

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 )

REPORT AND ORDER

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

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## I. INTRODUCTION

1. In this Report and Order, we modify the foreign ownership filing and review 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 with certain limited exceptions.<sup>2</sup> Recognizing the difficulty U.S. public companies face in ascertaining their foreign ownership, we also reform the methodology used by both common carrier and broadcast licensees that are, or are controlled by, U.S. public companies to assess compliance with the foreign ownership limits in Sections 310(b)(3) and 310(b)(4) of the Act, respectively. In particular, the reformed methodology provides a framework for a publicly traded licensee or controlling U.S. parent to ascertain its foreign ownership using information that is “known or reasonably should be known” to the company in the ordinary course of business, thereby eliminating the need for shareholder surveys.

2. We believe these changes will facilitate investment from new sources of capital at a time of growing need for investment in this important sector of our nation’s economy, while continuing to satisfy the requirements of Section 310 and the policies reflected in this Report and Order. We also find 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 provide the broadcast sector with greater transparency and more predictability, and 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 U.S. domestic investment process, while continuing to protect important interests related to national security, law enforcement, foreign policy, trade policy, and other public policy goals.<sup>3</sup>

<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 as “licensees” unless the context warrants otherwise. We also use the term “common carrier” or “common carrier licensees” 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 CFR § 1.9003. We also refer 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 CFR § 87.5 (defining various types of aeronautical radio stations); 47 CFR § 87.19(a), (b) (applying foreign ownership requirements to aeronautical en route and aeronautical fixed station licenses).

<sup>3</sup> The new rules we adopt in this Report and Order will be codified in Part 1, Subpart T, Sections 1.5000 through 1.5004 of the Commission’s rules and are appended to this Report and Order. *See infra* Appx. B.

## II. EXECUTIVE SUMMARY

3. We proposed in the *2015 Foreign Ownership NPRM* in this proceeding<sup>4</sup> to extend the foreign ownership rules and procedures established in the *2013 Foreign Ownership Second Report and Order*<sup>5</sup> to broadcast licensees, with certain modifications to tailor them to the broadcast context. We stated that these changes will, among other things, allow a broadcast licensee to request Commission approval for its controlling U.S. 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 future time. We also sought comment on whether and how to revise the methodology a common carrier or broadcast licensee should use to assess its compliance with the 25 percent foreign ownership benchmark in Section 310(b)(4) for U.S. entities that control licensees in order to reduce regulatory burdens on licensees. We asked whether such methodology should also apply to assessing a licensee's compliance with the 20 percent foreign ownership limits in Section 310(b)(3). In addition, we made several proposals to clarify and update existing policies and procedures for broadcast, common carrier, and aeronautical licensees.

4. In this Report and Order, we adopt several of the proposals set forth in the *2015 Foreign Ownership NPRM* as well as other measures that respond to the comments filed in this proceeding. Under our new rules and policies, we:

- Adopt specific procedures for the filing and review of broadcast petitions for declaratory ruling under Section 310(b)(4);
- Incorporate broadcast licensees into the existing streamlined rules and procedures that apply to Section 310(b)(4) petitions for declaratory ruling filed by common carrier licensees, with certain exceptions and modifications;
- Allow a broadcast licensee to seek approval in its Section 310(b)(4) petition for declaratory ruling for up to and including 100 percent aggregate foreign ownership of its controlling U.S. parent;
- Allow a broadcast licensee to seek approval in its Section 310(b)(4) petition for declaratory ruling to allow a proposed, controlling foreign investor to increase its equity and/or voting interests in the U.S. parent up to and including 100 percent at some future time without filing a new petition, to the extent the foreign investor would acquire an initial controlling interest of less than 100 percent;
- Allow a broadcast licensee to seek advance approval in its Section 310(b)(4) petition for declaratory ruling to allow a foreign investor named in the petition to increase its equity and/or voting interests in the U.S. parent at some future time, up to and including a non-controlling 49.99 percent equity and/or voting interest, without needing to seek a new ruling;
- Require that Section 310(b)(4) petitions filed in the broadcast service context use the broadcast attribution criteria to determine those U.S. and foreign interests that must be disclosed in the petition;
- Require that broadcast petitions use the specific approval requirements in the existing foreign ownership rules for common carrier licensees, which require specific approval

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<sup>4</sup> *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 15-236, Notice of Proposed Rulemaking, 30 FCC Rcd 11830 (2015) (*2015 Foreign Ownership NPRM*).

