶ 63-66 (stating that the Commission will accord deference to Executive Branch expertise with respect to national security, law enforcement, foreign policy and trade policy)).

³⁴⁷ USTelecom *NPRM* Reply at 6-7 (stating that one of the “major hurdles” in seeking foreign ownership approval is “the substantial time it takes for companies to prepare their application and for the Commission to complete its review”).

³⁴⁸ DOJ/DHS *NPRM* Comments at 11 (stating that “[i]n order to adequately review these complex [petitions], the Departments frequently require further information from petitioners, and petitioners need some amount of time to properly respond to those requests”).

³⁴⁹ *Id.*

³⁵⁰ See, e.g., Section IV.B.5 (allowing a licensee’s subsidiaries and affiliates, as defined in the rules, to rely on the licensee’s foreign ownership ruling, rather than filing petitions in their own names); Section IV.B.6 (allowing the insertion of new, foreign-organized entities into the licensee’s approved vertical ownership chain under certain circumstances without requiring the filing of a new petition for declaratory ruling); Section IV.B.7 (eliminating the (continued....))

Thus, we expect that, overall, the effect of the rules adopted in this Second Report and Order will be to reduce substantially the costs and burdens, including the regulatory delay, associated with foreign investment in common carrier and aeronautical licensees. Second, where a petition is filed in connection with an application for an initial license or a transfer/assignment of license, we believe it would be imprudent to allow for automatic grant of the petition 14 days after issuing public notice under our streamlined procedures.³⁵¹ The pleading cycle in the licensing proceeding may extend beyond the 14-day pleading period for streamlined petitions, and comments or oppositions filed in the licensing proceeding may raise issues relevant to the petition. Third, we believe it would be difficult and unreasonable for the Commission to adopt a uniform period within which the Commission must act on a petition regardless of whether the Executive Branch has completed its review. As the Departments state, the review process involves the participation of the relevant Executive Branch agencies as well as the petitioners, which, we note, may require varying amounts of time to respond to the agencies' request for additional information.³⁵² And, we note that each case presents particular circumstances that may require negotiation of a security agreement among the parties. We therefore will maintain our current streamlining procedures for processing section 310(b)(4) petitions and the existing categories of section 310(b)(4) petitions subject to streamlined processing. We will also apply the same procedures to the processing of petitions for declaratory ruling under our section 310(b)(3) forbearance approach.

133. As a final matter, we adopt a general rule to provide guidance as to a licensee's obligation to obtain a section 310(b)(3) ruling when it has already received a section 310(b)(4) ruling and vice versa. Section 1.990 of the rules will provide that, where a common carrier licensee obtains a section 310(b)(4) ruling to allow foreign ownership of its U.S. parent to exceed 25 percent, but then seeks to accept foreign investment that would be held in the licensee through U.S.-organized entities that do not control the licensee, the licensee must file a petition for declaratory ruling under our section 310(b)(3) forbearance approach before such additional foreign interests, aggregated with any foreign interests held directly in the licensee, exceed 20 percent of the licensee's equity and/or voting interests.³⁵³ Conversely, where the licensee first obtains a foreign ownership ruling under our section 310(b)(3) forbearance approach and then, for example, a foreign-organized company seeks to acquire all of the capital stock of the licensee's controlling U.S. parent, the licensee must file (in conjunction with a section 310(d) application) a petition to obtain prior approval for its U.S. parent's foreign ownership under section 310(b)(4).³⁵⁴

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practice of issuing service- and geographic-specific rulings to minimize the need for licensees to file new petitions for declaratory ruling); Sections IV.B.1-4 (adopting streamlined requirements for identifying and obtaining prior approval of investments by named foreign investors).

³⁵¹ See *supra* note 339.

³⁵² DOJ/DHS NPRM Comments at 11.

³⁵³ For example, assume that a common carrier licensee ("Licensee") obtains a section 310(b)(4) ruling (in conjunction with a section 310(d) application) that its controlling U.S. Parent ("U.S. Parent"), which holds 75 percent of Licensee's equity and voting interests, may be wholly owned and controlled by Foreign Company X. Foreign Company Y then seeks to acquire 100 percent ownership and control of U.S. Entity A, which holds a non-controlling 25 percent equity and voting interest in Licensee. Licensee will need a separate ruling, under our section 310(b)(3) forbearance approach, before Foreign Company Y acquires indirectly, through U.S. Entity A, the 25 percent interest in Licensee. See also *First Report and Order*, 27 FCC Rcd at 9843-44, ¶ 28 & nn.62-63.

³⁵⁴ In this example, the chronological order of the transactions in the prior footnote is reversed. That is, assume that Licensee's controlling U.S. Parent ("U.S. Parent") holds 75 percent of Licensee's equity and voting interests, and U.S. Entity A holds a non-controlling 25 percent equity and voting interest in Licensee. Both U.S. Parent and U.S. Entity A are wholly owned by U.S. individuals. Licensee obtains a ruling under our section 310(b)(3) forbearance approach allowing Foreign Company Y to acquire indirectly a non-controlling 25 percent equity and voting interest (continued....)

E. Continued Compliance with Section 310(b) Declaratory Rulings

134. In the *NPRM*, the Commission also requested comment whether a licensee's controlling U.S. parent should be required to file periodically with the Commission a certification to demonstrate that it is in compliance with its foreign ownership ruling. The Commission asked whether, for example, it should require the U.S.-organized parent company that has received the section 310(b)(4) ruling to file a certification of compliance every four (4) years after the anniversary of the effective date of the ruling. Alternatively, the Commission asked whether it should require that licensees include a certification in their license renewal applications.³⁵⁵ SIA supports initial certifications, but not periodic certifications on a going-forward basis.³⁵⁶ Verizon also does not support periodic certifications.³⁵⁷ The Departments, on the other hand, stated that requiring the filing of periodic certification to demonstrate compliance with foreign ownership rulings will remind licensees of their obligations, ensure accountability, and inform the Commission and licensees of any potential divergences from their rulings.³⁵⁸

135. We will not require periodic certification of compliance with our rulings, but we will require certification whenever a licensee files an application with the Commission for a new license, a transfer of control, or an assignment of license that does not also require the filing of a petition for declaratory ruling under our section 310(b)(3) forbearance approach or under section 310(b)(4). We will also require certification in renewal applications.³⁵⁹ Based upon our experience, we believe that such a requirement is sufficient to remind licensees of their obligations, ensure accountability, and inform the Commission and licensees of any potential divergences from their rulings. In addition, we will give deference to Department requests that we require more frequent certifications as a condition on the granting of a license on a case-by-case basis, where appropriate to address law enforcement or national security concerns. We will make changes to the relevant FCC Forms (Forms 312, 601, 603, and 608) to the extent necessary so that this aspect of the applicant's certification to the information in the application is clear. We agree with commenters that there is no need to require certification of compliance outside of the application process. We remind licensees that they have a continuing obligation to monitor their foreign ownership and ensure that they remain compliant with the requirements of the Act, the rules we adopt today, and a licensee's particular foreign ownership ruling.³⁶⁰

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in Licensee by acquiring 100 percent ownership and control of U.S. Entity A. Foreign Company X then seeks to acquire 100 percent ownership and control of U.S. Parent. Licensee would need to obtain a separate section 310(b)(4) ruling (in conjunction with a section 310(d) application) before Foreign Company X acquires 100 percent ownership and control of U.S. Parent.

³⁵⁵ See *NPRM*, 26 FCC Rcd at 11741-42, ¶ 77.

³⁵⁶ SIA *NPRM* Comments at 10 (supporting reliance on a certification of a petitioner that it has calculated and reported its ownership interests in accordance with the rules, but stating that the Commission should not require the submission of subsequent certifications on a going-forward basis).

³⁵⁷ Verizon *NPRM* Comments at 19 (stating that there is no need to require periodic certification because "licensees have an obligation to comply with all elements of their authorizations" and, in a license renewal proceeding, "a licensee will need to certify to compliance with all aspects of the authorization").

³⁵⁸ DOJ/DHS *NPRM* Comments at 11. The Departments recommend a shorter timeframe, such as every two years, stating that certification would not impose a burden so long as companies are in compliance with their rulings. *Id.* at 11-12.

³⁵⁹ As SIA points out, licensees are already required to make certifications regarding their foreign ownership in order to acquire or renew licenses. SIA Comments at 10.

³⁶⁰ See *supra* ¶ 87.

F. Transition Issues

136. The *NPRM* did not propose to change retroactively the terms and conditions of any section 310(b)(4) ruling issued prior to the effective date of the rules adopted in this proceeding. The Commission in the *NPRM*, however, did propose to permit the controlling U.S. parent companies of licensees with an existing ruling to file a new petition for declaratory ruling under the rules adopted in this proceeding.³⁶¹ The Commission also sought comment on alternative approaches that would extend the benefits of the rules adopted in this proceeding to U.S. parent companies in a way that minimizes the need for them to return to the Commission for a new ruling. It asked, for example, whether, to the extent it modified or eliminated current policy with respect to non-WTO Member investment, it should adopt a rule that modifies all existing section 310(b)(4) rulings to incorporate the new policies. The Commission also asked whether, if it adopted a 100 percent aggregate allowance, we should adopt a rule that would incorporate this provision in all wireless carriers' section 310(b)(4) rulings in place of the current, standard 25 percent aggregate allowance. The Commission sought comment on whether there are public policy reasons to require in all cases that a U.S. parent company return to the Commission for a new ruling to obtain the benefits of the rules adopted in this proceeding.³⁶²

137. The Departments believe there are “strong public policy reasons” to require the filing of new petitions for declaratory ruling if licensees and their controlling U.S. parents seek to obtain the benefits of the new rules.³⁶³ Industry commenters favor modifying existing rulings to incorporate the changes we adopt without requiring the licensee or U.S. parent to request a new ruling, or suggest adopting simplified procedures that enable licensees with an existing ruling to take advantage of the new rules we adopt in this proceeding.³⁶⁴

138. We do not adopt a rule that changes the terms and conditions of existing foreign ownership rulings issued prior to the effective date of the rules adopted in this proceeding. Given the scope of the changes we are making to our foreign ownership rules and policies, we believe it is important to afford the Commission and the relevant Executive Branch agencies the opportunity to evaluate the potential effect of applying the new rules in each case where a licensee has already received a ruling. Thus, we will permit licensees that have received a ruling prior to the effective date of the new rules to file a new petition for declaratory ruling under the new rules, but we will not require them to do so. We will continue to apply our existing foreign ownership policies and procedures to such licensees within the parameters of their existing rulings. We will also afford them flexibility in the manner in which they request a new ruling from the Commission, should they decide to do so. For example, a licensee could request a new ruling as part of an application for a new license or spectrum leasing arrangement, or an

³⁶¹ *NPRM*, 26 FCC Rcd at 11742, ¶ 78.

³⁶² *Id.*

³⁶³ DOD/DHS *NPRM* Comments at 12. *See also id.* (stating that “[t]he Departments need an opportunity to review any proposed changes that may affect ownership and the products and services provided, since these factors may not have been evaluated in prior public interest determinations”).

³⁶⁴ AT&T *NPRM* Comments at 10 (stating that the Commission should modify all existing rulings to incorporate any new policies without requiring licensees to request new rulings); SIA *NPRM* Comments at 8 (same); *see also id.* (stating, in the alternative, that the Commission should issue a Public Notice providing licensees that have a ruling the opportunity to “opt in” to the new rules and, under any procedure, “the FCC should enable existing holders of Section 310(b)(4) rulings automatically to replace the current standard 25 percent aggregate allowance with a new 100 percent aggregate allowance); T-Mobile *NPRM* Comments at 7 (suggesting that we provide, at a minimum, a reasonable transition period during which a licensee’s U.S. parent could notify the Commission of the names of all of the U.S. parent’s subsidiaries and affiliates to which the licensee’s existing ruling would apply, even if the terms of the ruling remain the same).

application for consent to a transfer of control or assignment of license. Alternatively, the licensee could file a stand-alone petition for declaratory ruling at any time. We believe this flexibility, and the modified content requirements in the new rules, will minimize the costs and burdens associated with any new filing.

