

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

In the Matter of )
Review of Foreign Ownership Policies for ) GN Docket No. 15-236
Broadcast, Common Carrier and Aeronautical )
Radio Licensees under Section 310(b)(4) of the )
Communications Act of 1934, as Amended )

NOTICE OF PROPOSED RULEMAKING

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By the Commission: Chairman Wheeler and Commissioners Clyburn, Rosenworcel, Pai and O’Rielly
issuing separate statements.

TABLE OF CONTENTS

Heading Paragraph #
I. INTRODUCTION..... 1
II. BACKGROUND..... 3
A. Section 310(b) of the Communications Act..... 3
B. Recent Proceedings Under Section 310(b)(4)..... 5
1. Foreign Ownership of Common Carrier and Aeronautical Radio Licensees ..... 5
2. Declaratory Ruling Regarding Foreign Ownership of Broadcast Licensees..... 6
3. Pandora Declaratory Ruling ..... 7
III. DISCUSSION ..... 8
A. Extending Streamlined Foreign Ownership Procedures to Broadcast Licensees ..... 8
B. Specific Modifications for Broadcast Licensees..... 13
1. Disclosable Interest Holders..... 13
2. Specific Approval of Named Foreign Investors..... 15
3. Insulation Criteria..... 17
4. Service-Specific Rulings ..... 20
5. Filing and Processing of Broadcast Petitions ..... 24
C. Methodology for Assessing Compliance with Section 310(b)(4)..... 26
D. Corrections and Clarifications of Existing Rules..... 37
E. Transition Issues ..... 42
F. Other Reforms to Foreign Ownership Review ..... 43
IV. CONCLUSION ..... 44
V. PROCEDURAL ISSUES ..... 45
A. Ex Parte Presentations ..... 45
B. Initial Regulatory Flexibility Certification ..... 46
C. Initial Paperwork Reduction Act of 1995 Analysis ..... 50
D. Filing of Comments and Reply Comments..... 51
VI. ORDERING CLAUSES..... 54
APPENDIX – Proposed Rules

## I. INTRODUCTION

1. In this Notice of Proposed Rulemaking (“NPRM”), we propose to simplify the foreign ownership approval process for broadcast licensees by extending the streamlined rules and procedures developed for foreign ownership reviews for common carrier and certain aeronautical licensees under section 310(b)(4) of the Communications Act of 1934, as amended (the “Act”),<sup>1</sup> to the broadcast context.<sup>2</sup> These changes will facilitate investment from new sources of capital at a time of growing need for capital investment in this important sector of our nation’s economy. We believe that adopting a standardized filing and review process for broadcast licensees’ requests to exceed the 25 percent foreign ownership benchmark in section 310(b)(4), as we have done for common carrier licensees, will also provide the broadcast sector with greater transparency, more predictability, and will reduce regulatory burdens and costs. As is the case with common carrier licensees, this standardized filing and review process will provide a clearer path for foreign investment in broadcast licensees that is more consistent with the domestic investment process, while continuing to protect important interests related to national security, law enforcement, foreign policy, and trade policy and other public policy goals.

2. Specifically, we propose to extend the foreign ownership rules and procedures established in the *2013 Foreign Ownership Second Report and Order*<sup>3</sup> to broadcast licensees, with certain modifications to tailor them to this context. These changes will, among other things, allow a broadcast licensee to request Commission approval for its U.S. controlling parent to have up to and including 100 percent foreign ownership and for any non-controlling named foreign investor to increase its interest in the U.S. parent up to and including a non-controlling interest of 49.99 percent at some time in the future. We also seek comment on whether and how to revise the methodology a licensee should use to assess its compliance with the 25 percent foreign ownership benchmark in section 310(b)(4) in order to reduce regulatory burdens on applicants and licensees. Finally, we make several proposals to clarify and update existing policies and procedures for broadcast, common carrier and aeronautical licensees.

## II. BACKGROUND

### A. Section 310(b) of the Communications Act

3. Section 310 of the Act requires the Commission to review foreign investment in radio station licensees.<sup>4</sup> This section imposes specific restrictions on who may hold certain types of radio

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<sup>1</sup> 47 U.S.C. § 310(b)(4).

<sup>2</sup> For ease of reference, we refer to broadcast, common carrier, aeronautical en route and aeronautical fixed radio station applicants and licensees (including broadcast permittees) and to common carrier spectrum lessees collectively in the NPRM as “licensees” unless the context warrants otherwise. We also use of the term “common carrier” or “common carrier licensees” in this NPRM to encompass common carrier, aeronautical en route and aeronautical fixed radio station applicants and licensees unless the context applies only to common carrier licensees. “Spectrum lessees” are defined in section 1.9003 of Part 1, Subpart X (“Spectrum Leasing”), 47 C.F.R. § 1.9003. We also refer herein to aeronautical en route and aeronautical fixed licensees collectively as “aeronautical” licensees. 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).

<sup>3</sup> 47 C.F.R. §§ 1.990-1.994; *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, FCC 13-50, 28 FCC Rcd 5741 (2013) (“*2013 Foreign Ownership Second Report and Order*”).

<sup>4</sup> 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

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licenses. The provisions of section 310 apply to applications for initial radio licenses, applications for assignments and transfers of control of radio licenses, and spectrum leasing arrangements under the Commission's secondary market rules.<sup>5</sup> As relevant to this NPRM, 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 licensee.<sup>6</sup> 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 broadcast, common carrier, or aeronautical radio licensee, unless the Commission finds that the public interest will be served by refusing to permit such foreign ownership.<sup>7</sup>

4. Licensees request Commission approval of their controlling U.S. parents' foreign ownership under section 310(b)(4) by filing a petition for declaratory ruling.<sup>8</sup> For the Commission to make the public interest findings required by that section of the Act, licensees file the petition and obtain Commission approval before direct or indirect foreign ownership of their U.S. parent companies exceeds 25 percent.<sup>9</sup> The Commission assesses, 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. The Commission's public interest analysis also considers any national security, law enforcement, foreign policy or trade policy issues that may be raised by the foreign ownership. We coordinate as necessary and appropriate with the relevant Executive Branch agencies and afford appropriate deference to their expertise on these issues.<sup>10</sup>

## **B. Recent Proceedings Under Section 310(b)(4)**

### **1. Foreign Ownership of Common Carrier and Aeronautical Radio Licensees**

5. In the *2013 Foreign Ownership Second Report and Order*, the Commission modified the policies and procedures applicable to foreign ownership of common carrier and aeronautical licensees pursuant to section 310(b)(4) by adopting sections 1.990-1.994 of its rules, which provided a streamlined approach for section 310(b)(4).<sup>11</sup> The Commission took these actions to reduce the regulatory costs and

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mobile satellite services. For ease of reference, we refer to "radio station licenses" as "licenses" unless the context warrants otherwise.

<sup>5</sup> See *2013 Foreign Ownership Second Report and Order*, 28 FCC Rcd at 5747-49, ¶¶ 7-10. Under the Commission's secondary market rules, spectrum lessees (and spectrum sublessees) providing common carrier service are subject to the same foreign ownership requirements that apply to common carrier licensees under sections 310(a) and (b) of the Act. See 47 C.F.R. §§ 1.9020(d)(2)(ii); 1.9030(d)(2)(ii); 1.9035(e)(1). We note that spectrum leasing is not currently permitted under the broadcast service rules.

<sup>6</sup> 47 U.S.C. § 310(b)(4) ("No broadcast or common carrier or aeronautical en route or aeronautical fixed radio station license shall be granted to or held by . . . 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.").

<sup>7</sup> The foreign ownership provisions in sections 310(a) and (b)(1)-(3) of the Act, 47 U.S.C. §§ 310(a), (b)(1)-(3), are discussed in the *2013 Foreign Ownership Second Report and Order*, 28 FCC Rcd at 5747-50, ¶¶ 7-11.

<sup>8</sup> See 47 C.F.R. § 1.2.

<sup>9</sup> See, e.g., *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, Notice of Proposed Rulemaking, 26 FCC Rcd 11703, 11710, ¶ 11 (2011) ("*2011 Foreign Ownership NPRM*").

<sup>10</sup> See *2013 Foreign Ownership Second Report and Order*, 28 FCC Rcd at 5751, ¶ 13, 5762, ¶ 34.

<sup>11</sup> *2013 Foreign Ownership Second Report and Order*, 28 FCC Rcd at 5744-46, ¶¶ 3, 5. In the *2012 Foreign Ownership First Report and Order*, in response to requests from commenters, the Commission adopted a

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burdens imposed on common carrier and aeronautical radio applicants, licensees, and spectrum lessees; 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, while continuing to protect important interests related to national security, law enforcement, foreign policy and trade policy.

## 2. Declaratory Ruling Regarding Foreign Ownership of Broadcast Licensees

6. In the *2013 Broadcast Clarification Order*, the Commission articulated and clarified its policies and procedures for evaluating potential foreign investment in broadcast licensees under section 310(b)(4) of the Act to remove apparent uncertainty.<sup>12</sup> As part of that proceeding, a number of diverse interested parties asked the Commission to review its policies and procedures regarding the assessment of applications or proposed transactions that would exceed the 25 percent benchmark in section 310(b)(4) in the broadcast context.<sup>13</sup> While the Commission declined to adopt a standardized review process, it clarified that it would continue to conduct the fact-specific, individual case-by-case review of each application or petition for declaratory ruling involving broadcast stations.<sup>14</sup> The Commission reiterated that, with respect to the application of section 310(b)(4) in broadcast cases, the 25 percent benchmark “is only a trigger for the exercise of our discretion, which we then exercise based upon a more searching analysis of the circumstances of each case.”<sup>15</sup> Additionally, the Commission acknowledged that “changes have occurred in the media landscape and marketplace since the foreign ownership restriction was enacted and that limited access to capital is a concern in the broadcast industry, especially for small business entities and new entrants, including minorities and women.”<sup>16</sup>

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forbearance approach to applying the foreign ownership limitations in section 310(b)(3) of the Act to common carrier licensees. *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, First Report and Order, FCC 12-93, 27 FCC Rcd 9832 (2012) (“*2012 Foreign Ownership First Report and Order*”). The Commission's forbearance authority does not extend to broadcast or aeronautical radio licensees. See 47 U.S.C. § 160. The section 310(b)(3) forbearance approach adopted in the *2012 Foreign Ownership 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, 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. *Id.* at 9832-33, ¶ 1.

<sup>12</sup> *Commission Policies and Procedures Under Section 310(b)(4) of the Communications Act, Foreign Investment in Broadcast Licensees*, MB Docket No. 13-50, Declaratory Ruling, 28 FCC Rcd 16244 (2013) (“*2013 Broadcast Clarification Order*”).

<sup>13</sup> *2013 Broadcast Clarification Order*, 28 FCC Rcd at 16246, ¶ 4. For example, the Coalition of Broadcast Investment (“CBI”), which filed the initial petition for clarification that was the basis for the Commission's *2013 Broadcast Clarification Order*, recommended that the Commission utilize the procedures already in place with respect to proposed common carrier foreign ownership to coordinate with the Executive Branch on any issues related to national security, law enforcement, foreign policy, or trade policy with respect to particular applications or proposed transaction that would exceed 25 percent foreign investment in the controlling U.S. parents of telecommunications entities. See *2013 Broadcast Clarification Order*, 28 FCC Rcd at 16248, ¶ 8.

<sup>14</sup> The Commission stated that it would not entertain petitions to exceed the foreign ownership limits of section 310(b)(3) for foreign investment in broadcast licensees. *2013 Broadcast Clarification Order*, 28 FCC Rcd at 5752, ¶ 15 n.49. Unlike section 310(b)(4), section 310(b)(3) does not afford the Commission any discretion to approve foreign investment in broadcast licensees in excess of the limitations contained therein. While the Commission has statutory authority to forbear from applying any regulation or provision of the Act to a telecommunications carrier or service if the Commission determines that forbearance is in the public interest, that authority is limited to application of those requirements to telecommunications carriers or services. See 47 U.S.C. § 160.