<sup>5</sup> 47 CFR §§ 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 11-133, Second Report and Order, 28 FCC Rcd 5741 (2013) (*2013 Foreign Ownership Second Report and Order*).

only for foreign individuals or entities with a greater than 5 percent ownership interest (or, in certain situations, an interest greater than 10 percent);

- Require that broadcast petitions use the broadcast insulation criteria in determining whether a particular foreign investor requires specific approval;
- Issue foreign ownership rulings in the broadcast context that would apply to all radio and television broadcast licenses then or subsequently proposed to be acquired by the same licensee and its covered subsidiaries and affiliates, irrespective of the markets they serve or the particular broadcast services they provide; applications to transfer or assign individual broadcast licenses would continue to be subject to petitions to deny and informal objection, where interested parties may address whether the particular transaction, including its existing and proposed foreign ownership, is consistent with the public interest;<sup>6</sup>
- Establish a methodology for common carrier and broadcast licensees that are, or are controlled by, U.S. public companies that will, for purposes of compliance with Sections 310(b)(3) and 310(b)(4): (1) require such licensees to exercise due diligence in identifying and determining the citizenship of their known or reasonably should be known interest holders;<sup>7</sup> (2) specify the information such licensees can rely on for purposes of complying with Sections 310(b)(3) and 310(b)(4), subject to exercising the required due diligence; and (3) eliminate the need to conduct surveys or random samplings of their shares and apply presumptions about the citizenship of their unknown shareholders;
- Conclude that unknown foreign ownership interests in publicly traded licensees and controlling U.S. parents of 5 percent or less (or, 10 percent or less interest in the case of a qualified institutional investor) generally are not contrary to the public interest;
- Affirm that all licensees and U.S. parent companies are required to monitor foreign ownership levels;
- Provide broadcast and common carrier licensees that are controlled by U.S. public companies a 30-day period, subject to certain conditions,<sup>8</sup> to file a petition for declaratory ruling seeking post-hoc approval of foreign ownership in excess of the 25 percent benchmark in Section 310(b)(4) or approval of any particular foreign interests that require specific approval under the licensee's existing Section 310(b)(4) ruling, where the after-the-fact filing is due solely to circumstances beyond the licensee's control that were not reasonably foreseeable to or known by the licensee with the exercise of the required due diligence; and

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<sup>6</sup> We decline to apply prospectively common carrier rulings to broadcast licensees, and vice versa. *See infra* Section IV.B.4.

<sup>7</sup> For ease of reference, we refer interchangeably in this Report and Order to “shareholders” and “interest holders.” A “shareholder” (or “stockholder”) refers generally to an individual or entity that owns one or more of a company's shares and in whose name the share certificate is issued. As explained in Section IV.C. below, most shares of U.S. publicly traded companies today are held in the name of an intermediary bank or broker on behalf of a client account. The voting rights (if any) associated with a particular share of a company may be held by one or more persons/entities. We refer herein to any person or entity that holds the right to vote or to direct the voting of a share of a company's stock as a “beneficial owner.” The beneficial owner(s) of a share may or may not hold the equity (i.e., the pecuniary) interest in the share. We refer herein to any person or entity that has the right to receive or the power to direct the receipt of dividends from, or the proceeds from the sale of, a share as the “equity interest holder.”

<sup>8</sup> *See infra* Section IV.C.5.

- Decline to adopt in this proceeding a rule that addresses the methodology used by privately held entities to demonstrate compliance with Section 310(b).

### III. BACKGROUND

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

5. Section 310 of the Act requires the Commission to review foreign investment in radio station licensees.<sup>9</sup> This section imposes specific restrictions on who may hold certain types of radio licenses. The provisions of Section 310 apply to applications for initial radio licenses, applications for assignments and transfers of control of radio licenses, and spectrum leasing arrangements under the Commission's secondary market rules.<sup>10</sup> Section 310(b)(3) prohibits foreign individuals, governments, and corporations from owning more than 20 percent of the capital stock of a broadcast, common carrier, or aeronautical radio station licensee.<sup>11</sup> Section 310(b)(4) 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>12</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>13</sup>

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<sup>9</sup> A "station license" is defined in 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(49). For example, the Commission issues radio station licenses for the provision of broadcast, wireless personal communications services, cellular, microwave, aeronautical en route, and mobile satellite services. *See also* 47 U.S.C. § 319 (construction permits). For ease of reference, we refer to "radio station licenses" as "licenses" unless the context warrants otherwise.