G. Other Issues

139. Intelsat and SIA ask that we relieve non-common carrier space station applicants from the requirement to respond to the section 310(b)-related questions in FCC Form 312 because section 310(b) does not apply to non-common carrier radio station licenses.³⁶⁵ The rules applicable to non-common carrier space station applicants are outside the scope of this proceeding. Thus, we do not address Intelsat's and SIA's requests to amend FCC Form 312 in the context of this Second Report and Order.

V. CONCLUSION

140. We adopt rules that apply to foreign ownership of common carrier radio station licensees and the controlling U.S. parents of common carrier radio station licensees. We also adopt rules that apply to foreign ownership of the controlling U.S. parents of aeronautical radio station licensees. We find that today's actions will continue to protect important interests related to national security, law enforcement, foreign policy and trade policy, while reducing regulatory burdens and costs, providing greater transparency and predictability, and facilitating investment U.S. telecommunications carriers and our nation's telecommunications infrastructure.

VI. PROCEDURAL ISSUES

A. Final Regulatory Flexibility Certification

141. The Regulatory Flexibility Act of 1980, as amended (RFA),³⁶⁶ requires that a final regulatory flexibility analysis be prepared for notice-and-comment rule making proceedings, unless the agency certifies that "the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities."³⁶⁷ The RFA generally defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction."³⁶⁸ In addition, the term "small business" has the same meaning as the term "small business concern" under the Small Business Act.³⁶⁹ A "small business concern" is one which: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA).³⁷⁰

³⁶⁵ Intelsat NPRM Comments at 4; SIA NPRM Comments at 4-5. All space station and earth station applications are filed on FCC Form 312. 47 C.F.R. § 25.110(b).

³⁶⁶ See 5 U.S.C. § 603. The RFA, *see* 5 U.S.C. § 601-612, has been amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), Pub. L. No. 104-121, Title II, 110 Stat. 857 (1996).

³⁶⁷ 5 U.S.C. § 605(b).

³⁶⁸ 5 U.S.C. § 601(6).

³⁶⁹ 5 U.S.C. § 601(3) (incorporating by reference the definition of "small business concern" in the Small Business Act, 15 U.S.C. § 632). Pursuant to 5 U.S.C. § 601(3), the statutory definition of a small business applies "unless an agency, after consultation with the Office of Advocacy of the Small Business Administration and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the Federal Register."

³⁷⁰ 15 U.S.C. § 632.

142. In this Second Report and Order, the Commission adopts rules that will apply to foreign ownership of common carrier and certain aeronautical radio station applicants, licensees and spectrum lessees (hereinafter referred to collectively as “licensees”). These rules will simplify the policies and procedures the Commission currently applies in reviewing foreign ownership of these licensees’ controlling U.S. parent companies under the discretionary provisions in section 310(b)(4) of the Act, 47 U.S.C. §§ 310(b)(4), while continuing to ensure that we have the information we need to carry out our statutory duties. The new rules will simplify to the same extent the policies and procedures that currently apply to Commission review of foreign ownership in common carrier licensees pursuant to the section 310(b)(3) forbearance policy that the Commission adopted in the *First Report and Order* in this proceeding.³⁷¹ The rules are designed to reduce to the extent possible the regulatory costs and burdens that our current foreign ownership policies and procedures impose on common carrier and aeronautical licensees, including those that are small entities; provide greater transparency and more predictability with respect to the Commission’s filing requirements and review process; and facilitate investment in U.S. carriers from new sources of capital, while continuing to protect important interests related to national security, law enforcement, foreign policy, and trade policy.

143. We estimate that the rule changes we are adopting will reduce the number of section 310(b) petitions for declaratory ruling filed with the Commission annually in the range of 40 to 70 percent as compared to the current regulatory framework.³⁷² We also anticipate a significant reduction in the time and expense associated with filing petitions. For example, licensees filing petitions for declaratory ruling under our section 310(b)(3) forbearance approach or under section 310(b)(4) will no longer be required to demonstrate the percentage of their equity and voting interests that are, or may be, held by investors from non-WTO Member countries.³⁷³ As another example, under the new rules licensees filing petitions will no longer be required to include requests for specific approval of named foreign investors unless a foreign investor would hold, in the licensee (in the case of a petition filed under section 310(b)(3) forbearance) or in the U.S. parent (in the case of a petition filed under section 310(b)(4)), an interest exceeding five percent, subject to an exception for certain ten percent interests.³⁷⁴

³⁷¹ 27 FCC Rcd 9832.

³⁷² This estimate is based on two reviews done by International Bureau staff. In the first review, based on the 21 section 310(b)(4) petitions filed with the Commission during a randomly-selected period (September 1, 2007 through August 31, 2008), staff concluded that adoption of the proposals and other options discussed in the *NPRM* would result in a more than 70 percent reduction in the number of petitions for declaratory ruling filed with the Commission annually, as compared to the current regulatory framework. In the second review, based on the 13 section 310(b)(4) petitions filed between January 1, 2011, and October 1, 2012, staff concluded that the rules adopted in this Order would result in at least a 40 percent reduction. We note that a large proportion of the filings during the first review period involved requests by licensees with existing foreign ownership rulings for approval, under section 310(b)(4), to acquire licenses in new wireless services being auctioned. In the second review period, these auctions had been completed and no auction-related petitions were filed. The lack of auction-related filings by licensees with existing foreign ownership rulings during the second review period accounts in large part for the difference between the higher 70 percent reduction figure and the 40 percent reduction figure for the two review periods. Significantly, industry commenters in this proceeding broadly supported elimination of the requirement that licensees with existing rulings return to the Commission for a new ruling when they apply for a license in a new service or geographic service area. *See supra* ¶ 107.

³⁷³ As USTR observes, this requirement imposes a “non-trivial burden on applicants by requiring them to demonstrate whether foreign investors are from a WTO or non-WTO Member.” USTR notes that the requirement “also imposes a not insignificant burden on FCC staff to evaluate the information.” *See USTR Letter, supra* note 19.

³⁷⁴ Industry commenters generally agree that, under our current requirements, companies face significant difficulties and costs in trying to ascertain the citizenship and principal places of business of their investors, which often hold (continued....)

144. Although the commenters in this proceeding did not quantify the extent to which current costs and burdens would be reduced by the proposals and other options raised in the *NPRM*, the qualitative descriptions they provided in the record, and the sheer volume of information that petitioners have had to produce in particular proceedings (and which the Commission has had to analyze in its decisions), leave no doubt that the current requirements impose significant costs and burdens that the new rules will reduce.

145. In summary, we believe that the new rules will reduce costs and burdens currently imposed on licensees, including those licensees that are small entities, and accelerate the foreign ownership review process, while continuing to ensure that we have the information we need to carry out our statutory duties. Therefore, we certify that the rules adopted in this Second Report and Order will not have a significant economic impact on a substantial number of small entities. The Commission will send a copy of this Order, including a copy of this Final Regulatory Flexibility Certification, to the Chief Counsel for Advocacy of the SBA.³⁷⁵ This final certification will also be published in the Federal Register.³⁷⁶

B. Paperwork Reduction Act of 1995

146. This Second Report and Order does not contain new or modified information collection requirements subject to the Paperwork Reduction Act of 1995, Public Law 104-13. The information collection requirements for the section 310(b) foreign ownership approval process are contained in OMB Control No. 3060-1163.³⁷⁷ In addition, therefore, this document does not contain any new or modified information collection burden for small business concerns with fewer than 25 employees, pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107-198, *see* 44 U.S.C. § 3506(c)(4).

C. Congressional Review Act

147. The Commission will include a copy of this Second Report and Order in a report to be sent to Congress and the Government Accountability Office pursuant to the Congressional Review Act. *See* 5 U.S.C. § 801(a)(1)(A).

VII. ORDERING CLAUSES

148. Accordingly, IT IS ORDERED, pursuant to the authority contained in Sections 1, 2, 4(i), 4(j), 10, 303(r), 309, 310, and 403 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 152, 154(i), 154(j), 160, 303(r), 309, 310 and 403, that this Second Report and Order IS ADOPTED and Parts 1 and 25 of the Commission rules ARE AMENDED as set forth in Appendix B to this Second Report and Order. The rule revisions in Appendix B will take effect 30 days after a summary of this Second Report and Order is published in the Federal Register.

149. IT IS FURTHER ORDERED that the Commission's Consumer and Governmental Affairs Bureau, Reference Information Center SHALL SEND a copy of this Second Report and Order, including the Final Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small

(Continued from previous page) _____
their interests indirectly through multiple investment vehicles and holding companies. *See supra* ¶ 45. USTelecom describes our current requirement as a "tortuous process of identifying each ultimate shareholder." USTelecom *NPRM Reply* at 5-6.

³⁷⁵ 5 U.S.C. § 605(b).

³⁷⁶ *Id.*

³⁷⁷ The Office of Management and Budget preapproved the information collection requirements at the *NPRM* stage of this proceeding, and the information collection requirements are adopted with nonsubstantial modification in this Second Report and Order.

Business Administration, in accordance with Section 603(a) of the Regulatory Flexibility Act, 5 U.S.C. § 601, *et seq.*

150. IT IS FURTHER ORDERED that this proceeding, IB Docket No. 11-133, IS HEREBY TERMINATED.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary

APPENDIX A

List of Commenters

Comments on the NPRM

AT&T Inc. (AT&T)
Department of Defense (DOD)
Department of Justice and Department of Homeland Security (“DOJ/DHS” or “the Departments”)
European-American Business Council (EABC)
GSM Association (GSMA)
Intelsat License LLC (Intelsat)
Minority Media and Telecommunications Council (MMTC)
Satellite Industry Association (SIA)
T-Mobile USA, Inc. (T-Mobile)
Verizon (Verizon)*
Vodafone Group (Vodafone)

Replies on the NPRM

CTIA-The Wireless Association® (CTIA)
European Telecommunications Network Operators’ Association (ETNO)
Organization for International Investment (OFII)
Sprint Nextel Corporation (Sprint)
United States Telecom Association (USTelecom)
Verizon*
Vodafone

Comments on the Forbearance Public Notice

AT&T
EABC
Verizon*
Vodafone

Replies on the Forbearance Public Notice

Deutsche Telekom AG and T-Mobile USA, Inc. (DT/T-Mobile)

*Verizon states that the Verizon companies participating in its filings (“Verizon”) are the regulated, wholly owned subsidiaries of Verizon Communications Inc. and Verizon Wireless.

APPENDIX B

Rules

Parts 1 and 25 of the Commission rules are amended as follows:

PART 1 – PRACTICE AND PROCEDURE

1. The authority citation for part 1 is amended to read as follows:

AUTHORITY: 47 U.S.C. 151, 154(i), 154(j), 155, 157, 225, 227, 303(r), 309 and 310.

2. Section 1.907 of Subpart F is amended to include the following definitions:

Spectrum leasing arrangement. An arrangement between a licensed entity and a third-party entity in which the licensee leases certain of its spectrum usage rights to a spectrum lessee, as set forth in Subpart X of this Part (47 C.F.R. §§ 1.9001 *et seq.*). Spectrum leasing arrangement is defined in § 1.9003.