<sup>15</sup> *2013 Broadcast Clarification Order*, 28 FCC Rcd at 16249-50, ¶ 11.

<sup>16</sup> *2013 Broadcast Clarification Order*, 28 FCC Rcd at 16249, ¶ 10.

### 3. Pandora Declaratory Ruling

7. In the *2015 Pandora Declaratory Ruling*, the Commission granted a petition for declaratory ruling filed by Pandora Radio LLC (“Pandora”) to exceed the 25 percent foreign ownership benchmark set out in section 310(b)(4).<sup>17</sup> On June 20, 2013, the Commission received an assignment application in which Pandora sought to become the licensee of Station KXMZ(FM), Box Elder, South Dakota. Thereafter, Pandora amended its assignment application to include a petition for declaratory ruling to permit Pandora’s parent company, Pandora Media, a publicly traded company headquartered in the United States, to have varying levels of foreign ownership (voting and equity) because it could not prove that foreign entities do not beneficially own or vote more than 25 percent of its shares.<sup>18</sup> Based on the facts specific to that case and in view of existing broadcast foreign ownership policies, the Commission approved the request to exceed the 25 percent benchmark under section 310(b)(4) provided that Pandora must obtain prior Commission approval for (1) aggregate foreign equity and/or foreign voting interests in Pandora Media exceeding 49.99 percent; (2) any change in the Pandora Media Board of Directors that would result in a majority of foreign members; or (3) any individual foreign investor or “group” acquiring a greater than five percent voting or equity interest (or ten percent for certain institutional investors) in Pandora Media.<sup>19</sup>

## III. DISCUSSION

### A. Extending Streamlined Foreign Ownership Procedures to Broadcast Licensees

8. In this NPRM, we propose to extend the foreign ownership rules and procedures applicable to common carrier licensees to broadcast licensees,<sup>20</sup> with certain exceptions and proposed modifications discussed in section III.B. below. Specifically, we propose to incorporate broadcast licensees into the Commission’s rules that apply to petitions filed under section 310(b)(4) of the Act.<sup>21</sup> We seek comment on these proposals, as well as on any alternatives that commenters believe we should consider. With respect to each proposal or proposed alternative, commenters should discuss, and, if possible, quantify, the likely costs and benefits of the proposal or proposed alternative.

9. In the *2013 Broadcast Clarification Order*, the Commission signaled that it might elect to create a standardized review process for broadcast licensees similar to that adopted in the common carrier context to streamline procedures.<sup>22</sup> Our subsequent experience with the *2015 Pandora Declaratory Ruling* leads us to propose modifications to our processing procedures for broadcast petitions for declaratory ruling pursuant to section 310(b)(4).<sup>23</sup> The proceeding illustrated a need for greater clarity

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<sup>17</sup> *Pandora Radio LLC Petition for Declaratory Ruling Under Section 310(b)(4) of the Communications Act of 1934, as Amended*, MB Docket No. 14-109, Declaratory Ruling, FCC 15-52, 30 FCC Rcd 5094, 5095-96, ¶ 4 (2015) (“*2015 Pandora Declaratory Ruling*”), *recon denied*, FCC 15-129 (rel. Sept. 17, 2015).

<sup>18</sup> *Id.*

<sup>19</sup> *Id.* at 5101, ¶ 19.

<sup>20</sup> See generally *2013 Foreign Ownership Second Report and Order*, 28 FCC Rcd 5741.

<sup>21</sup> See 47 C.F.R. §§ 1.990-1.994. To the extent we adopt the NPRM’s proposal to incorporate broadcast licensees into the regulatory framework for foreign ownership of common carrier licensees, with certain modifications applicable to broadcast licensees, we propose to codify the final rules adopted in this proceeding in Part 1, subpart T, which is currently reserved in the Code of Federal Regulations at §§ 1.5000-1.5004, and to remove §§ 1.990-1.994 from Part 1, subpart F. Subpart F of the Commission’s rules applies only to Wireless Radio Services Applications and Proceedings. In the text of this NPRM, we generally refer to the rules by their current section numbers, but we may refer to the proposed rule section in the text and footnotes as appropriate.

<sup>22</sup> *2013 Broadcast Clarification Order*, 28 FCC Rcd at 16252, ¶ 15.

<sup>23</sup> Our experience in *Pandora* also highlights an opportunity for the Commission to consider its guidance regarding foreign ownership showings and certifying compliance, which we do in Section III.C.

and certainty in the foreign ownership context for broadcasters, as well as those seeking to acquire broadcast interests. We believe that broadcasters can benefit from the streamlining measures that are applied to common carrier licensees that seek to exceed the 25 percent foreign ownership benchmark in section 310(b)(4). Furthermore, streamlining our filing and review processes may have the added benefit of attracting financial investment from new sources of capital for broadcasters.

10. We tentatively conclude that the considerations underlying the adoption of the foreign ownership rules applicable to section 310(b)(4) petitions for common carrier licensees are generally applicable to broadcast licensees. The Commission's experience applying these rules in the common carrier context demonstrates that the process is efficient and that filers are benefitting from the formal guidance. Moreover, the rules ensure that the Commission is able to satisfy its obligations under section 310(b) with respect to foreign ownership, while coordinating applications and petitions with the Executive Branch, as needed. We propose to apply these principles in the broadcast context. We seek comment on this approach. Commenters are encouraged to review the proposed rules set out in the Appendix, provide comment on the application of these rules to the broadcast sector, and propose alternative approaches that would promote the public interest.<sup>24</sup>

11. Significantly, a petitioner would be able to request (1) approval of up to 100 percent aggregate foreign ownership (voting and/or equity) by unnamed and future foreign investors in the controlling U.S. parent of a broadcast licensee, subject to certain conditions; (2) approval for any named foreign investor that proposes to acquire a less than 100 percent controlling interest to increase the interest to 100 percent at some time in the future; and (3) approval for any non-controlling named foreign investor to increase its voting and/or equity interest up to and including a non-controlling interest of 49.99 percent at some time in the future. Moreover, a petitioner would only need to obtain specific approval of foreign investors (*i.e.*, individuals, entities, or a "group" of foreign individuals or entities) that hold or would hold, directly or indirectly, more than five percent, and in certain circumstances, more than ten percent of the U.S. parent's equity and/or voting interests, or a controlling interest in the U.S. parent. The Commission will continue to coordinate as necessary and appropriate with the Executive Branch regarding all petitions for declaratory ruling filed under section 310(b).

12. We believe that applying these rules to broadcast licensees in the context of section 310(b)(4) petitions will help improve access to capital from foreign investors and promote regulatory flexibility, while also preserving the Commission's statutory obligation, in consultation with the relevant Executive Branch agencies, to ensure that foreign ownership above the 25 percent benchmark serves the public interest.<sup>25</sup> We believe this approach will reduce uncertainty regarding the treatment of foreign investment in broadcast properties and reduce burdens on filers by providing a streamlined, uniform process.

## **B. Specific Modifications for Broadcast Licensees**

### **1. Disclosable Interest Holders**

13. Section 1.991(e)-(g) of the rules requires all section 310(b) petitions for declaratory ruling regarding proposed foreign investment in a common carrier licensee to contain the name, address,

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<sup>24</sup> The Appendix shows the proposed new rules as they would be codified in subpart T of Part 1, 47 C.F.R. §§ 1.5000-1.5004.

<sup>25</sup> As in the common carrier context, the ability to request approval for foreign ownership above the statutory benchmark, including up to 100 percent foreign ownership of the U.S. parent, does not necessarily mean that such ownership levels will be granted in a particular case. *See, e.g., 2013 Foreign Ownership Second Report and Order*, 28 FCC Rcd at 5786, ¶ 82. The Commission, in consultation with the Executive Branch agencies, conducts review of applications and petitions involving broadcast stations based on the relevant public interest considerations for incumbent and prospective licensees. Additionally, as part of its review of any foreign ownership petition, the Commission may send letters of inquiry or document requests to the applicants or petitioners, request additional materials, or take any other needed measures in order to conduct a comprehensive public interest review.

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 the petitioning common carrier licensee or a controlling interest.<sup>26</sup> The Commission adopted the ten percent threshold to ensure consistency with the ownership disclosure requirements that apply to most common carrier applicants under the Commission's licensing rules, while preserving a meaningful opportunity for the Executive Branch agencies to review petitions for national security, law enforcement, foreign policy, and trade policy concerns.<sup>27</sup> We propose to adopt a similar approach for broadcast licensees subject to the modifications described below. We seek comment on this proposal.

14. Rather than adopt the ten percent disclosable threshold for broadcast licensees, we propose to require that broadcast entities disclose their ownership interests based on the current attribution rules and policies applicable to broadcast licensees.<sup>28</sup> Our media attribution rules seek to identify those interests in or relationships to licensees that confer on their holders a degree of influence or control such that the holders have a realistic potential to affect the programming decisions of licensees or other core operating functions.<sup>29</sup> Given the distinct nature of the services provided by common carriers and broadcast stations, different attribution standards apply to these services. For example, as noted above, the ownership disclosure requirements applicable to most common carriers require the disclosure of all ten percent interest holders (voting and equity); the broadcast attribution rules, however, generally require the attribution of individuals or entities that hold five percent or more of the voting stock, while non-voting stock interests are typically not attributable.<sup>30</sup> We believe that consistency with our broadcast attribution rules would ensure certainty and efficiency for broadcast firms with foreign ownership interests. Additionally, broadcast industry filers are familiar with the Commission's media attribution rules and are already required to disclose such interest holders on various Commission forms and applications (e.g., FCC Form 323, Ownership Report for Commercial Broadcast Stations). Given that familiarity, we believe it would pose an undue hardship to establish a different disclosure threshold for broadcasters. We seek comment on this proposal.

## 2. Specific Approval of Named Foreign Investors

15. Section 1.991(i) of the rules requires a common carrier licensee filing a section 310(b)(4) petition to identify and request specific approval for any foreign individual or entity, or "group" of foreign individuals or entities, 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) and/or voting stock, or a controlling interest.<sup>31</sup> In addition, as a condition of the initial ruling, and with respect to any future interests that may be acquired by foreign investors, section 1.994(a)(1) similarly requires the licensee to file a new petition to obtain prior approval

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<sup>26</sup> See *2013 Foreign Ownership Second Report and Order*, 28 FCC Rcd at 5799-801, ¶¶ 111-14; 47 C.F.R. § 1.991(e)-(g).

<sup>27</sup> *2013 Foreign Ownership Second Report and Order*, 28 FCC Rcd at 5800-01, ¶¶ 113-14.

<sup>28</sup> 47 C.F.R. § 73.3555, Note 2.

<sup>29</sup> See, e.g., *Review of the Commission's Regulations Governing Attribution of Broadcast and Cable/MDS Interests*, MM Docket No. 94-150, Report and Order, 14 FCC Rcd 12559, 12560, ¶ 1 (1999). The Commission's media attribution rules define what constitutes a "cognizable interest" in applying the broadcast multiple ownership rules.

<sup>30</sup> See *2013 Foreign Ownership Second Report and Order*, 28 FCC Rcd at 5799-800, ¶ 111; see also 47 C.F.R. § 73.3555, Note 2(a) (broadcast attribution standards). Non-voting stock interests can result in attribution under the "equity-debt" plus standard when they are combined with debt interests and certain other criteria. 47 C.F.R. § 73.3555, Note 2(h).

<sup>31</sup> 47 C.F.R. § 1.991(i). There is an exception in section 1.991(i)(3) for certain interests in excess of five percent and up to ten percent. 47 C.F.R. § 1.991(i)(3).

before any foreign individual, entity, or “group” not previously approved acquires a greater-than-five percent interest in the U.S. parent that does not qualify as exempt under section 1.991(i)(3).<sup>32</sup> In circumstances where a foreign-organized entity requires specific approval, the petition must include the information specified in section 1.991(j), including the name and citizenship of any individual or entity that holds, or would hold, directly and/or indirectly, through one or more intervening entities, ten 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.<sup>33</sup> We propose to adopt a similar approach for broadcast licensees subject to the modifications described in paragraph 16. We seek comment on this proposal.