<sup>10</sup> *See 2013 Foreign Ownership Second Report and Order*, 28 FCC Rcd at 5747-49, paras. 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 CFR §§ 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>11</sup> 47 U.S.C. § 310(b)(3). In the *2012 Foreign Ownership First Report and Order*, the Commission determined to forbear from applying the foreign ownership limits in Section 310(b)(3) to the class of common carrier licensees in which the foreign investment is held in the licensee through U.S.-organized entities that do not control the licensee, to the extent the Commission determines such foreign ownership is consistent with the public interest under the policies and procedures that apply to the Commission's public interest review of foreign ownership subject to Section 310(b)(4) of the Act. *Review of Foreign Ownership Policies for Common Carrier and Aeronautical Radio Licensees under Section 310(b)(4) of the Communications Act, as Amended*, IB Docket No. 11-133, First Report and Order, 27 FCC Rcd 9832 (2012) (*2012 Foreign Ownership First Report and Order*). The Commission codified the forbearance approach in the *2013 Foreign Ownership Second Report and Order*. *2013 Foreign Ownership Second Report and Order*, 28 FCC Rcd at 5763, para. 37; 47 CFR § 1.990(a)(2). The Commission's forbearance authority does not extend to broadcast or aeronautical radio station licensees covered by Section 310(b)(3). *See* 47 U.S.C. § 160.

<sup>12</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>13</sup> The foreign ownership provisions in Sections 310(a) and (b)(1)-(4) of the Act are discussed in the *2013 Foreign Ownership Second Report and Order*. *2013 Foreign Ownership Second Report and Order*, 28 FCC Rcd at 5747-50, paras. 7-11; 47 U.S.C. §§ 310(a), (b)(1)-(4).

6. Licensees may request Commission approval of their controlling U.S. parents' foreign ownership under Section 310(b)(4) by filing a petition for declaratory ruling.<sup>14</sup> Licensees must obtain Commission approval *before* direct or indirect foreign ownership of their U.S. parent companies exceeds 25 percent.<sup>15</sup> When presented with a petition for declaratory ruling, 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 national security, law enforcement, foreign policy, or trade policy issues that may be raised by the foreign ownership. The Commission coordinates as necessary and appropriate with the relevant Executive Branch agencies and accords deference to their expertise in identifying and interpreting issues of concern related to these matters.<sup>16</sup> The Commission evaluates concerns raised by the Executive Branch agencies in light of all the issues raised by a particular Section 310(b)(4) petition, and the Commission makes an independent decision on whether the foreign interests presented for approval by the licensee are in the public interest.<sup>17</sup>

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

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

7. 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) by adopting rules that provided a streamlined approach for filing petitions for declaratory ruling to exceed the 25 percent foreign ownership benchmark in Section 310(b)(4). The Commission took these actions to reduce the regulatory costs and 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.<sup>18</sup>

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

8. In the *2013 Broadcast Clarification Order*, we articulated and clarified the policies and procedures for evaluating potential foreign investment in broadcast licensees under Section 310(b)(4) of

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<sup>14</sup> See 47 CFR § 1.2. Under the Commission's Section 310(b)(3) forbearance approach applicable to common carrier licensees, common carrier licensees have the option to file a petition for declaratory ruling requesting prior Commission approval to exceed the 20 percent foreign ownership limits in Section 310(b)(3) where the foreign ownership interests would be held in the licensee through intervening U.S.-organized entities that do not control the licensee. See *supra* note 11; 47 CFR § 1.990(a)(2). For ease of reference, and because the Commission's forbearance authority does not extend to broadcast or aeronautical licensees covered by Section 310(b)(3), we refer generally in this Report and Order to petitions for declaratory ruling filed under Section 310(b)(4) of the Act, unless the context warrants otherwise.

<sup>15</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*, Notice of Proposed Rulemaking, 26 FCC Rcd 11703, 11710, para. 11 (2011) (*2011 Foreign Ownership NPRM*) (*emphasis added*).