Spectrum lessee. Any third party entity that leases, pursuant to the spectrum leasing rules set forth in Subpart X of this Part (47 C.F.R. §§ 1.9001 *et seq.*), certain spectrum usage rights held by a licensee. Spectrum lessee is defined in § 1.9003.

3. Subpart F is amended to add sections 1.990-1.994 to read as follows:

FOREIGN OWNERSHIP OF COMMON CARRIER, AERONAUTICAL EN ROUTE, AND AERONAUTICAL FIXED RADIO STATION LICENSEES

§ 1.990 Citizenship and filing requirements under section 310(b) of the Communications Act of 1934, as amended.

These rules establish the requirements and conditions for obtaining the Commission's prior approval of foreign ownership in common carrier, aeronautical en route, and aeronautical fixed radio station licensees and common carrier spectrum lessees that would exceed the 25 percent benchmark in section 310(b)(4) of the Act. These rules also establish the requirements and conditions for obtaining the Commission's prior approval of foreign ownership in common carrier (but not aeronautical en route or aeronautical fixed) radio station licensees and spectrum lessees that would exceed the 20 percent limit in section 310(b)(3) of the Act.

(a)(1) A common carrier, aeronautical en route or aeronautical fixed radio station licensee or common carrier spectrum lessee shall file a petition for declaratory ruling to obtain Commission approval under section 310(b)(4) of the Act, and obtain such approval, *before* the aggregate foreign ownership of any controlling, U.S.-organized parent company exceeds, directly and/or indirectly, 25 percent of the U.S. parent's equity interests and/or 25 percent of its voting interests. An applicant for a common carrier, aeronautical en route or aeronautical fixed radio station license or common carrier spectrum leasing arrangement shall file the petition for declaratory ruling required by this paragraph at the same time that it files its application.

(a)(2) A common carrier radio station licensee or spectrum lessee shall file a petition for declaratory ruling to obtain approval under the Commission's section 310(b)(3) forbearance approach, and obtain such approval, *before* aggregate foreign ownership, held through one or more intervening U.S.-organized entities that hold non-controlling equity and/or voting interests in the licensee, along with any foreign interests held directly in the licensee or spectrum lessee, exceeds 20 percent of its equity interests and/or

20 percent of its voting interests. An applicant for a common carrier radio station license or spectrum leasing arrangement shall file the petition for declaratory ruling required by this paragraph at the same time that it files its application. Foreign interests held directly in a licensee or spectrum lessee, or other than through U.S.-organized entities that hold non-controlling equity and/or voting interests in the licensee or spectrum lessee, shall not be permitted to exceed 20 percent.

Note 1 to § 1.990: Paragraph (a)(1) of this section implements the Commission's foreign ownership policies under section 310(b)(4) of the Act, 47 U.S.C. § 310(b)(4), for common carrier, aeronautical en route, and aeronautical fixed radio station licensees and common carrier spectrum lessees. It applies to foreign equity and/or voting interests that are held, or would be held, directly and/or indirectly in a U.S.-organized entity that itself directly or indirectly *controls* a common carrier, aeronautical en route, or aeronautical fixed radio station licensee or common carrier spectrum lessee. A foreign individual or entity that seeks to hold a controlling interest in such a licensee or spectrum lessee must hold its controlling interest indirectly, in a U.S.-organized entity that itself directly or indirectly controls the licensee or spectrum lessee. Such controlling interests are subject to section 310(b)(4) and the requirements of paragraph (a)(1) of this section. The Commission assesses foreign ownership interests subject to section 310(b)(4) separately from foreign ownership interests subject to section 310(b)(3).

Note 2 to § 1.990: Paragraph (a)(2) of this section implements the Commission's section 310(b)(3) forbearance approach adopted in the First Report and Order in IB Docket No. 11-133, FCC 12-93 (released August 17, 2012), 77 FR 50628 (Aug. 22, 2012). The section 310(b)(3) forbearance approach applies only to foreign equity and voting interests that are held, or would be held, in a common carrier licensee or spectrum lessee through one or more intervening U.S.-organized entities that *do not control* the licensee or spectrum lessee. Foreign equity and/or voting interests that are held, or would be held, directly in a licensee or spectrum lessee, or indirectly other than through an intervening U.S.-organized entity, are not subject to the Commission's section 310(b)(3) forbearance approach and shall not be permitted to exceed the 20 percent limit in section 310(b)(3) of the Act, 47 U.S.C. § 310(b)(3).

Example 1. U.S.-organized Corporation A is preparing an application to acquire a common carrier radio license by assignment from another licensee. U.S.-organized Corporation A is wholly owned and controlled by U.S.-organized Corporation B. U.S.-organized Corporation B is 51 percent owned and controlled by U.S.-organized Corporation C, which is, in turn, wholly owned and controlled by foreign-organized Corporation D. The remaining non-controlling 49 percent equity and voting interests in U.S.-organized Corporation B are held by U.S.-organized Corporation X, which is, in turn, wholly owned and controlled by U.S. citizens. Paragraph (a)(1) of this section requires that U.S.-organized Corporation A file a petition for declaratory ruling to obtain Commission approval of the 51 percent foreign ownership of its controlling, U.S.-organized parent, Corporation B, by foreign-organized Corporation D, which exceeds the 25 percent benchmark in section 310(b)(4) of the Act for both equity interests and voting interests. Corporation A is also required to identify and request specific approval in its petition for any foreign individual or entity, or "group," as defined in paragraph (d) of this section, that holds directly and/or indirectly more than five percent of Corporation B's total outstanding capital stock (equity) and/or voting stock, or a controlling interest in Corporation B, unless the foreign investment is exempt under § 1.991(i)(3).

Example 2. U.S.-organized Corporation A is preparing an application to acquire a common carrier radio license by assignment from another licensee. U.S.-organized Corporation A is 51 percent owned and controlled by U.S.-organized Corporation B, which is, in turn, wholly owned and controlled by U.S. citizens. The remaining non-controlling 49 percent equity and voting interests in U.S.-organized Corporation A are held by U.S.-organized Corporation X, which is, in turn, wholly owned and controlled by foreign-organized Corporation Y. Paragraph (a)(2) of this section requires that U.S.-organized

Corporation A file a petition for declaratory ruling to obtain Commission approval of the non-controlling 49 percent foreign ownership of U.S.-organized Corporation A by foreign-organized Corporation Y through U.S.-organized Corporation X, which exceeds the 20 percent limit in section 310(b)(3) of the Act for both equity interests and voting interests. U.S.-organized Corporation A is also required to identify and request specific approval in its petition for any foreign individual or entity, or “group,” as defined in paragraph (d) of this section, that holds an equity and/or voting interest in foreign-organized Corporation Y that, when multiplied by 49 percent, would exceed five percent of U.S.-organized Corporation A’s equity and/or voting interests, unless the foreign investment is exempt under § 1.991(i)(3).

Example 3. U.S.-organized Corporation A is preparing an application to acquire a common carrier radio license by assignment from another licensee. U.S.-organized Corporation A is 51 percent owned and controlled by U.S.-organized Corporation B, which is, in turn, wholly owned and controlled by foreign-organized Corporation C. The remaining non-controlling 49 percent equity and voting interests in U.S.-organized Corporation A are held by U.S.-organized Corporation X, which is, in turn, wholly owned and controlled by foreign-organized Corporation Y. Paragraphs (a)(1) and (a)(2) of this section require that U.S.-organized Corporation A file a petition for declaratory ruling to obtain Commission approval of foreign-organized Corporation C’s 100 percent ownership interest in U.S.-organized parent, Corporation B, and of foreign-organized Corporation Y’s non-controlling, 49 percent foreign ownership interest in U.S.-organized Corporation A through U.S.-organized Corporation X, which exceed the 25 percent benchmark and 20 percent limit in sections 310(b)(4) and 310(b)(3) of the Act, respectively, for both equity interests and voting interests. U.S.-organized Corporation A’s petition also must identify and request specific approval for ownership interests held by any foreign individual, entity, or “group,” as defined in paragraph (d) of this section, to the extent required by § 1.991(i).

(b) The petition for declaratory ruling required by paragraph (a) of this section shall be filed electronically on the Internet through the International Bureau Filing System (IBFS). For information on filing your petition through IBFS, see Part 1, Subpart Y and the IBFS homepage at <http://www.fcc.gov/ib>.

(c)(1) Each applicant, licensee, or spectrum lessee filing a petition for declaratory ruling required by paragraph (a) of this section shall certify to the information contained in the petition in accordance with the provisions of § 1.16 and the requirements of this paragraph. The certification shall include a statement that the applicant, licensee and/or spectrum lessee has calculated the ownership interests disclosed in its petition based upon its review of the Commission’s rules and that the interests disclosed satisfy each of the pertinent standards and criteria set forth in the rules.

(c)(2) Multiple applicants and/or licensees shall file *jointly* the petition for declaratory ruling required by paragraph (a) of this section where the entities are under common control and contemporaneously hold, or are contemporaneously filing applications for, common carrier licenses, common carrier spectrum leasing arrangements, or aeronautical en route or aeronautical fixed radio station licenses. Where joint petitioners have different responses to the information required by § 1.991, such information should be set out separately for each joint petitioner, except as otherwise permitted in § 1.991(h)(2).

(c)(2)(i) Each joint petitioner shall certify to the information contained in the petition in accordance with the provisions of § 1.16 with respect to the information that is pertinent to that petitioner. Alternatively, the controlling parent of the joint petitioners may certify to the information contained in the petition.

(c)(2)(ii) Where the petition is being filed in connection with an application for consent to transfer control of licenses or spectrum leasing arrangements, the transferee or its ultimate controlling parent may file the petition on behalf of the licensees or spectrum lessees that would be acquired as a result of the proposed transfer of control and certify to the information contained in the petition.

(c)(3) Multiple applicants and licensees shall not be permitted to file a petition for declaratory ruling jointly unless they are under common control.

(d) The following definitions shall apply to this section and §§ 1.991-1.994 of this part.

(1) *Aeronautical radio* licenses refers to aeronautical en route and aeronautical fixed radio station licenses only. It does not refer to other types of aeronautical radio station licenses.

(2) *Affiliate* refers to any entity that is under common control with a licensee, defined by reference to the holder, directly and/or indirectly, of more than 50 percent of total voting power, where no other individual or entity has *de facto* control.

(3) *Control* includes actual working control in whatever manner exercised and is not limited to majority stock ownership. *Control* also includes direct or indirect control, such as through intervening subsidiaries.

(4) *Entity* includes a partnership, association, estate, trust, corporation, limited liability company, governmental authority or other organization.

(5) *Group* refers to two or more individuals or entities that have agreed to act together for the purpose of acquiring, holding, voting, or disposing of their equity and/or voting interests in the relevant licensee, controlling U.S. parent, or entity holding a direct and/or indirect equity and/or voting interest in the licensee or U.S. parent.

(6) *Individual* refers to a natural person as distinguished from a partnership, association, corporation, or other organization.

(7) *Licensee* as used in §§ 1.990-1.994 of this part includes a *spectrum lessee* as defined in § 1.9003.

(8) *Privately held* company refers to a U.S.- or foreign-organized company that has not issued a class of equity securities for which beneficial ownership reporting is required by security holders and other beneficial owners under sections 13(d) or 13(g) of the Securities Exchange Act of 1934, as amended, 15 U.S.C. 78a *et seq.* (Exchange Act), and corresponding Exchange Act Rule 13d-1, 17 C.F.R. § 240.13d-1, or a substantially comparable foreign law or regulation.