16. Consistent with our proposal regarding disclosable interest holders in general,<sup>34</sup> we do not believe that it would be appropriate to require broadcast petitioners to use the ten percent standard specified in section 1.991(j)(ii)(2) for petitions filed by common carrier. Instead, we propose again to rely on the attribution standards set out in section 73.3555 applicable to broadcast stations to determine which individuals and entities should be listed for each foreign entity for which the broadcast licensee seeks specific approval.<sup>35</sup> We believe that consistency with our broadcast attribution rules and the familiarity of broadcasters with these rules support such an approach. We seek comment on this proposal.

### 3. Insulation Criteria

17. Sections 1.992 and 1.993 of the rules specify the methodology for calculating the foreign equity and voting interests in the controlling U.S. parent of a common carrier licensee that require specific approval under section 1.991(i) of the rules.<sup>36</sup> For purposes of calculating the percentage of foreign voting interests held indirectly in the controlling U.S. parent through one or more intervening partnerships or limited liability companies (“LLCs”), a general partner, uninsulated limited partner or uninsulated LLC interest holder (including a non-member manager) is considered to hold the same voting interest as the partnership or LLC holds in the company situated in the next lower tier of the vertical ownership chain. Where a limited partner or LLC member is insulated, the limited partner’s or LLC member’s voting interest is calculated as equal to its equity interest in the limited partnership or LLC.<sup>37</sup> Similarly, where the U.S. parent is itself organized as a limited partnership or LLC, an insulated limited partner’s or LLC member’s voting interest in the U.S. parent is calculated as equal to the limited partner’s or LLC member’s equity interest in the parent.

18. For broadcast licensees, we propose to rely on the broadcast insulation criteria set forth in the broadcast rules, rather than those applied in the common carrier context. The insulation criteria for

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<sup>32</sup> 47 C.F.R. § 1.994(a)(1). *See also* 47 C.F.R. § 1.994(e) (specifying the circumstances requiring licensees to file a new petition for declaratory ruling after an initial grant).

<sup>33</sup> 47 C.F.R. § 1.991(j)(2)(ii).

<sup>34</sup> *See supra* ¶¶ 13-14.

<sup>35</sup> *See* Appendix, Proposed Rules, § 1.5001(j)(2)(ii)(B). *See also* 47 C.F.R. § 73.3555, Note 2.

<sup>36</sup> 47 C.F.R. § 1.992 (stating how to calculate indirect equity and voting interests under section 1.991); *id.* § 1.993 (providing insulation criteria for interests in limited partnerships, limited liability partnerships, and limited liability companies). The same methodology applies for purposes of calculating the U.S. and foreign equity and voting interests in the U.S. parent that require disclosure pursuant to sections 1.991(e) through (g) of the rules. 47 C.F.R. § 1.991(e)-(g).

<sup>37</sup> Equity interests held indirectly in the controlling U.S. parent are calculated using 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 represents a controlling interest in the company positioned in the next lower tier. The resulting product yields the *pro rata* equity holdings of the investors in the U.S. parent company separate from the voting power associated with the investors’ shareholdings. *See* 47 C.F.R. § 1.992(b)(1); *2013 Foreign Ownership Second Report and Order*, 28 FCC Rcd at 5803, ¶ 118.



broadcasters are governed by Note 2(f) of section 73.3555.<sup>38</sup> Under the broadcast attribution rules governing partnership and LLC interests, all general partners and non-insulated limited partnership and LLC interests are attributable. An exception from attribution applies only to those limited partners and LLC interest holders that meet the Commission's insulation criteria and certify that they are not materially involved in the management or operations of the entity's media interests. While there are many similarities in the insulation criteria under section 1.993 and Note 2(f) of section 73.3555, the broadcast criteria contain elements that are specific to media-related activities and reflect the distinct nature of broadcast operations.<sup>39</sup>

19. We believe consistency with the Commission's broadcast insulation policies under our attribution rules is appropriate to apply in the foreign ownership context. Broadcast entities are already familiar with these insulation criteria, and those entities that have insulated certain interests have already executed their organizational documents based on these criteria. Adopting different criteria in this context may require these entities to revise and re-execute their organizational documents, renegotiate the roles of insulated interest holders, and operate pursuant to multiple insulation standards when seeking approval of foreign ownership above the 25 percent benchmark in section 310(b)(4). If we were to adopt different criteria, what would the costs associated with applying the common carrier foreign ownership insulation criteria be for broadcasters? Are there any public interest benefits that would exceed such costs? Are there alternative insulation criteria for broadcast entities that might be more appropriate in the context of our foreign ownership review pursuant to section 310(b)(4)? Would the benefits of imposing any alternative criteria exceed the cost of compliance? We seek comment on these issues.

#### 4. Service-Specific Rulings

20. Foreign ownership rulings issued to common carrier licensees<sup>40</sup> cover, unless otherwise specified in a particular ruling, any common carrier radio service in any geographic location regardless of the particular wireless service(s) (e.g., Personal Communications Service) and geographic service area(s) authorized under the petitioner's existing license(s). Such rulings may also be issued when an applicant seeks authority in a contemporaneously filed application for an initial license or for consent to acquire licenses by transfer or assignment.<sup>41</sup> We seek comment on whether there are considerations unique to broadcasting that suggest a different approach.

21. The Commission has noted in the past the important distinctions between common carrier services and broadcast media in the context of the public interest analysis under section 310(b)(4). For example, the Commission has noted that, while common carrier licenses are passive in nature and confer no control over the content of transmissions, broadcast transmissions have been found to present

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<sup>38</sup> 47 C.F.R. § 73.3555, Note 2.

<sup>39</sup> See, e.g., 47 C.F.R. § 73.3555, Note 2(f)(1).

<sup>40</sup> To date, the Commission has not received a request for a section 310(b)(4) declaratory ruling with respect to aeronautical licenses.

<sup>41</sup> Prior to adopting foreign ownership rules for common carrier and aeronautical licensees, the Commission typically issued rulings that were limited in scope to the particular wireless service(s) and geographic service area(s) of the licenses or spectrum leasing arrangements referenced in the petition for declaratory ruling. See *2013 Foreign Ownership Second Report and Order*, 28 FCC Rcd at 5797, ¶ 105. As a result, although the ruling authorized the foreign ownership of the licensee, the licensee was required to file additional petitions for declaratory ruling after grant of the initial ruling in order to "extend" its ruling to cover licenses or spectrum leasing arrangements in different services and/or in different geographic service areas. *Id.* The Commission determined in the *2013 Foreign Ownership Second Report and Order* that it could eliminate its practice of issuing rulings on a service-specific and geographic-specific basis, while preserving a meaningful opportunity for the Executive Branch to consider, in the Title III licensing process, whether a licensee's proposed expansion of service or coverage area raises concerns with respect to national security, law enforcement, foreign policy and trade policy due to the licensee's foreign ownership. *Id.* at 5797-99, ¶¶ 105-110.

additional concerns because broadcasters exercise control over the content that they air.<sup>42</sup> The Commission's approach to the benchmark for foreign investments in broadcast licensees has reflected "heightened concern for foreign influence over or control over broadcast licensees which exercise editorial discretion over the content of their transmissions."<sup>43</sup>

22. Given these considerations, we seek comment on how our process should be adapted, if at all, to approach service-specific rulings. The foreign ownership rules that currently apply to common carrier licensees allow a ruling for common carrier licensees that applies to all types of common carrier wireless services, *e.g.*, satellite, CMRS, microwave, AWS. In addition, the rulings are not geographic specific. Thus, a licensee does not need separate rulings to provide service in the conterminous United States and Puerto Rico. However, given the foregoing issues, a broadcast ruling may require different parameters. We seek comment on whether we should issue rulings on a service and/or geographic basis. For example, to which services would a ruling apply? If a licensee has a ruling covering television licenses, would it need a new ruling if it later sought to acquire AM radio station licenses? Would a licensee with a ruling for an AM radio station in small market require a new ruling if it sought to acquire a national chain of radio stations or additional stations in that small market?

23. Similar questions arise if a common carrier licensee seeks to acquire a broadcast licensee. Would a ruling for common carrier licenses apply prospectively to broadcast licenses that the licensee sought to acquire? Given that we propose herein to adopt differing requirements depending on service (*e.g.*, different disclosable interest holders), how would such differences be reconciled if, for example, a common carrier ruling also were to cover the subsequent acquisition of a television station? We tentatively conclude that entities should not be required to provide the disclosable interest information for both common carrier and broadcast licensees if they propose to provide only one of those types of services, and that the Commission should conduct its public interest analysis for all services only where the applicant is to hold licenses as both common carrier and broadcaster. We seek comment on this issue, including whether there is significant interest in the marketplace for entities with foreign ownership to hold both common carrier and broadcast licenses.

## 5. Filing and Processing of Broadcast Petitions

24. Section 1.990(b) of the rules provides that petitions for declaratory ruling shall be filed electronically through the International Bureau Filing System ("IBFS").<sup>44</sup> For broadcast petitions, however, we propose that petitions for declaratory ruling be filed electronically as an attachment to the underlying applications for a construction permit or an assignment or transfer of control that are electronically filed through the Commission's Consolidated Database System ("CDBS") or any successor database.<sup>45</sup> As is the current procedure, such applications would be placed on a CDBS-generated public notice denoting that the application is "accepted for filing." This public notice initiates the formal processing of the application, provides notice to interested members of the public who may wish to support or oppose the application, and triggers the legal timeframe for the filing of petitions to deny.<sup>46</sup>

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<sup>42</sup> 2013 Broadcast Clarification Order, 28 FCC Rcd at 16245, ¶ 3 n.5; *see also* 47 U.S.C. §§ 309(d), 310(d).

<sup>43</sup> 2013 Broadcast Clarification Order, 28 FCC Rcd at 16246, ¶ 3 n.7.

<sup>44</sup> 47 C.F.R. § 1.990(b).

<sup>45</sup> *See, e.g.*, FCC Form 314, Application for Consent to Assignment of Broadcast Station Construction Permit or License, <http://transition.fcc.gov/Forms/Forms314/314.pdf>; FCC Form 315, Application for Consent to Transfer Control of Entity Holding Broadcast Station Construction Permit or License, <http://transition.fcc.gov/Forms/Forms315/315.pdf>; FCC Form 316, Application for Consent to Assign Broadcast Station Construction Permit or License or Transfer of Control of Entity Holding Broadcast Station Construction Permit or License, <http://transition.fcc.gov/Forms/Forms316/316.pdf>.

<sup>46</sup> 47 C.F.R. § 73.3584(a).

Such a petition for declaratory ruling would separately receive a Media Bureau docket number for public notice and comment, in addition to the CDBS-generated public notice on the associated application.

25. We also propose that, in the absence of an underlying broadcast construction permit, assignment or transfer application, the broadcast petitioner would file its petition for declaratory ruling electronically with the Commission's Office of the Secretary via the Commission's Electronic Comment Filing System ("ECFS") as a non-docketed filing.<sup>47</sup> The petition will subsequently receive a Media Bureau docket number and a public notice seeking comment will be released. The petition would be reviewed and, after consultation with the relevant Executive Branch agencies, a decision issued. We believe this proposal will facilitate an efficient, predictable filing and processing scheme for broadcast petitions for declaratory ruling whether or not those petitions are accompanied by a construction permit, or an assignment or transfer application. Broadcasters are familiar with both the Commission's CDBS and ECFS filing systems and, as such, we expect implementation of these filing and notice measures will provide regulatory consistency. We seek comment on this proposal.

### C. Methodology for Assessing Compliance with Section 310(b)(4)

26. We propose to adopt a rule applicable to U.S. public companies that would specify the information upon which a licensee's controlling U.S. parent may rely for purposes of determining its aggregate level of foreign ownership. Such a rule should provide greater clarity for U.S. public companies and reduce the burden of determining their aggregate levels of foreign ownership given the difficulties in ascertaining the citizenship of their shareholders. We seek comment below on adoption of such a rule, including the type of information that would likely be known to a U.S. public company in the normal course of business. We also seek comment on specific alternative proposals to accomplish our goal of providing licensees with a more workable means of ensuring compliance with section 310(b)(4).