<sup>16</sup> See *2013 Foreign Ownership Second Report and Order*, 28 FCC Rcd at 5751, 5762, paras. 13, 34; *Rules and Policies on Foreign Participation in the U.S. Telecommunications Market: Market Entry and Regulation of Foreign-Affiliated Entities*, IB Docket Nos. 97-142 and 95-22, Report and Order and Order on Reconsideration, 12 FCC Rcd 23891, 23920, para. 63 (1997) (*Foreign Participation Order*), Order on Reconsideration, FCC 00-339, 15 FCC Rcd 18158 (2000). See also *Executive Branch Review of FCC Applications and Petitions with Foreign Ownership for National Security, Law Enforcement, Foreign Policy and Trade Policy Concerns*, IB Docket No. 16-155, Notice of Proposed Rulemaking, 31 FCC Rcd 7456 (2016) (*2016 Executive Branch Review NPRM*).

<sup>17</sup> *2013 Foreign Ownership Second Report and Order*, 28 FCC Rcd at 5762, para. 34; see also *Foreign Participation Order*, 12 FCC Rcd at 23921, para. 66.

<sup>18</sup> See *2013 Foreign Ownership Second Report and Order*, 28 FCC Rcd at 5742, para. 1.

the Act to remove apparent uncertainty.<sup>19</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>20</sup> Although we declined to adopt a standardized review process at that time, we clarified that the Commission would continue to conduct the fact-specific, individualized case-by-case review of each application or petition for declaratory ruling involving broadcast stations.<sup>21</sup> We 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>22</sup> Additionally, we 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>23</sup>

### 3. Pandora Declaratory Ruling

9. In the *2015 Pandora Declaratory Ruling*, we 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), in connection with an application for consent to acquire a broadcast station by assignment.<sup>24</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 organized and 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>25</sup> Based on the facts specific to that case and in view of existing broadcast foreign ownership policies, we approved the request to exceed the 25 percent benchmark under Section 310(b)(4) provided that Pandora 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 5 percent

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<sup>19</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>20</sup> *Id.* at 16246, para. 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 transactions involving foreign investment in excess of 25 percent in the controlling U.S. parents of telecommunications entities. *See Id.* at 16248, para. 8.

<sup>21</sup> We stated that we would not entertain petitions to exceed the foreign ownership limits of Section 310(b)(3) for foreign investment in broadcast licensees. *Id.* at 5752, para. 15 n.49. Unlike Section 310(b)(4), Section 310(b)(3) does not afford the Commission discretion to approve foreign investment in broadcast licensees in excess of the limitations contained therein. As noted above, the Commission’s forbearance authority does not extend to broadcast licensees.

<sup>22</sup> *Id.* at 16249-50, para. 11.

<sup>23</sup> *Id.* at 16249, para. 10.

<sup>24</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, 30 FCC Rcd 5094, 5095-96, para. 4 (2015) (*2015 Pandora Declaratory Ruling*), *recon denied*, 30 FCC Rcd 10570 (2015).

<sup>25</sup> *Id.*

voting or equity interest (or 10 percent for certain institutional investors) in Pandora Media.<sup>26</sup> We required Pandora Media to modify its organizational documents to ensure that its Board of Directors has all necessary powers to maintain compliance with Section 310(b)(4), including the right to request and obtain information regarding citizenship of Pandora Media's interest holders, and the necessary powers to cure non-compliance, specifically: (1) the right to restrict the transfer of shares to aliens; (2) the right to require disclosure when an alien acquires an equity and/or voting interest; and (3) the right to compel the redemption of shares held by aliens.<sup>27</sup>

### C. 2015 Foreign Ownership NPRM

10. In the *2015 Foreign Ownership NPRM*, we proposed 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) to the broadcast context.<sup>28</sup> Specifically, we proposed to extend the foreign ownership rules and procedures established in the *2013 Foreign Ownership Second Report and Order* to broadcast licensees, with certain modifications to tailor them to this context. The Commission also sought comment on whether and how to revise the methodology a common carrier or broadcast 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 licensees. We requested comment on whether any changes that we make regarding what licensees need to do to ensure compliance with Section 310(b)(4) should also apply to ensuring compliance with Section 310(b)(3).<sup>29</sup> We asked whether there is 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.<sup>30</sup> In addition, the Commission made several proposals to clarify and update existing policies and procedures for broadcast, common carrier and aeronautical licensees. Since issuance of the *2015 Foreign Ownership NPRM*, several petitions for declaratory ruling have been filed by or on behalf of broadcast applicants and licensees.<sup>31</sup>

## IV. DISCUSSION

11. In this section, we discuss modifications to the foreign ownership filing and review process for broadcast licensees and the revised methodology broadcast and common carrier licensees that are, or are controlled by, U.S. public companies will use to determine and certify their compliance with the statutory foreign ownership limits. As discussed below, we replace the *ad hoc* case-by-case procedures for requesting approval of foreign ownership of broadcast licensees with specific rules that incorporate the same streamlined procedures used for common carrier licensees—with limited broadcast-

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<sup>26</sup> *Id.* at 5101, para. 19.