(9) *Public company* refers to a U.S.- or foreign-organized company that has issued a class of equity securities for which beneficial ownership reporting is required by security holders and other beneficial owners under sections 13(d) or 13(g) of the Securities Exchange Act of 1934, as amended, 15 U.S.C. 78a *et seq.* (Exchange Act) and corresponding Exchange Act Rule 13d-1, 17 C.F.R. § 240.13d-1, or a substantially comparable foreign law or regulation.

(10) *Subsidiary* refers to any entity in which a licensee owns or controls, directly and/or indirectly, more than 50 percent of the total voting power of the outstanding voting stock of the entity, where no other individual or entity has *de facto* control.

(11) *Voting stock* refers to an entity's corporate stock, partnership or membership interests, or other equivalents of corporate stock that, under ordinary circumstances, entitles the holders thereof to elect the entity's board of directors, management committee, or other equivalent of a corporate board of directors.

(12) *Would hold* as used in §§ 1.990-1.994 includes equity and/or voting interests that an individual or entity proposes to hold in an applicant, licensee, or spectrum lessee, or their controlling U.S. parent, upon consummation of any transactions described in the petition for declaratory ruling filed under § 1.990(a)(1) or § 1.990(a)(2) of this part.

§ 1.991 Contents of petitions for declaratory ruling under section 310(b) of the Communications Act of 1934, as amended.

The petition for declaratory ruling required by § 1.990(a)(1) and/or § 1.990(a)(2) shall contain the following information:

(a) With respect to each petitioning applicant or licensee, provide its name; FCC Registration Number (FRN); mailing address; place of organization; telephone number; facsimile number (if available); electronic mail address (if available); type of business organization (*e.g.*, corporation, unincorporated association, trust, general partnership, limited partnership, limited liability company, trust, other (include description of legal entity)); name and title of officer certifying to the information contained in the petition.

(b) If the petitioning applicant or licensee is represented by a third party (*e.g.*, legal counsel), specify that individual's name, the name of the firm or company, mailing address and telephone number/electronic mail address.

(c)(1) For each named licensee, list the type(s) of radio service authorized (*e.g.*, cellular radio telephone service; microwave radio service; mobile satellite service; aeronautical fixed service).

(c)(2) If the petition is filed in connection with an application for a radio station license or a spectrum leasing arrangement, or an application to acquire a license or spectrum leasing arrangement by assignment or transfer of control, specify for each named applicant:

(c)(2)(i) the File No(s). of the associated application(s), if available at the time the petition is filed; otherwise, specify the anticipated filing date for each application; and

(c)(2)(ii) the type(s) of radio services covered by each application (*e.g.*, cellular radio telephone service; microwave radio service; mobile satellite service; aeronautical fixed service).

(d) With respect to each petitioner, include a statement as to whether the petitioner is requesting a declaratory ruling under § 1.990(a)(1) and/or § 1.990(a)(2).

(e)(1) *Direct U.S or foreign interests of ten percent or more or a controlling interest.* With respect to petitions filed under § 1.990(a)(1), provide the name of any individual or entity that holds, or would hold, *directly* 10 percent or more of the equity interests and/or voting interests, or a controlling interest, in the controlling U.S. parent of the petitioning common carrier or aeronautical radio station applicant(s) or licensee(s) as specified in paragraphs (e)(1)(i)-(e)(4)(iv) of this section.

(e)(2) *Direct U.S or foreign interests of ten percent or more or a controlling interest.* With respect to petitions filed under § 1.990(a)(2), provide the name of any individual or entity that holds, or would hold, *directly* 10 percent or more of the equity interests and/or voting interests, or a controlling interest, in each petitioning common carrier applicant or licensee as specified in paragraphs (e)(1)(i)-(e)(4)(ii) of this section.

(e)(3) Where no individual or entity holds, or would hold, *directly* 10 percent or more of the equity interests and/or voting interests, or a controlling interest, in the controlling U.S. parent (for petitions filed under § 1.990(a)(1)) or in the applicant or licensee (for petitions filed under § 1.990(a)(2)), the petition shall state that no individual or entity holds or would hold *directly* 10 percent or more of the equity interests and/or voting interests, or a controlling interest, in the U.S. parent, applicant or licensee.

(e)(4)(i) Where a named U.S. parent, applicant, or licensee is organized as a corporation, provide the name of any individual or entity that holds, or would hold, 10 percent or more of the outstanding capital stock and/or voting stock, or a controlling interest.

(e)(4)(ii) Where a named U.S. parent, applicant, or licensee is organized as a general partnership, provide the names of the partnership's constituent general partners.

(e)(4)(iii) Where a named U.S. parent, applicant, or licensee is organized as a limited partnership or limited liability partnership, provide the name(s) of the general partner(s) (in the case of a limited partnership), any uninsulated partner(s), and any insulated partner(s) with an equity interest in the partnership of at least 10 percent (calculated according to the percentage of the partner's capital contribution). With respect to each named partner (other than a named general partner), the petitioner shall state whether the partnership interest is insulated or uninsulated, based on the insulation criteria specified in § 1.993.

(e)(4)(iv) Where a named U.S. parent, applicant, or licensee is organized as a limited liability company, provide the name(s) of each uninsulated member, regardless of its equity interest, any insulated member with an equity interest of at least 10 percent (calculated according to the percentage of its capital contribution), and any non-equity manager(s). With respect to each named member, the petitioner shall state whether the interest is insulated or uninsulated, based on the insulation criteria specified in § 1.993, and whether the member is a manager.

Note to Paragraph (e): The Commission presumes that a general partner of a general partnership or limited partnership has a controlling interest in the partnership. A general partner shall in all cases be deemed to hold an uninsulated interest in the partnership.

(f)(1) *Indirect U.S or foreign interests of ten percent or more or a controlling interest.* With respect to petitions filed under § 1.990(a)(1), provide the name of any individual or entity that holds, or would hold, *indirectly*, through one or more intervening entities, 10 percent or more of the equity interests and/or voting interests, or a controlling interest, in the controlling U.S. parent of the petitioning common carrier or aeronautical radio station applicant(s) or licensee(s). Equity interests and voting interests held indirectly shall be calculated in accordance with the principles set forth in § 1.992.

(f)(2) *Indirect U.S or foreign interests of ten percent or more or a controlling interest.* With respect to petitions filed under § 1.990(a)(2), provide the name of any individual or entity that holds, or would hold, *indirectly*, through one or more intervening entities, 10 percent or more of the equity interests and/or voting interests, or a controlling interest, in the petitioning common carrier radio station applicant(s) or licensee(s). Equity interests and voting interests held indirectly shall be calculated in accordance with the principles set forth in § 1.992.

(f)(3) Where no individual or entity holds, or would hold, *indirectly* 10 percent or more of the equity interests and/or voting interests, or a controlling interest, in the controlling U.S. parent (for petitions filed under § 1.990(a)(1)) or in the petitioning applicant(s) or licensee(s) (for petitions filed under § 1.990(a)(2)), the petition shall specify that no individual or entity holds *indirectly* 10 percent or more of

the equity interests and/or voting interests, or a controlling interest, in the U.S. parent, applicant(s), or licensee(s).

Note to Paragraph (f): The Commission presumes that a general partner of a general partnership or limited partnership has a controlling interest in the partnership. A general partner shall in all cases be deemed to hold an uninsulated interest in the partnership.

(g) For each 10 percent interest holder named in response to paragraphs (e) and (f) of this section, specify the equity interest held and the voting interest held (each to the nearest one percent); in the case of an individual, his or her citizenship; and in the case of a business organization, its place of organization, type of business organization (*e.g.*, corporation, unincorporated association, trust, general partnership, limited partnership, limited liability company, trust, other (include description of legal entity)), and principal business(es).

(h)(1) *Estimate of aggregate foreign ownership.* For petitions filed under § 1.990(a)(1), attach an exhibit that provides a percentage estimate of the controlling U.S. parent's aggregate direct and/or indirect foreign equity interests and its aggregate direct and/or indirect foreign voting interests. For petitions filed under § 1.990(a)(2), attach an exhibit that provides a percentage estimate of the aggregate foreign equity interests and aggregate foreign voting interests held directly in the petitioning applicant(s) and/or licensee(s), if any, and the aggregate foreign equity interests and aggregate foreign voting interests held indirectly in the petitioning applicant(s) and/or licensee(s). The exhibit required by this paragraph must also provide a general description of the methods used to determine the percentages; and a statement addressing the circumstances that prompted the filing of the petition and demonstrating that the public interest would be served by grant of the petition.

(h)(2) *Ownership and control structure.* Attach an exhibit that describes the ownership and control structure of the applicant(s) and/or licensee(s) that are the subject of the petition, including an ownership diagram and identification of the real party-in-interest disclosed in any companion applications. The ownership diagram should illustrate the petitioner's vertical ownership structure, including the controlling U.S. parent named in the petition (for petitions filed under § 1.990(a)(1)) and the direct and indirect ownership (equity and voting) interests held by the individual(s) and/or entity(ies) named in response to paragraphs (e) and (f) of this section. Each such individual or entity shall be depicted in the ownership diagram and all controlling interests labeled as such. Where the petition includes multiple petitioners, the ownership of all petitioners may be depicted in a single ownership diagram or in multiple diagrams.

(i) *Requests for specific approval.* Provide, as required or permitted by this paragraph, the name of each foreign individual and/or entity for which each petitioner requests specific approval, if any, and the respective percentages of equity and/or voting interests (to the nearest one percent) that each such foreign individual or entity holds, or would hold, directly and/or indirectly, in the controlling U.S. parent of the petitioning common carrier or aeronautical radio station applicant(s) or licensee(s) for petitions filed under § 1.990(a)(1), and in each petitioning common carrier applicant or licensee for petitions filed under § 1.990(a)(2).

(i)(1) Each petitioning common carrier or aeronautical radio station applicant or licensee filing under § 1.990(a)(1) shall identify and request specific approval for any foreign individual, entity, or group of such individuals or entities that holds, or would hold, directly and/or indirectly, more than 5 percent of the equity and/or voting interests, or a controlling interest, in the petitioner's controlling U.S. parent unless the foreign investment is exempt under paragraph (i)(3) of this section. Equity and voting interests shall be calculated in accordance with the principles set forth in paragraphs (e) and (f) of this section and in § 1.992.

(i)(2) Each petitioning common carrier radio station applicant or licensee filing under § 1.990(a)(2) shall identify and request specific approval for any foreign individual, entity, or group of such individuals or entities that holds, or would hold, directly, and/or indirectly through one or more intervening U.S.-organized entities that do not control the applicant or licensee, more than 5 percent of the equity and/or voting interests in the applicant or licensee unless the foreign investment is exempt under paragraph (i)(3) of this section. Equity and voting interests shall be calculated in accordance with the principles set forth in paragraphs (e) and (f) of this section and in § 1.992.

Note to paragraphs (i)(1), (2): Two or more individuals or entities will be treated as a “group” when they have agreed to act together for the purpose of acquiring, holding, voting, or disposing of their equity and/or voting interests in the licensee and/or controlling U.S. parent of the licensee or in any intermediate company(ies) through which any of the individuals or entities holds its interests in the licensee and/or controlling U.S. parent of the licensee.