27. In the *2015 Pandora Declaratory Ruling* proceeding, the National Association of Broadcasters ("NAB") and the Multicultural Media and Telecommunications Council ("MMTC")<sup>48</sup> raised concerns that the Commission's policies for calculating levels of foreign ownership in broadcast entities are "outdated" and should be modified to comport with current securities laws regarding widely-traded public entities.<sup>49</sup> MMTC stated that broadcasters that are public companies need flexible, practical, and efficient means to estimate foreign ownership to comply with section 310(b)(4), which would attract new foreign capital that will be needed to help minority broadcasters "overcome a severe lack of access to domestic capital."<sup>50</sup> NAB also contended that the present policies tend to frustrate efforts to attract capital to broadcast firms.<sup>51</sup> MMTC and NAB raise important issues, and we stated in the *2015 Pandora Declaratory Ruling* that we would examine whether it is appropriate to revise the methodology for assessing broadcaster compliance with section 310(b)(4).<sup>52</sup> These issues are not limited to broadcast licensees and also affect common carrier licensees' compliance with section 310(b)(4). Thus we seek to address the practices used by any licensee in order to ensure compliance with section 310(b)(4). In addition, we seek comment on whether any changes that we make regarding what licensees need to do to

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<sup>47</sup> See *Commission Announces That Petitions for Rulemaking May Be Submitted Online*, Public Notice, DA 15-356 (rel. Mar. 19, 2015) (explaining how to submit a non-docketed filing via ECFS).

<sup>48</sup> At the time that it filed in the Pandora proceeding, MMTC was known as the Minority Media, Telecom and Internet Council.

<sup>49</sup> NAB Pandora Comments at 1.

<sup>50</sup> MMTC Pandora Reply at 1-2.

<sup>51</sup> NAB Pandora Comments at 5. See also Comments of the National Association of Broadcasters, filed July 1, 2015 in IB Docket No. 15-126, Applications Filed By LightSquared Subsidiary LLC, Debtor-in-Possession, and LightSquared Subsidiary, LLC, For FCC Consent to Assign Licenses and Other Authorizations and Request for Declaratory Ruling on Foreign Ownership.

<sup>52</sup> *2015 Pandora Declaratory Ruling*, 30 FCC Rcd at 5101, ¶ 17.

ensure compliance with section 310(b)(4) should also apply to ensuring compliance with section 310(b)(3).<sup>53</sup>

28. NAB maintains that the Commission's compliance policies are outdated, in part, because they pertain to regulations of some 40 years ago when Securities and Exchange Commission ("SEC") regulations related to physically holding stock certificates. The current practice involves holding shares of publicly traded companies in "street name" (*i.e.*, the broker holding legal title to a share on behalf of the beneficial owner).<sup>54</sup> NAB notes that SEC rules specifically limit brokers from providing companies with shareholder information without shareholder permission, and, as such, widely-traded public entities have "little recourse" if the shareholder decides to remain anonymous.<sup>55</sup> According to NAB, in light of current industry practices and SEC rules, the Commission cannot rationally assume that all unidentified shareholders are foreign.<sup>56</sup> NAB claims that as many as 70 to 80 percent of publicly traded shares are held in street name, and that it is unlikely that the majority of shareholders are aware of, or care, if a brokerage firm holds their securities in street name.<sup>57</sup>

29. Since the issuance of the *2015 Pandora Declaratory Ruling*, we have further considered the regulatory hurdles to certifying compliance with foreign ownership limits and for requesting Commission approval to exceed the statutory benchmark of 25 percent foreign ownership. In particular, we note the unique burdens our processes may exert on widely-held publicly traded companies, which do not necessarily have adequate means to ascertain and certify the citizenship of their shareholders. Our aim is to provide licensees with greater flexibility in their regulatory filings and certifications.

30. We seek comment on what steps licensees should take to track their foreign ownership to ensure compliance with section 310(b)(4). Privately-held companies, partnerships and LLCs should have knowledge of all of their owners, and should be able to track their foreign ownership relatively easily. We seek comment on our view that privately-held entities should have knowledge of the citizenship of their owners. We also seek comment on whether it is appropriate to adopt any measures to facilitate their ability to demonstrate compliance with section 310(b)(4), including any or all of the proposals described in this NPRM.

31. Publicly-traded companies face a more complicated challenge to demonstrate compliance with section 310 (b)(4). As NAB notes, most shares of publicly-traded companies are now held in street name and it can be difficult for the licensee to determine the citizenship of the beneficial owner of those shares. While publicly traded companies can undertake surveys of their shareholders' equity and voting interests, those surveys may not be able to ascertain the beneficial shareholders' citizenship. We believe a

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<sup>53</sup> 47 U.S.C. § 310(b)(3). In the *2012 Foreign Ownership First Report and Order*, the Commission adopted a forbearance approach to applying the foreign ownership limitations in section 310(b)(3) of the Act to common carrier licensees. See note 11, *supra*. The Commission uses the same policies and procedures for common carrier licensees subject to 310(b)(3) as it applies for 310(b)(4). *2012 Foreign Ownership First Report and Order*, 27 FCC Rcd at 9842, ¶ 26. The Commission codified these procedures in the *2013 Foreign Ownership Second Report and Order*. 28 FCC Rcd at 5763, ¶ 37. See 47 C.F.R. § 1.990.

<sup>54</sup> NAB Pandora Comments at 2.

<sup>55</sup> NAB Pandora Comments at 3.

<sup>56</sup> NAB Pandora Comments at 3; MMTTC Pandora Reply at 2 ("[i]nterpretations. . . which assume that every ownership share whose owner does not respond to a survey must be assumed to be held by a foreign entity, yield an impractical, illogical and inefficient approach to estimating foreign ownership by public companies").

<sup>57</sup> NAB Pandora Comments at 3 n.7 (citing Alan L. Beller & Janet L. Fisher, *The OBO/NOBO Distinction in Beneficial Ownership: Implications for Shareholder Communications and Voting*, Council of Institutional Investors, at 5 (Feb. 2010), available at <http://www.sec.gov/comments/s7-14-10/s71410-22.pdf>). NAB adds that many beneficial shareholders may not be aware that their information is not being shared. NAB states that, according to the SEC, "many brokerage firms will automatically put [a customer's] securities into street name unless you give them instructions to the contrary." NAB Pandora Comments at 3 n.6.

U.S.-organized public company should, however, know, or can be expected to know, information about certain shareholders. For example, U.S.-organized public companies should know about the shareholders that are required to disclose their ownership pursuant to SEC rules – generally, those shareholders with greater than five percent ownership and institutional investors with greater than ten percent ownership.<sup>58</sup> We believe the companies should also know the ownership of the shares registered with the company and the shares held by officers and directors. Are there other types of shares about which a U.S. public company could be expected to know?

32. We seek comment on the Commission’s authority to provide licensees with greater flexibility to demonstrate compliance with section 310(b)(4). We specifically seek comment on whether it would be consistent with the Commission’s obligations under section 310(b)(4) to permit a licensee with a U.S.-organized public company in its ownership chain to rely solely on ownership information that is known or reasonably should be known to the public company to determine whether the licensee is in compliance with the foreign ownership benchmark in section 310(b)(4). If we adopt this proposed approach, are there policy or legal reasons to limit its availability to U.S.-organized public companies, and/or companies for which a certain percentage of their officers and directors are U.S. citizens? What amount or type of shareholder data should licensees be required to produce to satisfy their “best efforts” to comply with section 310(b)(4)? Should equity and voting ownership in the U.S. public company be treated the same or, for example, should there be a different, greater obligation to know the voting ownership? Additionally, should we accept shareholder street addresses, alone, as a proxy for citizenship? If the Commission were to adopt such an approach, would there be circumstances under which street addresses, without more, would not be an acceptable method of certifying foreign ownership levels? Finally, we seek comment on how frequently a company should be required to assess the extent of its foreign ownership if we were to adopt this approach.

33. We also request comment on alternatives to our proposed approach, such as the guidance provided in the *2015 Pandora Declaratory Ruling*. In that proceeding, we instructed Pandora on several methods for determining and certifying its foreign citizenship levels, including making changes to organizational documents.<sup>59</sup> Further, Pandora committed to certify on a biennial basis its foreign ownership levels using measures, among others: using the Depository Trust Corporation (“DTC”) SEG-100 or equivalent program;<sup>60</sup> monitoring shares held by current and former officers and directors;

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<sup>58</sup> 17 C.F.R. § 240.13d-1. For these purposes, beneficial ownership includes both voting and investment power over the shares. *Id.* § 240.13d-3. In most cases, Exchange Act Rule 13d-1(a) 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. *Id.* § 240.13d-1(a). A more in-depth discussion of the shareholder reporting requirements under section 13(d) of the Securities Exchange Act of 1934, as amended (the “Exchange Act”) and the specific approval requirements for common carrier licensees is contained in the *2013 Foreign Ownership Second Report and Order*, 28 FCC Rcd at 5767-76, ¶¶ 47-65.

We note that the disclosure requirements of section 13(d) of the Exchange Act informed the Commission’s streamlined approach requiring section 310(b)(4) petitions filed by common carrier licensees to include requests for specific approval only for those foreign investors that hold or would hold, directly or indirectly, more than five percent, and in certain circumstances, more than ten percent of the U.S. parent’s equity and/or voting interests, or a controlling interest.

<sup>59</sup> *2015 Pandora Declaratory Ruling*, 30 FCC Rcd at 5101, ¶ 20.

<sup>60</sup> We note that several parents of broadcast licensees also participate in SEG-100 or similar programs which allow for the deposit of foreign-owned shares into a segregated account for monitoring of shares. When an issuer requests to be included in the SEG-100 program, DTC notifies its participants that they must apply SEG-100 procedures to future trades of stock. Each DTC participant is obligated to make inquiries of their own account participant’s SEG-100 account. Such a process allows firms, through their transfer agents, to monitor changes in foreign ownership levels and, if the threshold is exceeded, to notify DTC of the number of shares that must be transferred out of SEG-100 accounts.

monitoring relevant SEC filings, obtaining a non-objecting beneficial owner (“NOBO”) list,<sup>61</sup> and requesting that all NOBOs provide citizenship information; and making reasonable efforts to secure the cooperation of the relevant financial intermediaries in obtaining citizenship information. We stated that, consistent with existing compliance practices, we expected Pandora Media to use sources other than shareholder mailing addresses or corporate headquarters locations.<sup>62</sup>

34. We seek comment on whether the use of street addresses, coupled with participation in SEG-100, would provide the Commission with sufficient information to discharge its public interest obligations pertaining to foreign ownership in broadcast licensees, while affording a more workable approach that may reduce the burden on publicly-traded companies. We observe that, under SEG-100, stock issuers approach DTC and request that their publicly traded securities be included in the program. DTC then updates its notations as to those requiring SEG-100 treatment and notifies all DTC participants that they must apply SEG-100 procedures to trades in the restricted company’s stock. DTC participants are obligated to make inquiries of their account holders and to place the shares of such holders who are non-citizens in the DTC participant’s segregated account.<sup>63</sup> We ask commenters to raise any additional substantive and procedural issues that should be considered in modifying and supplementing our processes with regard to compliance with the broadcast foreign ownership rules and policies.

35. We also solicit comment on NAB’s suggestion that we eliminate the presumption that unidentified shareholders be counted as foreign.<sup>64</sup> In light of the difficulties public companies now face in obtaining information about their domestic as well as foreign shareholders, as the record in the Pandora proceeding indicated, we seek comment on alternatives to this presumption. If we were to change this presumption, should applicants be allowed to extrapolate foreign ownership percentages based on known shareholders? For example, if ten percent of the identified shares are owned by foreign owners, should we presume that ten percent of the unidentified shares are held by foreign owners? Alternatively, should we extrapolate using a multiple? If so, what should that multiple be? Should there be an upper limit on the relative number of unknown shareholders that can be estimated under any such approach?