<sup>27</sup> *Id.* at 5101, para. 20.

<sup>28</sup> *2015 Foreign Ownership NPRM*, 30 FCC Rcd at 11831, para. 1.

<sup>29</sup> *Id.* at 11840, para. 27.

<sup>30</sup> *Id.* at 11843, para. 36.

<sup>31</sup> See, e.g., *Frontier Media, LLC Seeks Foreign Ownership Ruling Pursuant to Section 310(b)(4) of the Communications Act, as Amended*, MB Docket No. 16-212, Public Notice, DA 16-765 (MB 2016); *Media Bureau Announces Filing of Petition for Declaratory Ruling by Univision and Televisa and Permit-But-Disclose Status of the Proceeding*, MB Docket 16-217, Public Notice, DA 16-776 (MB 2016); *Media Bureau Announces Filing of Petition for Declaratory Ruling by Hemisphere Media Group, Inc. and Permit-But-Disclose Ex Parte Status for the Proceeding*, MB Docket 16-238, Public Notice, DA 16-844 (MB 2016); *Media Bureau Announces Filing of Petition for Declaratory Ruling by Corvex Master Fund LP and Permit-But-Disclose Ex Parte Status for the Proceeding*, MB Docket 16-253, Public Notice, DA 16-919 (MB 2016).

specific provisions—except those procedures associated with Section 310(b)(3) forbearance. Second, we adopt a new methodology for broadcast and common carrier licensees that are, or are controlled by, U.S. public companies to use in determining and certifying compliance with Sections 310(b)(3) and 310(b)(4), respectively. The methodology relies on information that is known or reasonably should be known to the publicly traded licensee or U.S. parent company in the ordinary course of business. We discuss issues related to how frequently the public company must review its foreign ownership, as well as compliance requirements for publicly traded licensees and U.S. parent companies to remedy a breach of the foreign ownership limits in Sections 310(b)(3) and 310(b)(4) or of conditions in a licensee’s Section 310(b)(4) ruling. These compliance requirements take into account that certain breaches may be due to circumstances beyond the licensee’s control that were not reasonably foreseeable to or known by the licensee with the exercise of the required due diligence. We address the compliance obligations of privately held entities. Finally, we adopt certain corrections and clarifications to our existing foreign ownership rules, and discuss transition issues.

**A. Extending Streamlined Common Carrier Foreign Ownership Procedures to Broadcast Licensees**

12. Informed by our experience in the *2015 Pandora Declaratory Ruling*, we acknowledged in the *2015 Foreign Ownership NPRM* the need to provide broadcasters, as well as those seeking to acquire ownership interests in broadcasters, greater clarity and certainty in the foreign ownership context.<sup>32</sup> Therefore, we proposed to incorporate broadcast licensees into the existing rules for common carrier licensees that apply to petitions filed under Section 310(b)(4) of the Act, with certain exceptions and modifications.<sup>33</sup> We stated that we would continue to coordinate as necessary and appropriate petitions for declaratory ruling filed under Section 310(b) with the relevant Executive Branch agencies.<sup>34</sup> We stated our belief that applying the foreign ownership rules for common carrier licensees 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>35</sup>

13. Commenters broadly support the proposed approach to incorporate broadcast licensees into the existing common carrier rules for petitions filed under Section 310(b)(4).<sup>36</sup> There is agreement in the record that the Commission should replace the current *ad hoc* case-by-case procedures for the filing and review of broadcast foreign ownership petitions<sup>37</sup> with a more clearly defined process to increase regulatory transparency and predictability. Commenters assert that this will increase broadcasters’ access

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<sup>32</sup> *2015 Foreign Ownership NPRM*, 30 FCC Rcd at 11834-35, para. 9 (citing *2015 Pandora Declaratory Ruling*, 30 FCC Rcd 5094). In the *2013 Broadcast Clarification Order*, we signaled that we might elect to create a standardized and streamlined review process for analyzing foreign ownership in broadcast licensees similar to that adopted in the common carrier context. *2013 Broadcast Clarification Order*, 28 FCC Rcd at 16252, para. 15.