(i)(3) A foreign investment is exempt from the specific approval requirements of paragraphs (i)(1) and (i)(2) of this section where:

(i) The foreign individual or entity holds, or would hold, directly and/or indirectly, no more than 10 percent of the equity and/or voting interests of the U.S. parent (for petitions filed under § 1.990(a)(1)) or the petitioning applicant or licensee (for petitions filed under § 1.990(a)(2)); *and*

(ii) The foreign individual or entity does not hold, and would not hold, a controlling interest in the petitioner or any controlling parent company, does not plan or intend to change or influence control of the petitioner or any controlling parent company, does not possess or develop any such purpose, and does not take any action having such purpose or effect. The Commission will presume, in the absence of evidence to the contrary, that the following interests satisfy this criterion for exemption from the specific approval requirements in paragraphs (i)(1) and (i)(2) of this section:

(A) Where the relevant licensee, controlling U.S. parent, or entity holding a direct or indirect equity and/or voting interest in the licensee or U.S. parent is a “public company,” as defined in § 1.990(d)(9), *provided that* the foreign holder is an institutional investor that is eligible to report its beneficial ownership interests in the company’s voting, equity securities in excess of 5 percent (not to exceed 10 percent) pursuant to Exchange Act Rule 13d-1(b), 17 C.F.R. § 240.13d-1(b), or a substantially comparable foreign law or regulation. This presumption shall not apply if the foreign individual, entity or group holding such interests is obligated to report its holdings in the company pursuant to Exchange Act Rule 13d-1(a), 17 C.F.R. § 240.13d-1(a), or a substantially comparable foreign law or regulation.

Example. Common carrier applicant (“Applicant”) is preparing a petition for declaratory ruling to request Commission approval for foreign ownership of its controlling, U.S.-organized parent (“U.S. Parent”) to exceed the 25 percent benchmark in section 310(b)(4) of the Act. Applicant does not currently hold any FCC licenses. Shares of U.S. Parent trade publicly on the New York Stock Exchange. Based on a shareholder survey and a review of its shareholder records, U.S. Parent has determined that its aggregate foreign ownership on any given day may exceed an aggregate 25 percent, including a six percent common stock interest held by a foreign-organized mutual fund (“Foreign Fund”). U.S. Parent has confirmed that Foreign Fund is not currently required to report its interest pursuant to Exchange Act Rule 13d-1(a) and instead is eligible to report its interest pursuant to Exchange Act Rule 13d-1(b). U.S. Parent also has confirmed that Foreign Fund does not hold any other interests in U.S. Parent’s equity securities, whether of a class of voting or non-voting securities. Applicant may, but is not required to, request specific approval of Foreign Fund’s six percent interest in U.S. Parent.

Note to paragraph (i)(3)(ii)(A): Where an institutional investor holds voting, equity securities that are subject to reporting under Exchange Act Rule 13d-1, 17 C.F.R. § 240.13d-1, or a substantially comparable foreign law or regulation, and equity securities that are not subject to such reporting the investor's total capital stock interests may be aggregated and treated as exempt from the 5 percent specific approval requirement in paragraphs (i)(1) and (2) of this section so long as the aggregate amount of the institutional investor's holdings does not exceed ten percent of the company's total capital stock or voting rights and the investor is eligible to certify under Exchange Act Rule 13d-1(b), 17 C.F.R. § 240.13d-1(b), or a substantially comparable foreign law or regulation that it has acquired its capital stock interests in the ordinary course of business and not with the purpose nor with the effect of changing or influencing the control of the company. In calculating foreign equity and voting interests, the Commission does not consider convertible interests such as options, warrants and convertible debentures until converted, unless 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 approval.

(B) Where the relevant licensee, controlling U.S. parent, or entity holding a direct and/or indirect equity and/or voting interest in the licensee or U.S. parent is a "privately held" corporation, as defined in § 1.990(d)(8), *provided that* a shareholders' agreement, or similar voting agreement, prohibits the foreign holder from becoming actively involved in the management or operation of the corporation and limits the foreign holder's voting and consent rights, if any, to the minority shareholder protections listed in paragraph (i)(5) of this section.

(C) Where the relevant licensee, controlling U.S. parent, or entity holding a direct and/or indirect equity and/or voting interest in the licensee or U.S. parent is "privately held," as defined in § 1.990(d)(8), and is organized as a limited partnership, limited liability company ("LLC"), or limited liability partnership ("LLP"), *provided that* the foreign holder is "insulated" in accordance with the criteria specified in § 1.993.

(i)(4) A petitioner may, but is not required to, request specific approval for any other foreign individual or entity that holds, or would hold, a direct and/or indirect equity and/or voting interest in the controlling U.S. parent (for petitions filed under § 1.990(a)(1)) or in the petitioning applicant or licensee (for petitions filed under § 1.990(a)(2)).

(i)(5) The minority shareholder protections referenced in paragraph (i)(3)(ii)(B) of this section consist of the following rights:

(i) The power to prevent the sale or pledge of all or substantially all of the assets of the corporation or a voluntary filing for bankruptcy or liquidation;

(ii) The power to prevent the corporation from entering into contracts with majority shareholders or their affiliates;

(iii) The power to prevent the corporation from guaranteeing the obligations of majority shareholders or their affiliates;

(iv) The power to purchase an additional interest in the corporation to prevent the dilution of the shareholder's *pro rata* interest in the event that the corporation issues additional instruments conveying shares in the company;

(v) The power to prevent the change of existing legal rights or preferences of the shareholders, as provided in the charter, by-laws or other operative governance documents;

(vi) The power to prevent the amendment of the charter, by-laws or other operative governance documents of the company with respect to the matters described in paragraph (i)(5)(i)-(v) of this section.

(i)(6) The Commission reserves the right to consider, on a case-by-case basis, whether voting or consent rights over matters other than those listed in paragraph (i)(5) of this section shall be considered permissible minority shareholder protections in a particular case.

(j) For each foreign individual or entity named in response to paragraph (i) of this section, provide the following information:

(1) In the case of an individual, his or her citizenship and principal business(es);

(2) In the case of a business organization:

(i) Its place of organization, type of business organization (*e.g.*, corporation, unincorporated association, trust, general partnership, limited partnership, limited liability company, trust, other (include description of legal entity)), and principal business(es);

(ii) The name of any individual or entity that holds, or would hold, directly and/or indirectly, through one or more intervening entities, 10 percent or more of the equity interests and/or voting interests, or a controlling interest, in the foreign entity for which the petitioner requests specific approval. Specify for each such interest holder, his or her citizenship (for individuals) or place of legal organization (for entities). Equity interests and voting interests held indirectly shall be calculated in accordance with the principles set forth in § 1.992.

(iii) Where no individual or entity holds, or would hold, directly and/or indirectly, 10 percent or more of the equity interests and/or voting interests, or a controlling interest, the petition shall specify that no individual or entity holds, or would hold, directly and/or indirectly, 10 percent or more of the equity interests and/or voting interests, or a controlling interest, in the foreign entity for which the petitioner requests specific approval.

(k) *Requests for advance approval.* The petitioner may, but is not required to, request advance approval in its petition for any foreign individual or entity named in response to paragraph (i) of this section to increase its direct and/or indirect equity and/or voting interests in the controlling U.S. parent of the common carrier or aeronautical radio station licensee, for petitions filed under § 1.990(a)(1), and/or in the common carrier licensee, for petitions filed under § 1.990(a)(2), above the percentages specified in response to paragraph (i) of this section. Requests for advance approval shall be made as follows:

(k)(1) *Petitions filed under § 1.990(a)(1).* Where a foreign individual or entity named in response to paragraph (i) of this section holds, or would hold upon consummation of any transactions described in the petition, a *de jure* or *de facto* controlling interest in the controlling U.S. parent, the petitioner may request advance approval in its petition for the foreign individual or entity to increase its interests, at some future time, up to any amount, including 100 percent of the direct and/or indirect equity and/or voting interests in the U.S. parent. The petitioner shall specify for the named controlling foreign individual(s) or entity(ies) the maximum percentages of equity and/or voting interests for which advance approval is sought or, in lieu of a specific amount, state that the petitioner requests advance approval for the named controlling foreign individual or entity to increase its interests up to and including 100 percent of the U.S. parent's direct and/or indirect equity and/or voting interests.

(k)(2) *Petitions filed under § 1.990(a)(1) and/or § 1.990(a)(2).* Where a foreign individual or entity named in response to paragraph (i) of this section holds, or would hold upon consummation of any transactions described in the petition, a non-controlling interest in the controlling U.S. parent of the licensee, for petitions filed under § 1.990(a)(1), or in the licensee, for petitions filed under § 1.990(a)(2), the petitioner may request advance approval in its petition for the foreign individual or entity to increase its interests, at some future time, up to any non-controlling amount not to exceed 49.99 percent. The petitioner shall specify for the named foreign individual(s) or entity(ies) the maximum percentages of equity and/or voting interests for which advance approval is sought or, in lieu of a specific amount, shall state that the petitioner requests advance approval for the named foreign individual(s) or entity(ies) to increase their interests up to and including a non-controlling 49.99 percent equity and/or voting interest in the licensee, for petitions filed under § 1.990(a)(2), or in the controlling U.S. parent of the licensee, for petitions filed under § 1.990(a)(1).

§ 1.992 How to calculate indirect equity and voting interests under section 1.991.

(a) The criteria specified in this section shall be used for purposes of calculating indirect equity and voting interests under § 1.991.

(b)(1) *Equity interests held indirectly in the licensee and/or controlling U.S. parent.* Equity interests that are held by an individual or entity indirectly through one or more intervening entities shall be calculated by successive multiplication of the equity percentages for 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.

Example under § 1.990(a)(1). Assume that a foreign individual holds a non-controlling 30 percent equity and voting interest in U.S.-organized Corporation A which, in turn, holds a non-controlling 40 percent equity and voting interest in U.S.-organized Parent Corporation B. The foreign individual's equity interest in U.S.-organized Parent Corporation B would be calculated by multiplying the foreign individual's equity interest in U.S.-organized Corporation A by that entity's equity interest in U.S.-organized Parent Corporation B. The foreign individual's equity interest in U.S.-organized Parent Corporation B would be calculated as 12 percent (30% x 40% = 12%). The result would be the same even if U.S.-organized Corporation A held a *de facto* controlling interest in U.S.-organized Parent Corporation B.

(b)(2) *Voting interests held indirectly in the licensee and/or controlling U.S. parent.* Voting interests that are held by any individual or entity indirectly through one or more intervening entities will be determined depending upon the type of business organization(s) in which the individual or entity holds a voting interest as follows:

(b)(2)(i) Voting interests that are held through one or more intervening corporations shall be calculated by successive multiplication of the voting percentages for each link in the vertical ownership chain, except that wherever the voting interest for any link in the chain is equal to or exceeds 50 percent or represents actual control, it shall be treated as if it were a 100 percent interest.

Example under § 1.990(a)(1). Assume that a foreign individual holds a non-controlling 30 percent equity and voting interest in U.S.-organized Corporation A which, in turn, holds a *controlling* 70 percent equity and voting interest in U.S.-organized Parent Corporation B. Because U.S.-organized Corporation A's 70 percent voting interest in U.S.-organized Parent Corporation B constitutes a *controlling* interest, it is treated as a 100 percent interest. The foreign individual's 30 percent voting interest in U.S.-organized

Corporation A would flow through in its entirety to U.S. Parent Corporation B and thus be calculated as 30 percent (30% x 100% = 30%).

(b)(2)(ii) Voting interests that are held through one or more intervening partnerships shall be calculated depending upon whether the individual or entity holds a general partnership interest, an uninsulated partnership interest, or an insulated partnership interest as specified in paragraphs (b)(2)(ii)(A)-(B) of this section.

Note to Paragraph (b)(2)(ii): The Commission presumes that a general partner of a general partnership or limited partnership has a controlling interest in the partnership. A general partner shall in all cases be deemed to hold an uninsulated interest in the partnership.