36. In addition, is there a legal and policy basis for concluding in this proceeding, under section 310(b)(4), that the public interest would be served by permitting small foreign equity and/or voting interests in U.S. public companies – e.g., equity or voting interests that are not required to be reported under Exchange Act Rule 13d-1 – without our individual review and approval, even in circumstances where the U.S. public company may have aggregate foreign ownership (or aggregate foreign and unknown ownership) exceeding 25 percent? If so, does that basis extend to a finding that the public interest would be served by permitting a U.S. public company to have up to an aggregate less than 50 percent (or some higher level) non-controlling foreign investment, even with individual investments that may be required to be reported under the Exchange Act Rule 13d-1, without individual review and approval? We seek comment on these approaches and ask commenters to provide any other suggestions.

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<sup>61</sup> A NOBO list is a list of beneficial owners that own shares through a broker or bank intermediary and that do not object to their identifying information being reported to the issuer.

<sup>62</sup> *2015 Pandora Declaratory Ruling*, 30 FCC Rcd at 5101-02, ¶ 21. Previously, pursuant to Commission precedent, the Media Bureau advised Pandora that, in the broadcast context, a mailing address is not a sufficiently reliable indicator of citizenship for section 310(b) purposes. The use of mailing addresses may result in a foreign shareholder, such as a company incorporated under the laws of another country, being treated as a U.S. shareholder. Pandora was instructed that it could not rely on such data in making its foreign ownership certification in its assignment application for KXMZ (FM). See Letter to John M. Pelkey, Esq. and Melodie A Virtue, Esq. from Peter H. Doyle, Chief, Audio Division, Media Bureau, Federal Communications Commission, at 1 (Jan. 8, 2014) (regarding KXMZ (FM), Box Elder, SD).

<sup>63</sup> See also *supra* n.60.

<sup>64</sup> See *supra* ¶ 28.

#### D. Corrections and Clarifications of Existing Rules

37. We take this opportunity to make certain technical corrections to the foreign ownership rules and seek comment on proposed clarifying changes, discussed below, as well as on any other changes commenters may suggest to improve the structure and clarity of the rules.

38. First, in section 1.5001 of the proposed rules, which lists the required contents of petitions for declaratory ruling, we propose to include a cross-reference to section 1.5000(c), the requirement that each applicant, licensee, or spectrum lessee filing a section 310(b) petition for declaratory ruling certify to the information contained in the petition in accordance with the provisions of section 1.16 of the rules.<sup>65</sup> Our experience is that it is not uncommon for petitions to be filed without the required certification. We therefore have included in proposed rule section 1.5001(l) a cross-reference to the certification requirement to highlight to filers this critical aspect of our rules.

39. Second, we propose to include two Notes in section 1.5001(i) of the proposed rules to clarify that certain foreign interests of five percent or less may require specific approval in circumstances where there is direct or indirect foreign investment in the U.S. parent in the form of uninsulated partnership interests or uninsulated interests held by members of an LLC.<sup>66</sup> Many limited partners and LLC members hold small equity interests in their respective companies with control of these companies residing in the general partner or managing member, respectively. However, for purposes of identifying foreign interests that require specific approval (and for determining a common carrier licensee's disclosable U.S. and foreign interest holders), uninsulated partners and uninsulated LLC members are deemed to hold the same *voting* interest as the partnership or LLC holds in the company situated in the next lower tier of the licensee's vertical ownership chain.<sup>67</sup> Depending on the particular ownership structure presented in the petition, an uninsulated foreign limited partner or uninsulated LLC member may require specific approval because the voting interest it is deemed to hold in the U.S. parent exceeds five percent and, because it is an uninsulated voting interest, it does not qualify as exempt from the specific approval requirements.<sup>68</sup> We request comment on the proposed language and placement of these Notes, which are intended to improve the clarity of the specific approval requirements as recodified in section 1.5001(i) of the rules.

40. Third, we seek comment on whether Commission precedent supports the inclusion of additional permissible voting or consent rights in the list of investor protections where the rights do not, in themselves, result in a limited partnership or LLC interest being deemed uninsulated within the meaning of that section.<sup>69</sup> Similarly, we request comment on whether Commission precedent supports the inclusion of additional permissible minority shareholder protections.<sup>70</sup>

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<sup>65</sup> See Appendix, Proposed Rules, § 1.5001(l). The certification requirement is contained in section 1.990(c) of the rules, 47 C.F.R. § 1.990(c), which we propose to recodify as 47 C.F.R. § 1.5000(c). See Appendix, Proposed Rules, § 1.5000(c). The certification must also 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. 47 C.F.R. § 1.990(c)(1), which we propose to recodify as 47 C.F.R. § 1.5000(c)(1).

<sup>66</sup> See Appendix, Proposed Rules, § 1.5001(i), Note to paragraphs (i)(1) and (2); *id.* § 1.5001(i), Note to paragraph (i)(3)(ii)(C).

<sup>67</sup> 47 C.F.R. §§ 1.992(b)(2)(ii)(A), (iii)(A). See also *supra* section III.B.3.

<sup>68</sup> Insulated partnership and LLC interests of ten percent or less in the U.S. parent are exempt from specific approval. 47 C.F.R. § 1.991(i)(3)(ii)(C).

<sup>69</sup> 47 C.F.R. § 1.993. This rule would be recodified as section 1.5003 under the proposed rules. See Appendix, Proposed Rules, § 1.5003.

<sup>70</sup> 47 C.F.R. § 1.991(i)(5). This rule would be recodified as section 1.5001(i)(5) under the proposed rules. See Appendix, Proposed Rules, § 1.5001(i)(5).

41. Finally, we propose to correct two cross-references,<sup>71</sup> and to make additional clarifying changes.<sup>72</sup>

#### **E. Transition Issues**

42. Consistent with the approach adopted in the *2013 Foreign Ownership Second Report and Order*, we propose that any changes adopted in this proceeding be applied prospectively.<sup>73</sup> We propose that existing foreign ownership rulings issued prior to the effective date of the rules adopted in this proceeding shall remain in effect. Specifically, as is currently the case under our foreign ownership rules for common carrier licensees, licensees subject to an existing ruling as of the effective date of the rules adopted in this proceeding would be required to continue to comply with any general and specific terms and conditions of their rulings, including Commission rules and policies in effect at the time the ruling was issued.<sup>74</sup> We propose that such licensees may, however, request a new ruling under any revised rules, but they are not required to do so. We tentatively conclude that this approach is appropriate because it will afford the Commission and the relevant Executive Branch agencies an opportunity to evaluate the potential effects of applying the new rules to licensees that are subject to an existing ruling. We seek comment on this approach. In addition, we seek comment on how to treat any requests for declaratory ruling that are pending before the Commission as of the effective date of the rules adopted in this proceeding. Should the Commission review these requests under the rules adopted in this proceeding? Are there other transition issues that we should address?

#### **F. Other Reforms to Foreign Ownership Review**

43. Finally, we invite comment on any additional reforms that could further streamline our review of foreign ownership applications and bring our foreign and domestic investment review processes into closer alignment, while ensuring that important national security, law enforcement, foreign policy, trade policy and other public policy goals continue to be met. For example, are there certain types of applications that could be reviewed in a more streamlined manner than the proposals outlined above? We seek comment on these and any other proposals that would streamline our process for analyzing foreign ownership under section 310(b)(4), while also serving our public interest goals.

### **IV. CONCLUSION**

44. We seek comment on proposals to adopt a tailored application of the existing rules for review of foreign ownership of common carrier licensees to foreign ownership of broadcast licensees. We also seek comment on revising the methodology for assessing licensee compliance with section

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<sup>71</sup> See Appendix, Proposed Rules, §§ 1.5001(e)(1), (2).

<sup>72</sup> See Appendix, Proposed Rules, §§ 1.5001(i)(3)(ii)(A)-(C).

<sup>73</sup> *2013 Foreign Ownership Second Report and Order*, 28 FCC Rcd at 5812-13, ¶¶ 136-38.

<sup>74</sup> We remind common carrier licensees with an existing foreign ownership ruling of their obligation to seek a new ruling *before* they exceed the parameters of their rulings, including those rulings issued prior to August 9, 2013, the effective date of the rules adopted in the *2013 Foreign Ownership Second Report and Order*. We note, in particular, that a licensee's ruling issued prior to August 9, 2013, may be limited in scope to the particular wireless service(s) and geographic service area(s) of the licenses or spectrum leasing arrangements referenced in the petition for declaratory ruling. See *supra* Section III.B.4 (citing *2013 Foreign Ownership Second Report and Order*, 28 FCC Rcd at 5797, ¶ 105). The Commission's decision in the *2013 Foreign Ownership Second Report and Order* to eliminate its practice of issuing rulings on a service- and geographic-specific basis did not apply retroactively to rulings issued prior to the effective date of the rules adopted in that proceeding. See *2013 Foreign Ownership Second Report and Order*, 28 FCC Rcd at 5812-13, ¶ 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. ... We will continue to apply our existing foreign ownership policies and procedures to such licensees within the parameters of their existing rulings.") Failure to meet a condition of a foreign ownership ruling may result in monetary sanctions or other enforcement action by the Commission.



310(b)(4). In addition, we propose clarification of existing policies and procedures for both broadcast and common carrier as well as aeronautical licensees. We tentatively conclude that these proposals 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 in the U.S. broadcast and telecommunications infrastructure.

## V. PROCEDURAL ISSUES

### A. *Ex Parte* Presentations

45. This NPRM shall be treated as a “permit-but-disclose” proceeding in accordance with the Commission’s *ex parte* rules. Persons making *ex parte* presentations must file a copy of any written presentation or a memorandum summarizing any oral presentation within two business days after the presentation (unless a different deadline applicable to the Sunshine period applies). Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentation must (1) list all persons attending or otherwise participating in the meeting at which the *ex parte* presentation was made, and (2) summarize all data presented and arguments made during the presentation. If the presentation consisted in whole or in part of the presentation of data or arguments already reflected in the presenter’s written comments, memoranda or other filings in the proceeding, the presenter may provide citations to such data or arguments in his or her prior comments, memoranda, or other filings (specifying the relevant page and/or paragraph numbers where such data or arguments can be found) in lieu of summarizing them in the memorandum. Documents shown or given to Commission staff during *ex parte* meetings are deemed to be written *ex parte* presentations and must be filed consistent with rule 1.1206(b). In proceedings governed by rule 1.49(f) or for which the Commission has made available a method of electronic filing, written *ex parte* presentations and memoranda summarizing oral *ex parte* presentations, and all attachments thereto, must be filed through the electronic comment filing system available for that proceeding, and must be filed in their native format (e.g., .doc, .xml, .ppt, searchable .pdf). Participants in this proceeding should familiarize themselves with the Commission’s *ex parte* rules.

### B. Initial Regulatory Flexibility Certification

46. The Regulatory Flexibility Act of 1980, as amended (RFA),<sup>75</sup> requires that an initial 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.”<sup>76</sup> The RFA generally defines the term “small entity” as having the same meaning as the terms “small business,” “small organization,” and “small governmental jurisdiction.”<sup>77</sup> In addition, the term “small business” has the same meaning as the term “small business concern” under the Small Business Act.<sup>78</sup> 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).

47. In this NPRM, the Commission seeks comment on proposed changes and other options to incorporate broadcast licenses into the Commission’s rules and procedures for analyzing foreign ownership of common carrier and aeronautical radio licensees under section 310(b)(4) of the Act, 47

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<sup>75</sup> 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).

<sup>76</sup> 5 U.S.C. § 605(b).

<sup>77</sup> 5 U.S.C. § 601(6).

<sup>78</sup> 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.”