<sup>33</sup> *2015 Foreign Ownership NPRM*, 30 FCC Rcd at 11834, para. 8.

<sup>34</sup> *Id.* at 11835, para. 11; *see also 2016 Executive Branch Review NPRM*, 31 FCC Rcd 7456 (proposing changes to the Commission’s rules and procedures related to certain applications and petitions for declaratory ruling involving foreign ownership to, among other things, streamline and increase the transparency of the Executive Branch review of applications and petitions for national security, law enforcement, foreign policy, and trade policy concerns).

<sup>35</sup> *2015 Foreign Ownership NPRM*, 30 FCC Rcd at 11835, paras. 9, 11.

<sup>36</sup> *See, e.g.*, NAB Comments at 9-12; 21<sup>st</sup> Century Fox Comments at 2-9; MMTCC Reply at 1-5; Comcast Reply at 2; Media General Reply at 1; *see also* Letter from Erin Dozier, Senior Vice President and Deputy General Counsel, National Association of Broadcasters, to Marlene H. Dortch, Secretary, FCC, GN Docket No. 15-236, at 1 (filed Mar. 28, 2016) (NAB *Ex Parte*).

<sup>37</sup> *See generally 2013 Broadcast Clarification Order*, 28 FCC Rcd 16244 (discussing the current case-by-case approach applicable to broadcasters).

to foreign capital and remove impediments to increasing diversity in broadcast ownership.<sup>38</sup> For example, Nexstar states that application of the streamlined common carrier procedures to broadcasters will allow broadcasters to compete on a level playing field for capital in foreign markets and may produce similar public interest benefits for the broadcast sector that greater access to foreign capital has brought to the telecommunications sector.<sup>39</sup> In addition, commenters suggest that modernizing and streamlining the foreign ownership rules will help create new opportunities for U.S. broadcasters to enter foreign radio and television markets.<sup>40</sup>

14. Commenters also support applying specific common carrier rules to broadcasters.<sup>41</sup> For example, 21<sup>st</sup> Century Fox asserts that adoption of the proposals set forth in the *2015 Foreign Ownership NPRM*—notably, approval of up to 100 percent aggregate foreign ownership; approval for less than 100 percent controlling interest to increase to 100 percent; and approval for a non-controlling foreign investor to increase its interest to 49.99 percent—will provide the industry with greater flexibility and transparency.<sup>42</sup> In order to eliminate the filing of duplicative petitions for declaratory ruling,<sup>43</sup> NAB supports application of the “automatic extension rule” applicable to common carrier petitions to broadcast licensees. This would enable any declaratory ruling pertaining to a licensee to later cover any then-current or subsequently formed or acquired subsidiaries and affiliates, provided that the foreign ownership of the petitioner and its subsidiaries and affiliates remains within the parameters of the declaratory ruling.<sup>44</sup> NAB also supports extending to broadcast petitioners the ability to introduce new, foreign-

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<sup>38</sup> NAB Comments at 8-9, 12-14; Nexstar Comments at 3-5; MMTC Comments at 1-3; *see also* NAB Reply at 2, 7; Media General Reply at 1; MMTC Reply at 1, 3, 5. A number of commenters raised concerns that the Commission was proposing to relax its review of individual broadcast license applications, and that the absence of such review would raise security and other concerns specific to broadcast. *See, e.g.*, Gerald J. Kenney, Jr. Comments (“the proposed rule is contrary to the interests of localism as the Commission has defined that core broadcast goal”); Melanie Coles Comments; Jennifer Pedrick Comments; Steve Combs Comments; George Aylwin Comments; Barbara Croyle Comments; America’s Survival Comments (seeking a hearing on the proposed modifications to foreign ownership policy). These commenters’ concerns are misplaced. The *2015 Foreign Ownership NPRM* did not propose, nor do we adopt herein, changes to the licensing and approval process for broadcast applications. That process, as statutorily governed by Section 309, remains the same. Applicants must continue to show that they meet the requisite character and other qualifications of a licensee, including with respect to foreign ownership. This application process includes public notice and opportunity for interested parties to support or oppose an application. Commenters recognize this long-standing process. *See, e.g.*, Comcast Comments at 15. Moreover, the relevant Executive Branch agencies will continue to review Section 310(b)(4) petitions for declaratory ruling, where appropriate, and will advise us of any national security, law enforcement, foreign policy, or trade policy concerns. *See 2015 Foreign Ownership NPRM*, 30 FCC Rcd at 11832, para. 12 n.25. This review process will continue to address concerns raised by a particular foreign investment in the broadcasting context. We find that the Executive Branch review process also addresses concerns raised by William J. Kirsch that adopting the proposed rules would constitute a “unilateral trade concession for trade in broadcasting services,” and, as such, would be contrary to the public interest. *See* William J. Kirsch Reply 1 and Reply 2. As discussed herein, we also determine that the Commission’s actions in this Report and Order provide a more carefully tailored approach, consistent with our statutory obligations, than S-R Broadcasting’s request that the Commission remove foreign ownership restrictions for licensees of the AM band. *See* S-R Broadcasting Comments.