(b)(2)(ii)(A) *General partnership and other uninsulated partnership interests.* A general partner and uninsulated partner shall be deemed to hold the same voting interest as the partnership holds in the company situated in the next lower tier of the vertical ownership chain. A partner shall be treated as uninsulated unless the limited partnership agreement, limited liability partnership agreement, or other operative agreement satisfies the insulation criteria specified in § 1.993.

(b)(2)(ii)(B) *Insulated partnership interests.* A partner of a limited partnership (other than a general partner) or partner of a limited liability partnership that satisfies the insulation criteria specified in § 1.993 shall be treated as an insulated partner and shall be deemed to hold a voting interest in the partnership that is equal to the partner's equity interest.

(b)(2)(iii) Voting interests that are held through one or more intervening limited liability companies shall be calculated depending upon whether the individual or entity is a non-member manager, an uninsulated member or an insulated member as specified in paragraphs (b)(2)(iii)(A)-(B) of this section.

(b)(2)(iii)(A) *Non-member managers and uninsulated membership interests.* A non-member manager and an uninsulated member of a limited liability company shall be deemed to hold the same voting interest as the limited liability company holds in the company situated in the next lower tier of the vertical ownership chain. A member shall be treated as uninsulated unless the limited liability company agreement satisfies the insulation criteria specified in § 1.993.

(b)(2)(iii)(B) *Insulated membership interests.* A member of a limited liability company that satisfies the insulation criteria specified in § 1.993 shall be treated as an insulated member and shall be deemed to hold a voting interest in the limited liability company that is equal to the member's equity interest.

§ 1.993 Insulation criteria for interests in limited partnerships, limited liability partnerships, and limited liability companies.

(a) A limited partner of a limited partnership and a partner of a limited liability partnership shall be treated as uninsulated within the meaning of § 1.992(b)(2)(ii)(A) unless the partner is prohibited by the limited partnership agreement, limited liability partnership agreement, or other operative agreement from, and in fact is not engaged in, active involvement in the management or operation of the partnership and only the usual and customary investor protections are contained in the partnership agreement or other operative agreement. These criteria apply to any relevant limited partnership or limited liability partnership, whether it is the licensee, a controlling U.S.-organized parent, or any partnership situated above them in the vertical chain of ownership.

(b) A member of a limited liability company shall be treated as unincorporated for purposes of § 1.992(b)(2)(iii)(A) unless the member is prohibited by the limited liability company agreement from, and in fact is not engaged in, active involvement in the management or operation of the company and only the usual and customary investor protections are contained in the agreement. These criteria apply to any relevant limited liability company, whether it is the licensee, a controlling U.S.-organized parent, or any limited liability company situated above them in the vertical chain of ownership.

(c) The usual and customary investor protections referred to in paragraphs (a)-(b) of this section shall consist of:

(c)(1) The power to prevent the sale or pledge of all or substantially all of the assets of the limited partnership, limited liability partnership, or limited liability company or a voluntary filing for bankruptcy or liquidation;

(c)(2) The power to prevent the limited partnership, limited liability partnership, or limited liability company from entering into contracts with majority investors or their affiliates;

(c)(3) The power to prevent the limited partnership, limited liability partnership, or limited liability company from guaranteeing the obligations of majority investors or their affiliates;

(c)(4) The power to purchase an additional interest in the limited partnership, limited liability partnership, or limited liability company to prevent the dilution of the partner's or member's *pro rata* interest in the event that the limited partnership, limited liability partnership, or limited liability company issues additional instruments conveying interests in the partnership or company;

(c)(5) The power to prevent the change of existing legal rights or preferences of the partners, members, or managers as provided in the limited partnership agreement, limited liability partnership agreement, or limited liability company agreement, or other operative agreement;

(c)(6) The power to vote on the removal of a general partner, managing partner, managing member, or other manager in situations where such individual or entity is subject to bankruptcy, insolvency, reorganization, or other proceedings relating to the relief of debtors; adjudicated insane or incompetent by a court of competent jurisdiction (in the case of a natural person); convicted of a felony; or otherwise removed for cause, as determined by an independent party;

(c)(7) The power to prevent the amendment of the limited partnership agreement, limited liability partnership agreement, or limited liability company agreement, or other organizational documents of the partnership or limited liability company with respect to the matters described in paragraph (c)(1)-(6) of this section.

(d) The Commission reserves the right to consider, on a case-by-case basis, whether voting or consent rights over matters other than those listed in paragraph (c) of this section shall be considered usual and customary investor protections in a particular case.

§ 1.994 Routine terms and conditions.

Foreign ownership rulings issued pursuant to §§ 1.990 *et seq.* shall be subject to the following terms and conditions, except as otherwise specified in a particular ruling:

(a)(1) *Aggregate allowance for rulings issued under § 1.990(a)(1)*. In addition to the foreign ownership interests approved specifically in a licensee's declaratory ruling issued pursuant to § 1.990(a)(1), the controlling U.S.-organized parent named in the ruling (or a U.S.-organized successor-in-interest formed as part of a *pro forma* reorganization) may be 100 percent owned, directly and/or indirectly through one or more U.S.- or foreign-organized entities, on a going-forward basis (*i.e.*, after issuance of the ruling) by other foreign investors without prior Commission approval. This "100 percent aggregate allowance" is subject to the requirement that the licensee seek and obtain Commission approval before any foreign individual, entity, or "group" not previously approved acquires, directly and/or indirectly, more than five percent of the U.S. parent's outstanding capital stock (equity) and/or voting stock, or a controlling interest, with the exception of any foreign individual, entity, or "group" that acquires an equity and/or voting interest of ten percent or less, *provided that* the interest is exempt under § 1.991(i)(3).

(a)(2) *Aggregate allowance for rulings issued under § 1.990(a)(2)*. In addition to the foreign ownership interests approved specifically in a licensee's declaratory ruling issued pursuant to § 1.990(a)(2), the licensee(s) named in the ruling (or a U.S.-organized successor-in-interest formed as part of a *pro forma* reorganization) may be 100 percent owned on a going forward basis (*i.e.*, after issuance of the ruling) by other foreign investors holding interests in the licensee indirectly through U.S.-organized entities that do not control the licensee, without prior Commission approval. This "100 percent aggregate allowance" is subject to the requirement that the licensee seek and obtain Commission approval before any foreign individual, entity, or "group" not previously approved acquires directly and/or indirectly, through one or more U.S.-organized entities that do not control the licensee, more than five percent of the licensee's outstanding capital stock (equity) and/or voting stock, with the exception of any foreign individual, entity, or "group" that acquires an equity and/or voting interest of ten percent or less, *provided that* the interest is exempt under § 1.991(i)(3). Foreign ownership interests held directly in a licensee shall not be permitted to exceed an aggregate 20 percent of the licensee's equity and/or voting interests.

Note to Paragraph (a): Licensees have an obligation to monitor and stay ahead of changes in foreign ownership of their controlling U.S.-organized parent companies (for rulings issued pursuant to § 1.990(a)(1)) and/or in the licensee itself (for rulings issued pursuant to § 1.990(a)(2)), to ensure that the licensee obtains Commission approval before a change in foreign ownership renders the licensee out of compliance with the terms and conditions of its declaratory ruling(s) or the Commission's rules. Licensees, their controlling parent companies, and other entities in the licensee's vertical ownership chain may need to place restrictions in their bylaws or other organizational documents to enable the licensee to ensure compliance with the terms and conditions of its declaratory ruling(s) and the Commission's rules.

Example 1 (for rulings issued under § 1.990(a)(1)). U.S. Corp. files an application for a common carrier license. U.S. Corp. is wholly owned and controlled by U.S. Parent, which is a newly formed, privately held Delaware corporation in which no single shareholder has *de jure* or *de facto* control. A shareholders' agreement provides that a five-member board of directors shall govern the affairs of the company; five named shareholders shall be entitled to one seat and one vote on the board; and all decisions of the board shall be determined by majority vote. The five named shareholders and their respective equity interests are as follows: Foreign Entity A, which is wholly owned and controlled by a foreign citizen (5 percent); Foreign Entity B, which is wholly owned and controlled by a foreign citizen (10 percent); Foreign Entity C, a foreign public company with no controlling shareholder (20 percent); Foreign Entity D, a foreign pension fund that is controlled by a foreign citizen and in which no individual or entity has a pecuniary interest exceeding one percent (21 percent); and U.S. Entity E, a U.S. public company with no controlling shareholder (25 percent). The remaining 19 percent of U.S. Parent's shares are held by three foreign-organized entities as follows: F (4 percent), G (6 percent), and H (9 percent). Under the shareholders' agreement, voting rights of F, G, and H are limited to the minority shareholder protections listed in

§1.991(i)(5). Further, the agreement expressly prohibits G and H from becoming actively involved in the management or operation of U.S. Parent and U.S. Corp.

As required by the rules, U.S. Corp. files a section 310(b)(4) petition concurrently with its application. The petition identifies and requests specific approval for the ownership interests held in U.S. Parent by Foreign Entity A and its sole shareholder (5 percent equity and 20 percent voting interest); Foreign Entity B and its sole shareholder (10 percent equity and 20 percent voting interest), Foreign Entity C (20 percent equity and 20 percent voting interest), and Foreign Entity D (21 percent equity and 20 percent voting interest) and its fund manager (20 percent voting interest). The Commission's ruling specifically approves these foreign interests. The ruling also provides that, on a going-forward basis, U.S. Parent may be 100 percent owned in the aggregate, directly and/or indirectly, by other foreign investors, subject to the requirement that U.S. Corp. seek and obtain Commission approval before any previously unapproved foreign investor acquires more than five percent of U.S. Parent's equity and/or voting interests, or a controlling interest, with the exception of any foreign investor that acquires an equity and/or voting interest of ten percent or less, *provided that* the interest is exempt under § 1.991(i)(3).

In this case, foreign entities F, G, and H would each be considered a previously unapproved foreign investor (along with any new foreign investors). However, prior approval for F, G and H would only apply to an increase of F's interest above five percent (because the ten percent exemption under § 1.991(i)(3) does not apply to F) or to an increase of G's or H's interest above ten percent (because G and H do qualify for this exemption). U.S. Corp. would also need Commission approval before Foreign Entity D appoints a new fund manager that is a non-U.S. citizen and before Foreign Entities A, B, C, or D increase their respective equity and/or voting interests in U.S. Parent, unless the petition previously sought and obtained Commission approval for such increases (up to non-controlling 49.99 percent interests). (*See* § 1.991(k)(2).) Foreign shareholders of Foreign Entity C and U.S. Entity E would also be considered previously unapproved foreign investors. Thus, Commission approval would be required before any foreign shareholder of Foreign Entity C or U.S. Entity E acquires (1) a controlling interest in either company; or (2) a non-controlling equity and/or voting interest in either company that, when multiplied by the company's equity and/or voting interests in U.S. Parent, would exceed 5 percent of U.S. Parent's equity and/or voting interests, unless the interest is exempt under § 1.991(i)(3).

Example 2 (for rulings issued under § 1.990(a)(2)). Assume that the following three U.S.-organized entities hold non-controlling equity and voting interests in common carrier Licensee, which is a privately held corporation organized in Delaware: U.S. corporation A (30 percent); U.S. corporation B (30 percent); and U.S. corporation C (40 percent). Licensee's shareholders are wholly owned by foreign individuals X, Y, and Z, respectively. Licensee has received a declaratory ruling under § 1.990(a)(2) specifically approving the 30 percent foreign ownership interests held in Licensee by each of X and Y (through U.S. corporation A and U.S. corporation B, respectively) and the 40 percent foreign ownership interest held in Licensee by Z (through U.S. corporation C). On a going-forward basis, Licensee may be 100 percent owned in the aggregate by X, Y, Z, and other foreign investors holding interests in Licensee indirectly, through U.S.-organized entities that do not control Licensee, subject to the requirement that Licensee obtain Commission approval before any previously unapproved foreign investor acquires more than five percent of Licensee's equity and/or voting interests, with the exception of any foreign investor that acquires an equity and/or voting interest of ten percent or less, *provided that* the interest is exempt under § 1.991(i)(3). In this case, any foreign investor other than X, Y, and Z would be considered a previously unapproved foreign investor. Licensee would also need Commission approval before X, Y, or Z increases its equity and/or voting interests in Licensee unless the petition previously sought and obtained Commission approval for such increases (up to non-controlling 49.99 percent interests). (*See* § 1.991(k)(2).)