U.S.C. § 310(b)(4), and to clarify certain aspects of those rules and procedures for broadcast, common carrier and aeronautical licensees while continuing to ensure that we have the information we need to carry out our statutory duties. The proposals in this NPRM are designed to reduce to the extent possible the regulatory costs and burdens imposed on broadcast, wireless common carrier and aeronautical applicants, licensees, and spectrum lessees; provide greater transparency and more predictability with respect to the Commission's filing requirements and review process; and facilitate investment from new sources of capital, while continuing to protect important interests related to national security, law enforcement, foreign policy, and trade policy.

48. The Commission estimates that the rule changes discussed in this NPRM, if adopted, would result in a reduction in the time and expense associated with filing section 310(b)(4) petitions for declaratory ruling by broadcast licensees. For example, this NPRM proposes that U.S. parent companies of broadcast licensees that seek Commission approval to exceed the 25 percent foreign ownership benchmark in section 310(b)(4) include in their petitions requests for specific approval only of foreign investors that would hold a direct or indirect equity and/or voting interest in the U.S. parent that exceeds five percent (or exceeds ten percent in certain circumstances), or a controlling interest. Another proposal would, if adopted, allow the U.S. parent to request specific approval for any non-controlling foreign investors named in the section 310(b)(4) petition to increase their direct or indirect equity and/or voting interests in the U.S. parent at any time after issuance of the section 310(b)(4) ruling, up to and including a non-controlling 49.99 percent equity and/or voting interest. Similarly, the U.S. parent would be permitted to request specific approval for any named foreign investor that proposed to acquire a controlling interest of less than 100 percent to increase the interest to 100 percent at some future time. This NPRM also seeks comment on measures the Commission can take to reduce the costs and burdens associated with licensees' efforts to ensure that they remain in compliance with the statutory foreign ownership requirements, which apply broadly to broadcast, common carrier, aeronautical en route and aeronautical fixed radio licensees.

49. The Commission believes that the streamlining proposals and other options on which the Commission seeks comment in this NPRM 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 the Commission has the information we need to carry out our statutory duties. Therefore, the Commission certifies that the proposals in this NPRM, if adopted, will not have a significant economic impact on a substantial number of small entities.<sup>79</sup> The Commission will send a copy of the NPRM, including a copy of this Initial Regulatory Flexibility Certification, to the Chief Counsel for Advocacy of the SBA.<sup>80</sup> This initial certification will also be published in the Federal Register.<sup>81</sup>

### C. Initial Paperwork Reduction Act of 1995 Analysis

50. This document contains proposed new and modified information collection requirements. The Commission, as a part of its continuing effort to reduce paperwork burdens, invites the general public and the Office of Management and Budget (OMB) to comment on the information collection requirements contained in this document, as required by the Paperwork Reduction Act of 1995 (PRA), Public Law 104-13. In addition, pursuant to the Small Business Paperwork Relief Act of 2002, Public

<sup>79</sup> In the proceeding in which sections 1.990-1.994 were adopted, the Commission certified that the rules and procedures for analyzing foreign ownership of common carrier and aeronautical radio licensees under section 310(b)(4), which this NPRM proposes to apply with certain modifications to broadcast licensees, would not have a significant economic impact on a substantial number of small entities. *See 2013 Foreign Ownership Second Report and Order*, 25 FCC Rcd at 5813-15, ¶¶ 141-145; *2011 Foreign Ownership NPRM*, 26 FCC Rcd at 11742-44, ¶¶ 80-83.

<sup>80</sup> 5 U.S.C. § 605(b).

<sup>81</sup> *Id.*

Law 107-198, *see* 44 U.S.C. 3506(c)(4), we seek specific comment on how we might “further reduce the information collection burden for small business concerns with fewer than 25 employees.”

#### **D. Filing of Comments and Reply Comments**

51. Pursuant to sections 1.415 and 1.419 of the Commission’s rules, 47 CFR §§ 1.415, 1.419, interested parties may file comments and reply comments on or before the dates indicated on the first page of this document. Comments may be filed using the Commission’s Electronic Comment Filing System (ECFS). *See Electronic Filing of Documents in Rulemaking Proceedings*, 63 FR 24121 (1998).

- Electronic Filers: Comments may be filed electronically using the Internet by accessing the ECFS: <http://apps.fcc.gov/ecfs/>.
- Paper Filers: Parties who choose to file by paper must file an original and one copy of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, filers must submit two additional copies for each additional docket or rulemaking number.

Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. All filings must be addressed to the Commission’s Secretary, Office of the Secretary, Federal Communications Commission.

- All hand-delivered or messenger-delivered paper filings for the Commission’s Secretary must be delivered to FCC Headquarters at 445 12<sup>th</sup> St., SW, Room TW-A325, Washington, DC 20554. The filing hours are 8:00 a.m. to 7:00 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes and boxes must be disposed of before entering the building.
- Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743.
- U.S. Postal Service first-class, Express, and Priority mail must be addressed to 445 12<sup>th</sup> Street, SW, Washington DC 20554.

52. People with Disabilities: To request materials in accessible formats for people with disabilities (braille, large print, electronic files, audio format), send an e-mail to [fcc504@fcc.gov](mailto:fcc504@fcc.gov) or call the Consumer & Governmental Affairs Bureau at 202-418-0530 (voice), 202-418-0432 (tty).

53. All parties must file one copy of each pleading electronically or by paper to each of the following:

(1) Kimberly Cook, Attorney, Policy Division, International Bureau, 445 12<sup>th</sup> Street, S.W., Washington, D.C. 20554; e-mail [Kimberly.Cook@fcc.gov](mailto:Kimberly.Cook@fcc.gov).

(2) Jamila Bess Johnson, Attorney, Industry Analysis Division, Media Bureau, 445 12<sup>th</sup> Street, S.W., Washington, D.C. 20554; e-mail [Jamila-Bess.Johnson@fcc.gov](mailto:Jamila-Bess.Johnson@fcc.gov).

#### **VI. ORDERING CLAUSES**

54. IT IS ORDERED that, pursuant to the authority contained in 47 U.S.C. Sections 151, 152, 154(i), 154(j), 211, 303(r), 309, 310 and 403, this Notice of Proposed Rulemaking is ADOPTED.

55. IT IS FUTHER ORDERED that NOTICE IS HEREBY GIVEN of the proposed regulatory changes to Commission policy and rules described in this Notice of Proposed Rulemaking and that comment is sought on these proposals.

56. IT IS FURTHER ORDERED that the Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, SHALL SEND a copy of this Notice of Proposed Rulemaking, including the Initial Regulatory Flexibility Certification, to the Chief Counsel for Advocacy of the Small Business Administration.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch  
Secretary

## APPENDIX

## Proposed Rules

Parts 1, 25, 73 and 74 of the Commission rules are amended as follows:

## PART 1 – PRACTICE AND PROCEDURE

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

Authority: 15 U.S.C. 79, et seq.; 47 U.S.C. 151, 154(i), 154(j), 155, 157, 160, 201, 225, 227, 303, 309, 310, 332, 1403, 1404, 1451, 1452, and 1455.

2. In part 1, subpart F, remove the undesignated center heading “Foreign Ownership of Common Carrier, Aeronautical En Route, and Aeronautical Fixed Radio Station Licensees” and remove §§ 1.990 through 1.994.

3. Add subpart T to part 1 to read as follows:

**Subpart T—Foreign Ownership of Broadcast, Common Carrier, Aeronautical En Route, and Aeronautical Fixed Radio Station Licensees**

Sec.

1.5000 Citizenship and filing requirements under section 310(b) of the Communications Act of 1934, as amended.

1.5001 Contents of petitions for declaratory ruling under section 310(b) of the Communications Act of 1934, as amended.

1.5002 How to calculate indirect equity and voting interests under section 1.5001.

1.5003 Insulation criteria for interests in limited partnerships, limited liability partnerships, and limited liability companies.

1.5004 Routine terms and conditions.

**§ 1.5000 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 broadcast, 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 broadcast, 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 broadcast, 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 broadcast, 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.

(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 § 1.5000: For purposes of calculating its foreign ownership to determine whether it is required to file a petition for declaratory ruling under paragraph (a)(1) or (a)(2) of this section, a U.S.-organized publicly-traded company shall use information about its voting and non-voting stock available to it in the normal course of business, including ownership information required to be disclosed pursuant to rules of the Securities and Exchange Commission, shares recorded in the company's shareholder register, shares held by the members of the company's Board of Directors and shares held by its officers. A U.S.-organized publicly-traded company is a company (1) that is organized in the United States, (2) whose stock is traded on a stock exchange in the United States, (3) that is headquartered in the United States, (4) with a majority of members of its Board of Directors who are citizens of the United States, and (5) with a majority of officers who are citizens of the United States.

Note 2 to § 1.5000: 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 broadcast, 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 broadcast, 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 3 to § 1.5000: 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). The Commission's forbearance approach does not apply to broadcast, aeronautical en route or aeronautical fixed radio station licenses.

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 § 1.5001(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 § 1.5001(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 § 1.5001(i).

(b) Except for petitions involving broadcast stations only, 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>. Petitions for declaratory ruling required by paragraph (a) of this section involving broadcast stations only shall be filed electronically on the Internet through the Media Bureau’s Consolidated Database System (CDBS) or any successor system thereto when submitted

to the Commission as part of an application for a construction permit, assignment, or transfer of control of a broadcast license; if there is no associated construction permit, assignment or transfer of control application, petitions for declaratory ruling should be filed with the Office of the Secretary via the Commission's Electronic Comment Filing System (ECFS).

(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.

(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, broadcast, 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 § 1.5001, such information should be set out separately for each joint petitioner, except as otherwise permitted in § 1.5001(h)(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.

(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 §§ 1.5001 through 1.5004.

(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 §§ 1.5000 through 1.5004 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 CFR 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 CFR 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 §§ 1.5000 through 1.5004 includes 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 § 1.5000(a)(1) or § 1.5000(a)(2) of this part.

**§ 1.5001 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 § 1.5000(a)(1) and/or § 1.5000(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., broadcast service, cellular radio telephone service; microwave radio service; mobile satellite service; aeronautical fixed service). In the case of broadcast licensees, also list the call sign, facility identification number (if applicable), and community of license or transmit site for each authorization covered by the petition.

(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:

(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

(ii) The type(s) of radio services covered by each application (e.g., broadcast service, 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 § 1.5000(a)(1) and/or § 1.5000(a)(2).

(e) Disclosable interest holders – direct U.S. or foreign interests in the controlling U.S. parent. Paragraphs (e)(1) through (e)(4) of this section apply only to petitions filed under § 1.5000(a)(1) and/or § 1.5000(a)(2) for common carrier, aeronautical en route, and aeronautical fixed radio station applicants or licensees, as applicable. Petitions filed under § 1.5000(a)(1) for broadcast licensees shall provide the name of any individual or entity that holds, or would hold, directly, an attributable interest in the controlling U.S. parent of the petitioning broadcast station applicant(s) or licensee(s), as defined in the Notes to § 73.3555 of this chapter. Where no individual or entity holds, or would hold, directly, an attributable interest in the controlling U.S. parent (for petitions filed under § 1.5000(a)(1)), the petition shall specify that no individual or entity holds, or would hold, directly, an attributable interest in the U.S. parent, applicant(s), or licensee(s).

(1) Direct U.S. or foreign interests of ten percent or more or a controlling interest. With respect to petitions filed under § 1.5000(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)(4)(i) through (e)(4)(iv) of this section.

(2) Direct U.S. or foreign interests of ten percent or more or a controlling interest. With respect to petitions filed under § 1.5000(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)(4)(i) through (e)(4)(iv) of this section.

(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 § 1.5000(a)(1)) or in the applicant or licensee (for petitions filed under § 1.5000(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.

(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.

(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.

(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 uninsured partner(s), and any insured 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 uninsured, based on the insulation criteria specified in § 1.5003.

(iv) Where a named U.S. parent, applicant, or licensee is organized as a limited liability company, provide the name(s) of each uninsured member, regardless of its equity interest, any insured 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 uninsured, based on the insulation criteria specified in § 1.5003, 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 uninsured interest in the partnership.