<sup>39</sup> Nexstar Comments at 4. Nexstar states that new sources of financing may permit broadcasters to invest more, finance new offerings, innovate, grow jobs, and provide access to capital for women and minorities. *Id.*

<sup>40</sup> NAB Reply at 3-4; *see also* MMTC Comments at 5 (“Establishing a more flexible standard for compliance with U.S. broadcast foreign ownership requirements could . . . help break down trade barriers between nations.”).

<sup>41</sup> NAB Comments at 9; Letter from CBS Corporation et al., to Marlene H. Dortch, Secretary, FCC, GN Docket 15-236, at 2-3 (filed Mar. 10, 2016) (Joint Broadcasters *Ex Parte*); NAB *Ex Parte* at 1-2.

<sup>42</sup> 21<sup>st</sup> Century Fox Comments at 3-4.

<sup>43</sup> NAB Comments at 19.

organized entities into their vertical ownership chain above the controlling U.S. parent of the licensee, under Section 310(b)(4), provided that such new foreign-organized entities are under 100 percent common ownership and control with the foreign investor approved in the ruling.<sup>45</sup>

15. We agree that we should modify the Section 310(b)(4) petition review process for broadcasters. We therefore adopt the *2015 Foreign Ownership NPRM* proposal to apply the foreign ownership rules and procedures applicable to common carrier licensees to broadcast licensees, with certain exceptions and modifications further discussed below. It is clear from our experience that the common carrier rules for reviewing foreign ownership petitions create an efficient process that benefits filers without harm to the public. The process also helps ensure that the Commission is able to fulfill its obligations under Section 310(b) with respect to foreign ownership, while coordinating applications and petitions with the relevant Executive Branch agencies, as needed. Notably, among other changes, broadcast petitioners will now be able to request: (1) approval of up to and including 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 future time; 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 future time.<sup>46</sup> Other routine common carrier terms and conditions will also apply to broadcast rulings, such as those involving subsidiaries and affiliates and the insertion of new foreign-organized companies into the controlling U.S. parent's vertical ownership chain.<sup>47</sup> There is significant support for these proposals in the record, and we find that the public interest will be served by applying these rules to broadcast petitions for declaratory ruling filed pursuant to Section 310(b)(4).<sup>48</sup>

16. In addition, we adopt our proposal that broadcast petitioners need to obtain specific approval only for foreign investors (i.e., foreign individuals, entities, or a "group" of foreign individuals or entities) that hold or would hold, directly or indirectly, more than 5 percent, and in certain circumstances, more than 10 percent of the U.S. parent's voting and/or equity interests, or a controlling interest in the U.S. parent.<sup>49</sup> The *2013 Foreign Ownership Second Report and Order* details the policy objectives under Section 310(b) that informed the selection of these specific approval criteria.<sup>50</sup> The Commission, in that item, sought to balance a number of factors in identifying the types of foreign investments that warrant specific approval. Ultimately, the Commission determined that the specific approval thresholds it adopted struck an important balance between the agency's twin objectives of

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<sup>44</sup> NAB Comments at 19 n.60 (citing *2013 Foreign Ownership Second Report and Order*, 28 FCC Rcd at 5790-91, para. 92); see also 47 CFR § 1.994(b). NAB details the Commission's definition of "subsidiary" for purposes of the automatic extension rule, and the concomitant filing requirements for subsidiaries and affiliates in relevant petitions and applications (47 CFR § 1.990(d)(2), (10)). NAB Comments at 19 n.59.

<sup>45</sup> NAB Comments at 20 n.63.