(b) *Subsidiaries and affiliates.* A foreign ownership ruling issued to a licensee shall cover it *and* any U.S.-organized subsidiary or affiliate, as defined in § 1.990(d), whether the subsidiary or affiliate existed

at the time the ruling was issued or was formed or acquired subsequently, *provided that* the foreign ownership of the licensee named in the ruling, and of the subsidiary and/or affiliate, remains in compliance with the terms and conditions of the licensee's ruling and the Commission's rules.

(b)(1) The subsidiary or affiliate of a licensee named in a foreign ownership ruling issued under § 1.990(a)(1) may rely on that ruling for purposes of filing its own application for an initial common carrier or aeronautical license or spectrum leasing arrangement, or an application to acquire such license or spectrum leasing arrangement by assignment or transfer of control *provided that* the subsidiary or affiliate, and the licensee named in the ruling, each certifies in the application that its foreign ownership is in compliance with the terms and conditions of the foreign ownership ruling and the Commission's rules.

(b)(2) The subsidiary or affiliate of a licensee named in a foreign ownership ruling issued under § 1.990(a)(2) may rely on that ruling for purposes of filing its own application for an initial common carrier radio station license or spectrum leasing arrangement, or an application to acquire such license or spectrum leasing arrangement by assignment or transfer of control *provided that* the subsidiary or affiliate, and the licensee named in the ruling, each certifies in the application that its foreign ownership is in compliance with the terms and conditions of the foreign ownership ruling and the Commission's rules.

(b)(3) The certifications required by paragraphs (b)(1) and (b)(2) of this section shall also include the citation(s) of the relevant ruling(s) (*i.e.*, the DA or FCC Number, FCC Record citation when available, and release date).

(c) *Insertion of new controlling foreign-organized companies* – (1) Where a licensee's foreign ownership ruling specifically authorizes a named, foreign investor to hold a controlling interest in the licensee's controlling U.S.-organized parent, for rulings issued under § 1.990(a)(1), or in an intervening U.S.-organized entity that does not control the licensee, for rulings issued under § 1.990(a)(2), the ruling shall permit the insertion of new, controlling foreign-organized companies in the vertical ownership chain above the controlling U.S. parent, for rulings issued under § 1.990(a)(1), or above an intervening U.S.-organized entity that does not control the licensee, for rulings issued under § 1.990(a)(2), without prior Commission approval *provided that* any new foreign-organized company(ies) are under 100 percent common ownership and control with the foreign investor approved in the ruling.

(c)(2) Where a previously unapproved foreign-organized entity is inserted into the vertical ownership chain of a licensee, or its controlling U.S.-organized parent, without prior Commission approval pursuant to paragraph (c)(1) of this section, the licensee shall file a letter to the attention of the Chief, International Bureau, within 30 days after the insertion of the new, foreign-organized entity. The letter must include the name of the new, foreign-organized entity and a certification by the licensee that the entity complies with the 100 percent common ownership and control requirement in paragraph (c)(1) of this section. The letter must also reference the licensee's foreign ownership ruling(s) by IBFS File No. and FCC Record citation, if available. This letter notification need not be filed if the ownership change is instead the subject of a *pro forma* application or *pro forma* notification already filed with the Commission pursuant to the relevant wireless radio service rules or satellite radio service rules applicable to the licensee.

(c)(3) Nothing in this section is intended to affect any requirements for prior approval under 47 U.S.C. § 310(d) or conditions for forbearance from the requirements of 47 U.S.C. § 310(d) pursuant to 47 U.S.C. § 160.

Example (for rulings issued under § 1.990(a)(1)). Licensee receives a foreign ownership ruling under § 1.990(a)(1) that authorizes its controlling, U.S.-organized parent ("U.S. Parent A") to be wholly owned and controlled by a foreign-organized company ("Foreign Company"). Foreign Company is minority

owned (20 percent) by U.S.-organized Corporation B, with the remaining 80 percent controlling interest held by Foreign Citizen C. After issuance of the ruling, Foreign Company forms a wholly-owned, foreign-organized subsidiary (“Foreign Subsidiary”) to hold all of Foreign Company’s shares in U.S. Parent A. There are no other changes in the direct or indirect foreign ownership of U.S. Parent A. The insertion of Foreign Subsidiary into the vertical ownership chain between Foreign Company and U.S. Parent A would not require prior Commission approval, except for any approval otherwise required pursuant to section 310(d) of the Communications Act and not exempt therefrom as a *pro forma* transfer of control under § 1.948(c)(1).

Example (for rulings issued under § 1.990(a)(2)). An applicant for a common carrier license receives a foreign ownership ruling under § 1.990(a)(2) that authorizes a foreign-organized company (“Foreign Company”) to hold a non-controlling 44 percent equity and voting interest in the applicant through Foreign Company’s wholly-owned, U.S.-organized subsidiary, U.S. Corporation A, which holds the non-controlling 44 percent interest directly in the applicant. The remaining 56 percent of the applicant’s equity and voting interests are held by its controlling U.S.-organized parent, which has no foreign ownership. After issuance of the ruling, Foreign Company forms a wholly-owned, foreign-organized subsidiary to hold all of Foreign Company’s shares in U.S. Corporation A. There are no other changes in the direct or indirect foreign ownership of U.S. Corporation A. The insertion of the foreign-organized subsidiary into the vertical ownership chain between Foreign Company and U.S. Corporation A would not require prior Commission approval.

(d) *Insertion of new non-controlling foreign-organized companies* – (1) Where a licensee’s foreign ownership ruling specifically authorizes a named, foreign investor to hold a non-controlling interest in the licensee’s controlling U.S.-organized parent, for rulings issued under § 1.990(a)(1), or in an intervening U.S.-organized entity that does not control the licensee, for rulings issued under § 1.990(a)(2), the ruling shall permit the insertion of new, foreign-organized companies in the vertical ownership chain above the controlling U.S. parent, for rulings issued under § 1.990(a)(1), or above an intervening U.S.-organized entity that does not control the licensee, for rulings issued under § 1.990(a)(2), without prior Commission approval *provided that* any new foreign-organized company(ies) are under 100 percent common ownership and control with the foreign investor approved in the ruling.

Note to Paragraph (d)(1): Where a licensee has received a foreign ownership ruling under § 1.990(a)(2) and the ruling specifically authorizes a named, foreign investor to hold a non-controlling interest directly in the licensee (subject to the 20 percent aggregate limit on direct foreign investment), the ruling shall permit the insertion of new, foreign-organized companies in the vertical ownership chain of the approved foreign investor without prior Commission approval *provided that* any new foreign-organized companies are under 100 percent common ownership and control with the approved foreign investor.

Example (for rulings issued under § 1.990(a)(1)). Licensee receives a foreign ownership ruling under § 1.990(a)(1) that authorizes a foreign-organized company (“Foreign Company”) to hold a non-controlling 30 percent equity and voting interest in Licensee’s controlling, U.S.-organized parent (“U.S. Parent A”). The remaining 70 percent equity and voting interests in U.S. Parent A are held by U.S.-organized entities which have no foreign ownership. After issuance of the ruling, Foreign Company forms a wholly-owned, foreign-organized subsidiary (“Foreign Subsidiary”) to hold all of Foreign Company’s shares in U.S. Parent A. There are no other changes in the direct or indirect foreign ownership of U.S. Parent A. The insertion of Foreign Subsidiary into the vertical ownership chain between Foreign Company and U.S. Parent A would not require prior Commission approval.

Example (for rulings issued under § 1.990(a)(2)). Licensee receives a foreign ownership ruling under § 1.990(a)(2) that authorizes a foreign-organized entity (“Foreign Company”) to hold approximately 24

percent of Licensee's equity and voting interests, through Foreign Company's non-controlling 48 percent equity and voting interest in a U.S.-organized entity, U.S. Corporation A, which holds a non-controlling 49 percent equity and voting interest directly in Licensee. (A U.S. citizen holds the remaining 52 percent equity and voting interests in U.S. Corporation A, and the remaining 51 percent equity and voting interests in Licensee are held by its U.S.-organized parent, which has no foreign ownership. After issuance of the ruling, Foreign Company forms a wholly-owned, foreign-organized subsidiary ("Foreign Subsidiary") to hold all of Foreign Company's shares in U.S. Corporation A. There are no other changes in the direct or indirect foreign ownership of U.S. Corporation A. The insertion of Foreign Subsidiary into the vertical ownership chain between Foreign Company and U.S. Corporation A would not require prior Commission approval.

(d)(2) Where a previously unapproved foreign-organized entity is inserted into the vertical ownership chain of a licensee, or its controlling U.S.-organized parent, without prior Commission approval pursuant to paragraph (d)(1) of this section, the licensee shall file a letter to the attention of the Chief, International Bureau, within 30 days after the insertion of the new, foreign-organized entity. The letter must include the name of the new, foreign-organized entity and a certification by the licensee that the entity complies with the 100 percent common ownership and control requirement in paragraph (d)(1) of this section. The letter must also reference the licensee's foreign ownership ruling(s) by IBFS File No. and FCC Record citation, if available. This letter notification need not be filed if the ownership change is instead the subject of a *pro forma* application or *pro forma* notification already filed with the Commission pursuant to the relevant wireless radio service rules or satellite radio service rules applicable to the licensee.

(e) *New petition for declaratory ruling required.* A licensee that has received a foreign ownership ruling, including a U.S.-organized successor-in-interest to such licensee formed as part of a *pro forma* reorganization, or any subsidiary or affiliate relying on such licensee's ruling pursuant to paragraph (b) of this section, shall file a new petition for declaratory ruling under § 1.990 to obtain Commission approval *before* its foreign ownership exceeds the routine terms and conditions of this section, and/or any specific terms or conditions of its ruling.

(f)(1) *Continuing compliance.* If at any time the licensee, including any successor-in-interest and any subsidiary or affiliate as described in paragraph (b) of this section, knows, or has reason to know, that it is no longer in compliance with its foreign ownership ruling or the Commission's rules relating to foreign ownership, it shall file a statement with the Commission explaining the circumstances within 30 days of the date it knew, or had reason to know, that it was no longer in compliance therewith. Subsequent actions taken by or on behalf of the licensee to remedy its non-compliance shall not relieve it of the obligation to notify the Commission of the circumstances (including duration) of non-compliance. Such licensee and any controlling companies, whether U.S.- or foreign-organized, shall be subject to enforcement action by the Commission for such non-compliance, including an order requiring divestiture of the investor's direct and/or indirect interests in such entities.

(f)(2) Any individual or entity that, directly or indirectly, creates or uses a trust, proxy, power of attorney, or any other contract, arrangement, or device with the purpose or effect of divesting itself, or preventing the vesting, of an equity interest or voting interest in the licensee, or in a controlling U.S. parent company, as part of a plan or scheme to evade the application of the Commission's rules or policies under section 310(b) shall be subject to enforcement action by the Commission, including an order requiring divestiture of the investor's direct and/or indirect interests in such entities.