(f) Disclosable interest holders – indirect U.S. or foreign interests in the controlling U.S. parent. Paragraphs (f)(1) through (f)(3) of this section apply only to petitions filed under § 1.5000(a)(1) and/or § 1.5000(a)(2) for common carrier, aeronautical en route, and aeronautical fixed radio station applicants or licensees, as applicable. Petitions filed under § 1.5000(a)(1) for broadcast licensees shall provide the name of any individual or entity that holds, or would hold, indirectly, an attributable interest in the controlling U.S. parent of the petitioning broadcast station applicant(s) or licensee(s), as defined in the Notes to § 73.3555 of this chapter. Where no individual or entity holds, or would hold, indirectly, an attributable interest in the controlling U.S. parent (for petitions filed under § 1.5000(a)(1)), the petition shall specify that no individual or entity holds, or would hold, indirectly, an attributable interest in the U.S. parent, applicant(s), or licensee(s).

(f)(1) Indirect U.S. or foreign interests of ten percent or more or a controlling interest. With respect to petitions filed under § 1.5000(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 § 1.5002.

(2) Indirect U.S. or foreign interests of ten percent or more or a controlling interest. With respect to petitions filed under § 1.5000(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 § 1.5002.

(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 § 1.5000(a)(1)) or in the petitioning applicant(s) or licensee(s) (for petitions filed under § 1.5000(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)(1) Citizenship and other information for disclosable interests in common carrier, aeronautical en route, and aeronautical fixed radio station applicants and licensees. 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).

(2) Citizenship and other information for attributable interests in broadcast station applicants and licensees. For each attributable interest holder named in response to paragraphs (e) and (f) of this section, describe the nature of the attributable interest and, if applicable, 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 § 1.5000(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 § 1.5000(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.

(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 § 1.5000(a)(1)) and either

(i) For common carrier, aeronautical en route, and aeronautical fixed radio station applicants and licensees, 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; or

(ii) For broadcast station applicants and licensees, the attributable interest holders 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 broadcast, common carrier or aeronautical radio station applicant(s) or licensee(s) for petitions filed under § 1.5000(a)(1), and in each petitioning common carrier applicant or licensee for petitions filed under § 1.5000(a)(2).

(1) Each petitioning broadcast, common carrier or aeronautical radio station applicant or licensee filing under § 1.5000(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 § 1.5002.

(2) Each petitioning common carrier radio station applicant or licensee filing under § 1.5000(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 § 1.5002.

Note to paragraph (i)(1): Solely for the purpose of identifying foreign interests that require specific approval under this paragraph (i), broadcast station applicants and licensees filing petitions under § 1.5000(a)(1) should calculate equity and voting interests in accordance with the principles set forth in paragraphs (e) and (f) of this section and in § 1.5002 and *not* as set forth in the Notes to § 73.3555 of this chapter, to the extent that there are any differences in such calculation methods.

Note 1 to paragraphs (i)(1) and (2): Certain foreign interests of 5 percent or less may require specific approval under paragraphs (i)(1) and (2). See the Note to paragraph (i)(3)(ii)(C) of this section.

Note 2 to paragraphs (i)(1) and (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.

(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 § 1.5000(a)(1)) or the petitioning applicant or licensee (for petitions filed under § 1.5000(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 petitioning applicant or licensee, controlling U.S. parent, or entity holding a direct or indirect equity and/or voting interest in the applicant/licensee or U.S. parent is a “public company,” as defined in § 1.5000(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 CFR 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 CFR 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 CFR 240.13d-1, or a substantially comparable foreign law or regulation, in addition to 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 CFR 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 petitioning applicant or licensee, controlling U.S. parent, or entity holding a direct and/or indirect equity and/or voting interest in the applicant/licensee or U.S. parent is a “privately held” corporation, as defined in § 1.5000(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 petitioning applicant or 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 § 1.5000(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 § 1.5003.

Note to paragraph (i)(3)(ii)(C): For purposes of identifying foreign interests that require specific approval, uninsulated partners, uninsulated LLC members, and non-member LLC managers are deemed to hold the same voting interest as the partnership or LLC holds in the company situated in the next lower tier of the petitioner’s vertical ownership chain. See §§ 1.5002(b)(2)(ii)(A), 1.5002(b)(2)(iii)(A). Depending on the particular ownership structure presented in the petition, a foreign uninsulated partner, LLC member, or non-member LLC manager may be deemed to hold a direct or indirect voting interest in the controlling U.S. parent (for petitions filed under § 1.5000(a)(1)) or in the petitioning applicant or licensee (for petitions filed under § 1.5000(a)(2)) that requires specific approval because the voting interest exceeds the 5 percent amount specified in paragraphs (i)(1) and (2) of this section and, because it is an uninsulated interest, the voting interest would not qualify as exempt from specific approval under this paragraph (i)(3)(ii)(C) even in circumstances where the voting interest does not exceed 10 percent.

(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 § 1.5000(a)(1)) or in the petitioning applicant or licensee (for petitions filed under § 1.5000(a)(2)).

(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) through (v) of this section.

(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)(A) For common carrier, aeronautical en route, and aeronautical fixed radio station applicants and licensees, 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 § 1.5002.

(B) For broadcast applicants and licensees, the name of any individual or entity that holds, or would hold, directly and/or indirectly, through one or more intervening entities, an attributable 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). Attributable interests shall be calculated in accordance with the principles set forth in the Notes to § 73.3555 of this chapter.

(iii)(A) For common carrier, aeronautical en route, and aeronautical fixed radio station applicants and licensees, 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.

(B) For broadcast applicants and licensees, where no individual or entity holds, or would hold, directly and/or indirectly, an attributable interest in the foreign entity, the petition shall specify that no individual or entity holds, or would hold, directly and/or indirectly, an attributable 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 broadcast, common carrier or aeronautical radio station licensee, for petitions filed under § 1.5000(a)(1), and/or in the common carrier licensee, for petitions filed under § 1.5000(a)(2), above the percentages specified in response to paragraph (i) of this section. Requests for advance approval shall be made as follows:



(1) Petitions filed under § 1.5000(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.

(2) Petitions filed under § 1.5000(a)(1) and/or § 1.5000(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 § 1.5000(a)(1), or in the licensee, for petitions filed under § 1.5000(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 § 1.5000(a)(2), or in the controlling U.S. parent of the licensee, for petitions filed under § 1.5000(a)(1).

(l) Each applicant, licensee, or spectrum lessee filing a petition for declaratory ruling shall certify to the information contained in the petition in accordance with the provisions of § 1.16 and the requirements of § 1.5000(c)(1).

#### **§ 1.5002 How to calculate indirect equity and voting interests under section 1.5001.**

(a) The criteria specified in this section shall be used for purposes of calculating indirect equity and voting interests under § 1.5001.

(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 § 1.5000(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.

(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:

(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 § 1.5000(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%).

(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) and (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.

(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 § 1.5003.

(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 § 1.5003 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.

(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) and (B) of this section.

(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 § 1.5003.

(B) Insulated membership interests. A member of a limited liability company that satisfies the insulation criteria specified in § 1.5003 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.

**§ 1.5003 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 § 1.5002(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. Notwithstanding the foregoing, the insulation of limited partnership and limited liability partnership interests for broadcast applicants and licensees shall be determined in accordance with Note 2(f) of § 73.3555 of this chapter.

(b) A member of a limited liability company shall be treated as uninsulated for purposes of § 1.5002(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. Notwithstanding the foregoing, the insulation of limited liability company interests for broadcast applicants and licensees shall be determined in accordance with Note 2(f) of § 73.3555 of this chapter.

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

- (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;
- (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;
- (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;
- (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;
- (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;
- (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;

(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) through (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.

#### **§ 1.5004 Routine terms and conditions.**

Foreign ownership rulings issued pursuant to §§ 1.5000 *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 § 1.5000(a)(1). In addition to the foreign ownership interests approved specifically in a licensee's declaratory ruling issued pursuant to § 1.5000(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 § 1.5001(i)(3).

(2) Aggregate allowance for rulings issued under § 1.5000(a)(2). In addition to the foreign ownership interests approved specifically in a licensee's declaratory ruling issued pursuant to § 1.5000(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 § 1.5001(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 § 1.5000(a)(1)) and/or in the licensee itself (for rulings issued pursuant to § 1.5000(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 § 1.5000(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 §1.5001(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 § 1.5001(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* § 1.5001(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 § 1.5001(i)(3).

Example 2 (for rulings issued under § 1.5000(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 § 1.5000(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 § 1.5001(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 § 1.5001(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 § 1.5000(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.

(1) The subsidiary or affiliate of a licensee named in a foreign ownership ruling issued under § 1.5000(a)(1) may rely on that ruling for purposes of filing its own application for an initial broadcast, 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.

(2) The subsidiary or affiliate of a licensee named in a foreign ownership ruling issued under § 1.5000(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.

(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 § 1.5000(a)(1), or in an intervening U.S.-organized entity that does not control the licensee, for rulings issued under § 1.5000(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 § 1.5000(a)(1), or above an intervening U.S.-organized entity that does not control the licensee, for rulings issued under § 1.5000(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.

(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 broadcast service rules, wireless radio service rules or satellite radio service rules applicable to the licensee.

Note to paragraph (c)(2): For broadcast stations, in order to insert a previously unapproved foreign-organized entity that is under 100 percent common ownership and control with the foreign investor approved in the ruling into the vertical ownership chain of the licensee's controlling U.S.-organized parent, as described in paragraph (c)(1) of this section, the licensee must always file a pro forma application requesting prior consent of the FCC pursuant to section 73.3540(f) of this chapter.

(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 § 1.5000(a)(1)). Licensee of a common carrier license receives a foreign ownership ruling under § 1.5000(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 § 1.5000(a)(2)). An applicant for a common carrier license receives a foreign ownership ruling under § 1.5000(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 § 1.5000(a)(1), or in an intervening U.S.-organized entity that does not control the licensee, for rulings issued under § 1.5000(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 § 1.5000(a)(1), or above an intervening U.S.-organized entity that does not control the licensee, for rulings issued under § 1.5000(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 § 1.5000(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 § 1.5000(a)(1)). Licensee receives a foreign ownership ruling under § 1.5000(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 § 1.5000(a)(2)). Licensee receives a foreign ownership ruling under § 1.5000(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.

(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; or in the case of a broadcast licensee, the licensee shall file a letter to the attention of the Chief, Media 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; or, if a broadcast licensee, the letter must reference the licensee’s foreign ownership ruling(s) by CDBS File No., Docket No., call sign(s), facility identification number(s), 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 broadcast service, 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 § 1.5000 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.

(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**

- 1. The authority citation for part 25 is revised to read as follows:**

**Authority:** Interprets or applies Sections 4, 301, 302, 303, 307, 309, 310, 319, 332, 705, and 721 of the Communications Act, as amended, 47 U.S.C. Sections 154, 301, 302, 303, 307, 309, 310, 319, 332, 705, and 721 unless otherwise noted.

- 2. Section 25.105 is revised 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) of the Communications Act (47 U.S.C. 310(b)(3)) and/or the 25 percent benchmark in section 310(b)(4) of the Act (47 U.S.C. 310(b)(4)) are set forth in §§ 1.5000 through 1.5004 of this chapter.

## **PART 73 – RADIO BROADCAST SERVICES**

- 6. The authority citation for part 73 is revised to read as follows:**

**Authority:** 47 U.S.C. 154, 303, 309, 310, 334, 336, and 339.

- 7. Section 73.1010 - is amended to read as follows:**

### **§ 73.1010 Cross reference to rules in other parts.**

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(a)(9) Subpart T, "Foreign Ownership of Broadcast, Common Carrier, Aeronautical En Route, and Aeronautical Fixed Radio Station Licensees". (§§ 1.5000 to 1.5004).

(10) Part 1, Subpart W of this chapter, "FCC Registration Number". (§§ 1.8001-1.8005).

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**PART 74 –EXPERIMENTAL RADIO, AUXILIARY, SPECIAL BROADCAST AND OTHER PROGRAM DISTRIBUTIONAL SERVICES**

**8. The authority citation for part 74 is revised to read as follows:**

**Authority:** 47 U.S.C. 154, 302a, 303, 307, 309, 310, 336 and 554.

**2. Section 74.5 of Subpart–General; Rules Applicable to All Services in Part 74 is revised to read as follows:**

**§ 74.5 Cross reference to rules in other parts.**

\* \* \* \* \*

(a)(8) Subpart T, “Foreign Ownership of Broadcast, Common Carrier, Aeronautical En Route, and Aeronautical Fixed Radio Station Licensees”. (§§ 1.5000 to 1.5004).

(9) Part 1, Subpart W of the chapter, “FCC Registration Number”. (§§ 1.8001-1.8005).

**STATEMENT OF  
CHAIRMAN TOM WHEELER**

*Re: Review of Foreign Ownership Policies for Broadcast, Common Carrier and Aeronautical Radio Licensees under Section 310(b)(4) of the Communications Act of 1934, as Amended (GN Docket No. 15-236).*

One of my first actions as FCC Chairman was to launch a comprehensive review of the FCC's processes to identify practices that should be updated and streamlined, and one of the first decisions approved during my chairmanship focused on the process of compliance with the Commission's foreign ownership rules in the broadcast context. Today, thanks to the leadership of Commissioner O'Rielly, we take another step forward to improve the process for reviewing foreign ownership requests for broadcast licensees and the Commission.

Broadcasters want — and need — investment to continue to offer local, diverse, and informative content. Broadcasters have repeatedly told us that modernizing our foreign ownership filing and review process will promote foreign investment in the broadcast industry.

The need for additional updates to our foreign ownership rules became evident after Pandora Radio's recent purchase of KXMZ, an FM station in South Dakota. Our experience in the *Pandora* proceeding highlighted two important lessons. First, broadcasters seek greater transparency on the Commission's framework for review of foreign ownership information. Second, we can and should modernize our procedures for calculating levels of foreign ownership in line with current securities laws and regulations for widely-traded public entities.

Today's NPRM proposes updating the filing and review process so it is better adapted to the current business environment. In particular, the NPRM seeks comment on simplifying the foreign ownership approval process for broadcast licensees by extending the rules and procedures that currently apply to other classes of licensees to broadcast licensees.

The Commission will continue its substantive public interest review of applications from entities with foreign ownership above the statutory benchmarks on a case-by-case basis. As we do now, the Commission will also continue to coordinate with - and accord deference to - the relevant expert Executive Branch agencies on matters related to national security, law enforcement, foreign policy, and trade policy. We have been engaged in an ongoing review with these Executive Branch agencies to establish a more efficient and timely process for consideration of these foreign ownership requests, and I hope to see that dialogue brought to a successful conclusion in the near future.

This item is about improving and modernizing process. But reforming processes is not the goal, it is the means to better outcomes for the American people. The result of this proceeding should be an injection of capital into local broadcasters and an increase in quality content for the public.

Thank you to the Commission staff who worked on this item, in particular members of the Media Bureau and the International Bureau. Special thanks to Commissioner O'Rielly for his leadership on the issues of foreign ownership and broader process reform.

**SEPARATE STATEMENT OF  
FCC COMMISSIONER MIGNON L. CLYBURN**

*Re: Review of Foreign Ownership Policies for Broadcast, Common Carrier and Aeronautical Radio Licensees under Section 310(b)(4) of the Communications Act of 1934, as Amended, GN Docket No. 15-236*

Even before I began my term of service here at the FCC, I would often hear how the lack of access to adequate capital is preventing the broadcast industry from achieving the goals the Communications Act directs us to promote, which include serving the local information needs of communities, increasing greater diversity of media voices, and lowering barriers to entry for small businesses. That is why one of my proudest moments was circulating the Declaratory Ruling that clarified the Commission's intent to consider, on a case-by-case basis, petitions from broadcasters to allow foreign entities to own more than 25 percent of their capital stock. I am grateful that Chairman Wheeler, at his first open meeting, gave us the opportunity to vote that item.

With today's NPRM, we now begin the process of extending to broadcast licensees, more streamlined review procedures that were established for common carriers in the 2013 Foreign Ownership Order. There, the Commission determined that, with regard to common carriers such as wireless companies, we can 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 at the same time. We should be able to accomplish the same policy goals in the broadcast industry.

The changes the NPRM proposes will allow a broadcast licensee to request Commission approval for its U.S. controlling parent to have 100 percent foreign ownership and for any non-controlling named foreign investor to increase its interest in the U.S. parent up to and including a non-controlling interest of 49.99 percent. We provide guidance about the type of information publicly traded companies can rely upon in determining their aggregate level of foreign ownership while also preserving the Commission's statutory obligation, in consultation with the relevant Executive Branch agencies, to ensure that foreign ownership above the 25 percent benchmark serves the public interest. The NPRM invites parties to tell us if there is more we can do to further streamline our review of foreign investment applications and I encourage entities to take us up on the offer.

I would to thank the staffs of the International and Media Bureaus for their presentations as well as their hard work on such an important item.

**STATEMENT OF  
COMMISSIONER JESSICA ROSENWORCEL**

Re: *Review of Foreign Ownership Policies for Broadcast, Common Carrier and Aeronautical Radio Licensees under Section 310(b)(4) of the Communications Act of 1934, as Amended*, GN Docket No. 15-236, Notice of Proposed Rulemaking (October 22, 2015)

Like so many other segments of the communications industry, broadcasters are facing an increasingly complex, multi-platform future. But unlike other segments of the communications industry, broadcasters have faced special funding constraints—and these constraints hinder their ability to seek investment on a global scale.

In a world where networks connect us across the globe, and content knows no national borders, it is time to fix these constraints. So today we start a rulemaking to establish clear-cut, understandable rules for foreign investment in our nation's broadcast stations. I am confident that under current law we can simplify the foreign ownership approval process for broadcast licensees—and I believe we can do so without compromising national security objectives.

I look forward to the record that develops and thank the Media Bureau and International Bureau for their efforts.

**STATEMENT OF  
COMMISSIONER AJIT PAI**

Re: *Review of Foreign Ownership Policies for Broadcast, Common Carrier and Aeronautical Radio Licensees under Section 310(b)(4) of the Communications Act of 1934, as Amended*, GN Docket No. 15-236.

Today, foreign companies own a majority interest in two of our four nationwide wireless carriers. A Dutch company has asked to purchase our nation's fifth and seventh largest cable operators. And the Commission agreed earlier this year to offer a Swedish company's subsidiary the contract to become the next local number portability administrator for the United States. Generally, such foreign investment is good for this country. Indeed, the Commission has expressly recognized the critical role that foreign investment plays in promoting innovation, economic growth, and job creation.<sup>1</sup>

Yet we haven't fully embraced that reality. It recently took the Commission over two years to determine whether a company with more than 25% foreign ownership should be allowed to purchase a single FM radio station in Box Elder, South Dakota, a town of fewer than 8,000 people.<sup>2</sup> What made that case all the more absurd was that foreign interests almost certainly did not own more than 25% of Pandora, the company at issue. But the Commission couldn't acknowledge that fact. Why? Because of our outdated methodology for measuring foreign ownership. The Pandora case highlighted the need for the Commission to reform its approach to foreign investment, so I am pleased that we are launching a rulemaking proceeding to do just that.

Going forward, we should concentrate on two key objectives. First, we must level the regulatory playing field and enable greater foreign investment in the broadcast industry. The Declaratory Ruling that we issued in 2013 was a good first step, but it is now clear that we must go further. That's why we propose to extend to the broadcast sector the same streamlined rules and procedures for foreign ownership reviews that the Commission implemented in 2013 for common carriers. For example, if a common carrier can request Commission approval for up to 100% foreign ownership, why shouldn't a broadcaster be able to do the same? It simply can't be the case that 100% foreign ownership of a single FM radio station in the Black Hills of South Dakota raises more concerns than 100% foreign ownership of a nationwide wireless carrier with tens of millions of customers.

Second, we must create a more rational process for determining compliance with foreign ownership requirements. Today, all companies, including those that are publicly traded, must tell us what percentage of their ownership is foreign. But brokers often hold shares of such companies in "street name" on behalf of their clients, and securities regulations prevent brokers from disclosing information about those clients without their permission. Thus, publicly traded companies generally don't know the identity of a large number of their shareholders. This can be a problem because the Commission presumes that an unidentified shareholder is a foreign investor for purposes of determining compliance with our Section 310(b)(4) foreign ownership limits. These days, that presumption makes about as much sense as presuming that someone with an unlisted phone number is a fugitive from justice. This obsolete methodology is inaccurate and burdensome, and it unnecessarily impedes the flow of capital into our nation's communications industry. I am therefore pleased that this Notice of Proposed Rulemaking seeks

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<sup>1</sup> See *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, 28 FCC Rcd 5741, 5744, para. 3 (2013) (*Second Report and Order*).

<sup>2</sup> See *Pandora Radio LLC Petition for Declaratory Ruling Under Section 310(b)(4) of the Communications Act of 1934, as Amended*, MB Docket No. 14-109, Declaratory Ruling, 30 FCC Rcd 5094, 5095 (2015), *recon. denied*, FCC 15-129 (rel. Sept. 17, 2015).

comment on both eliminating this presumption and alternative approaches for measuring foreign ownership.

Finally, I would like to commend Commissioner O’Rielly for his leadership on this issue and the staff of the International Bureau and Media Bureau for their outstanding work on this Notice of Proposed Rulemaking. I look forward to working with my colleagues to reform our foreign ownership policies.

**APPROVING STATEMENT OF  
COMMISSIONER MICHAEL O'RIELLY**

*Re: Review of Foreign Ownership Policies for Broadcast, Common Carrier and Aeronautical Radio Licenses under Section 310(b)(4) of the Communications Act of 1934, as Amended, GN Docket No. 15-236.*

This item represents another positive, although incremental, step toward expanding permissible foreign investment by non-government entities in U.S. broadcast companies. As we have seen in a recent high-profile application, many of the Commission's policies and procedures for reviewing proposed foreign ownership in the broadcast context require factual showings that are difficult or just plain impossible to make for any modern, publically-traded company, or for that matter, any company. Extending the streamlined foreign ownership rules already used for common carrier licensees to broadcast licensees, as we propose, would certainly multiply potential funding options available to broadcasters.

But we have the opportunity in this proceeding to go beyond streamlining, and truly clear some of the roadblocks that are cutting American companies off from possible sources of foreign capital, at the same time that they give other governments a reason to freeze out investments in their own markets by U.S. firms. Many of our allies permit foreign investment in communications well beyond the 25 percent threshold to which we currently adhere. More capital options here at home and more investment opportunities abroad would greatly benefit Americans, which is why I believe that we would serve the public interest by permitting a greater aggregate proportion of non-controlling foreign investment without the need for individual approval. That is why I am pleased to see the item explore whether the Commission should establish a new threshold at 50 percent or a higher level before triggering the more rigorous and expensive Commission scrutiny. I am thankful to the Chairman for including this line of inquiry, and hope that stakeholders will fully develop our record on this point.

While I fully support this effort to improve the Commission's foreign ownership review policies and look forward to completing the proceeding soon, I must caution that nothing here would address the opaque and often very lengthy Team Telecom review process for foreign ownership, which in too many instances has devolved into a black hole of uncertainty. National security concerns can and should be fully addressed within the structure of a reasonable, transparent process that provides applicants with either good news, or substantive responses, in a timely manner. Having worked on this issue for quite a while, it has been encouraging to hear the feedback regarding my efforts to push reform from so many individuals who have had the "pleasure" of dealing with Team Telecom's "procedures."

On that, it is my understanding we may soon be seeing some progress on that front, and look forward to hearing specific details and implementing the changes. I appreciate the Chairman and the International Bureau's work to bring more certainty to the Team Telecom process. However, I firmly believe that the only way to fully correct this situation is to have Congress codify a CFIUS-like statute to govern the Team Telecom reviews. Accordingly, I plan to discuss this issue and raise it in opportunities before the Congress in the coming months.