PART 25 – SATELLITE COMMUNICATIONS

4. The authority citation for part 25 is amended to read as follows:

AUTHORITY: 47 U.S.C. 701–744. Interprets or applies Sections 4, 301, 302, 303, 307, 309, 310 and 332 of the Communications Act, as amended, 47 U.S.C. Sections 154, 301, 302, 303, 307, 309, 310 and 332, unless otherwise noted.

5. Section 25.105 of Subpart A is added to read as follows:

§ 25.105 Citizenship.

The rules that establish the requirements and conditions for obtaining the Commission’s prior approval of foreign ownership in common carrier licensees that would exceed the 20 percent limit in section 310(b)(3) and/or the 25 percent benchmark in section 310(b)(4) are set forth in §§ 1.990-1.994 of this chapter.

**STATEMENT OF
CHAIRMAN JULIUS GENACHOWSKI**

Re: Review of Foreign Ownership Policies for Common Carrier and Aeronautical Radio Licensees under Section 310(b)(4) of the Communications Act of 1934, as Amended, IB Docket No. 11-133.

With this item to streamline and modernize our policies for reviewing foreign ownership, we take another action in our agency-wide efforts to eliminate unnecessary regulations and improve the transparency and predictability of the Commission's work.

Ultimately, this action will unleash more foreign investment, an important source of financing for U.S. telecommunications companies, fostering technical innovation, economic growth, and job creation.

In the first days of my chairmanship, I launched an agency-wide review of rules and regulations, appointing a Special Counsel for FCC Reform, and asking all of the Bureaus to incorporate such review into their daily work.

Agency-wide, we've made significant progress. We've eliminated over 300 regulations since January 2011. And we continue to review data collections, reduce backlogs, and improve processes.

The International Bureau has been a leader in this effort. Among many actions, they've streamlined the international reporting requirements in Part 43 of our rules, removing five unnecessary data collections, as well as eliminating reporting requirements for over 1000 small carriers – leading to an overall estimated 30% reduction in industry burden.

They've removed the International Settlements Policy (ISP) from the Commission's rules – allowing U.S. carriers more flexibility to negotiate commercial agreements for international telephone rates.

And they are in the middle of a proceeding to streamline and modernize the Commission's rules related to satellite licensing.

The Foreign Ownership Second Report and Order is yet another step in the reform of our rules.

This Order is the result of a review of our policies and procedures for foreign ownership review under sections 310(b) of the Communications Act as they apply to common carrier wireless and certain aeronautical radio station licensees. It will:

- (1) reduce the regulatory costs and burdens imposed on wireless common carrier and aeronautical applicants, licensees, and spectrum lessees by reducing the number of petitions by 40 to 70 percent, as well as the number of burden hours;
- (2) provide greater transparency and more predictability with respect to the Commission's foreign ownership filing requirements and review process; and
- (3) facilitate investment from new sources of capital, while continuing to protect important interests related to national security, law enforcement, foreign policy, and trade policy.

I thank the staff for all their hard work on this and on the many reforms they've made over the last few years.

**STATEMENT OF
COMMISSIONER MIGNON L. CLYBURN**

Re: Review of Foreign Ownership Policies for Common Carrier and Aeronautical Radio Licensees under Section 310(b)(4) of the Communications Act of 1934, as Amended, IB Docket No. 11-133.

Facilitating tower construction, providing more options for backhaul services, enabling greater use of unlicensed spectrum, promoting data roaming agreements, and repurposing spectrum for commercial broadband use -- all of these objectives and subsequent proceedings under Chairman Genachowski's leadership, are key to the realization of higher quality data services and more competitive mobile service options for consumers. But in order to take advantage of these worthwhile policies, and fuel other actions to improve their networks, providers need substantial amounts of capital investment.

Investment in wireless networks not only improves broadband capacity, and other mobile services for consumers, it fosters economic growth and job creation. A 2012 Report by the White House's Council of Economic Advisors makes clear, that investment in wireless broadband networks substantially increases out domestic economic growth. One study, cited by that Report, estimates that, from 2003 to 2009, entities invested \$11.6 billion in wireless and satellite technologies, and that infusion created over 168,000 new jobs, during that timeframe. So why should that excite us? Investment in advanced wireless networks can collectively reduce our deficit, improve public safety, and bolster our Nation's economy. That is why President Obama, in 2011, set a goal of providing 4G services to at least 98 percent of Americans by 2016 and that is why we will should and will continue to do all we can, to encourage more domestic and foreign investment in wireless networks.

As this Order explains, the process for reviewing increases of foreign interests in licensees, under Section 310(b)(4) of the Communications Act, is an area where the Commission can facilitate greater investment in mobile networks. That statute and our case precedent, requires us to ensure that certain increases in foreign investment do not adversely impact important interests such as national security, law enforcement, and public safety. But, we can substantially reduce the number of petitions and other administrative hurdles that parties incur when trying to show that increases in foreign ownership of U.S. licensees would serve the public interest.

Through the capable leadership of Mindel De La Torre, Susan O'Connell, Kate Collins, and other staff members with decades of experience in these proceedings, we have found several creative ways to exercise the discretion Congress gave us, while substantially facilitating more foreign investment in more streamlined manner. By codifying our foreign ownership policies and procedures, we are encouraging more foreign investment by providing more regulatory predictability and guidance about the information we need to review and approve these applications. We have substantially reduced the number of non-controlling foreign interests that must be reported, and removed unnecessary burdens in the filing investment applications. We have reduced the number of petitions that must be filed by eliminating the need for U.S. parent companies to return to the Commission every time an already approved foreign investor seeks to increase its interest on an incremental basis. The staff also took a prudent course, by coordinating this Order with the United States Trade Representative, Department of Homeland Security, Department of Justice, and NTIA, to ensure these rule changes would not impede those agencies from properly assessing our national interests.

Facilitating investment in our wireless licensees is a critical part of a national strategy to advance our wireless services industry and improve economic growth. These changes go a long way toward realizing this key objective and that is why, I am pleased to support this order.

**STATEMENT OF
COMMISSIONER JESSICA ROSENWORCEL**

Re: Review of Foreign Ownership Policies for Common Carrier and Aeronautical Radio Licensees under Section 310(b)(4) of the Communications Act of 1934, as Amended, IB Docket No. 11-133.

For American telecommunications companies to maintain their leadership in a global market, they need investment on a global scale. More funding means more digital age infrastructure and more innovative services. It means more economic growth. It means more jobs.

So for the Commission, the equation going forward is deceptively simple: our communications networks need an unprecedented level of investment, and investment requires clarity and predictability. In short, the Commission should strive to provide confidence for investment.

Establishing clear-cut, understandable rules is one way to instill this confidence. That is what we do here—and that is why I support today’s decision. We provide clear direction to licensees, making it easier to invest in our networks and access capital from around the globe. We remove unnecessary filing requirements, and as a result more resources can be devoted to improving networks rather than pushing paper. At the same time, our approach is entirely consistent with national security objectives. We keep intact review of matters of essential national interest and maintain our authority to condition or disallow foreign investment that threatens those interests.

Finally, transparency, efficiency, and confidence in investment should not be limited to telecommunications networks. Broadcasters also are facing an increasingly complex, multi-platform future. That is why I am pleased that the Media Bureau sought comment on a letter from the Coalition for Broadcast Investment seeking additional clarification of the Commission’s foreign ownership policies. We should quickly review the record and take action accordingly.

Thank you to the International Bureau for the experience and knowledge you bring to these issues and this proceeding.

**STATEMENT OF
COMMISSIONER AJIT PAI**

Re: Review of Foreign Ownership Policies for Common Carrier and Aeronautical Radio Licensees under Section 310(b)(4) of the Communications Act of 1934, as Amended, IB Docket No. 11-133.

As today's item observes, "foreign investment has been . . . an important source of financing for U.S. telecommunications companies, fostering technical innovation, economic growth and job creation."¹ We are lucky to have this inflow of capital, for it is a truth universally acknowledged that constructing next-generation networks requires possession of a good fortune.² In 2011, for example, wireless companies poured over \$25 billion into building and upgrading their networks.³

This makes it critical that the United States remain the most attractive place in the world for investment in the communications industry. By reducing regulatory costs and burdens for common carrier radio station licensees, the measures contained in this *Second Report and Order* will help us achieve that goal, and I am therefore pleased to support it.

But today's effort cannot be a coda. When it comes to foreign investment, one aspect of the Commission's policies still demands reexamination and revision. Currently, we have a *de facto* ban on any foreign investment in a U.S. broadcast holding company that exceeds a 25 percent benchmark. Under our rules, then, a foreign company can indirectly hold more than a quarter share in our nation's largest cable operators, cable programmers, wireline carriers, wireless carriers, Internet backbone providers, and satellite video providers. Yet that company cannot own a similar interest in a single AM radio station in a small, rural town. As I have pointed out before, this makes no sense.⁴ It is long past time for us to level the regulatory playing field.

Foreign investment can pave the way for growth and innovation in broadcasting, just as it has done for other segments of the communications industry. That's why the Coalition for Broadcast Investment asked the Commission last year to modernize our current policy and evaluate foreign investment on a case-by-case basis. In February, the Media Bureau put the Coalition's proposal out for comment. We received the first round of feedback on Monday. Even at this early stage, the support for permitting additional foreign investment is overwhelming.

It might not be a surprise that industry groups, such as the National Association of Broadcasters, support these investments. But it is notable that at least thirty-one national minority and civil rights organizations do too, including the League of United Latin American Citizens, the Rainbow PUSH Coalition, the National Black Caucus of State Legislators, the Asian American Chamber of Commerce,

¹ *Second Report and Order*, ¶ 3.

² Cf. Jane Austen, *Pride and Prejudice* 1 (1813).

³ *Implementation of Section 6002(b) of the Omnibus Budget Reconciliation Act of 1993, Annual Report and Analysis of Competitive Market Conditions With Respect to Mobile Wireless, including Commercial Mobile Services*, WT Docket No. 11-186, Sixteenth Report, FCC 13-34, at Table 33 (rel. Mar. 19, 2013).

⁴ See, e.g., Remarks of Commissioner Ajit Pai before the NAB Radio Show at 5–6 (Sept. 19, 2012), available at <http://go.usa.gov/Tj2G>; Statement of Commissioner Ajit Pai on Modernizing Approach to Foreign Investment in Broadcast Stations (Feb. 26, 2013), available at <http://go.usa.gov/TjTC>; Statement of Commissioner Ajit Pai, Hearing Before the United States Senate Committee on Commerce, Science, and Transportation, "Oversight of the Federal Communications Commission" at 9 (Mar. 12, 2013), available at <http://go.usa.gov/TjTW>.

and the Minority Media and Telecommunications Council. As these groups put it, “To reverse the decline in minority broadcast ownership, one of the most significant steps the Commission could take is to relax its strict application of Section 310(b)(4) of the Communications Act By relaxing its restrictions on foreign investment in broadcasting, the Commission would greatly assist minority broadcasters whose survival depends on their ability to grow domestically and internationally.”

The comment cycle on the Coalition’s proposal will end on April 30, and I hope that the Commission will take action soon thereafter. By ending our anachronistic approach to foreign investment, we can bring new vitality to the broadcasting industry. We can increase access to capital. And we can help boost minority ownership.

In closing, I would like to thank the staff of the International Bureau for their work on today’s item and for their ongoing efforts to review foreign ownership applications. In particular, the Commission’s long-time foreign ownership expert, Susan O’Connell, merits special recognition. Much of today’s item reflects the knowledge and wisdom that Susan has developed through her years of experience with these issues.