<sup>46</sup> For example, under the common carrier foreign ownership rules that we are extending to broadcasters, a licensee filing a Section 310(b)(4) petition to allow foreign ownership of its controlling U.S. parent to exceed 25 percent may include in its petition a request that we specifically approve a named foreign investor's acquisition of up to and including a non-controlling 49.99 percent interest in the U.S. parent at some future time. If, after grant of the initial petition, the foreign investor seeks to acquire *any* additional equity or voting interests in the U.S. parent above 49.99 percent interests, i.e., the thresholds approved in the initial ruling, the licensee must file a new Section 310(b)(4) petition to obtain Commission approval *before* the foreign investor acquires any additional interests. Commission grant of the licensee's new petition would constitute a modification of the licensee's initial ruling.

<sup>47</sup> The routine terms and conditions can be found in Appx. B, Final Rules (§ 1.5004).

<sup>48</sup> These revised regulations, among others, can be found in Appx. B, Final Rules (§§ 1.5000-1.5004).

<sup>49</sup> The revised rule regarding disclosable foreign interests can be found in Appx. B, Final Rules (§ 1.5001(e)-(g)).

<sup>50</sup> See *2013 Foreign Ownership Second Report and Order*, 28 FCC Rcd at 5760-69, paras. 52-67.

reducing the regulatory costs and burdens associated with foreign investment in common carriers and protecting important interests related to national security, law enforcement, and public safety.<sup>51</sup> The Commission further held that the specific approval thresholds it adopted were tailored to those foreign investors that the company should reasonably be able to identify and whose interests rise to the level that may be relevant to the actual concerns applicable to the Section 310(b) review of foreign ownership in the common carrier context.<sup>52</sup> We find this reasoning equally applicable to broadcast petitioners, and conclude that the public interest is best served by harmonizing the specific approval requirements, thereby providing consistency in the application of Section 310(b) to all subject licensees, regardless of service.<sup>53</sup>

17. As indicated in the *2015 Foreign Ownership NPRM*, we find that there are instances in which it is appropriate to distinguish between broadcast licensees and common carrier licensees to minimize disruption to broadcasters. Based on our review of the record, we adopt our proposal to modify particular rules as they would apply to broadcast petitioners to reflect the distinct nature and precedent of the broadcast service, as discussed below.

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

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

18. Under the existing rules, common carrier licensees filing petitions for declaratory ruling regarding proposed foreign investments under Section 310(b) must include the name, address, citizenship, and principal business(es) of any individual or entity, regardless of citizenship, that directly or indirectly holds or would hold, after effectuation of any planned ownership changes described in the petition, at least 10 percent of the equity or voting interests in the controlling U.S. parent of the petitioning common carrier licensee or a controlling interest.<sup>54</sup> The 10 percent threshold was adopted to ensure consistency with the ownership disclosure requirements that apply to most common carrier applicants under the existing 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>55</sup>

19. Instead of relying on the 10 percent threshold applicable to common carriers, however, we proposed that broadcast licensees be required to disclose their U.S. and foreign ownership interests based on the attribution rules and policies set out in Section 73.3555 applicable to broadcast licensees.<sup>56</sup> No commenter opposed this proposal. NAB in particular states that if the Commission were to adopt a new and different threshold for disclosable interest holders, broadcasters would be required to maintain a separate and distinct understanding of their ownership solely for the purpose of filing petitions.<sup>57</sup>

20. Consistent with the record, we adopt our proposal to utilize the attribution rules and policies applicable to broadcasters to determine those U.S. and foreign interests that must be disclosed in

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<sup>51</sup> *Id.* at 5769, para. 50.

<sup>52</sup> *See 2013 Foreign Ownership Second Report and Order*, 28 FCC Rcd at 5769, para. 50.

<sup>53</sup> The revised regulation can be found in Appx. B, Final Rules (§ 1.5001(i)).

<sup>54</sup> *2015 Foreign Ownership NPRM*, 30 FCC Rcd at 11836, para. 13 n.26 (citing *2013 Foreign Ownership Second Report and Order*, 28 FCC Rcd at 5799-801, paras. 111-14; 47 CFR § 1.991(e)-(g)). Similarly, when a foreign individual or foreign-organized entity requires specific approval under Section 1.991(i) of the rules, 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, 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. *Id.* at 11836-37, para. 15. *See also infra* Section IV.B.2.

<sup>55</sup> *2015 Foreign Ownership NPRM*, 30 FCC Rcd at 11836, para. 13.

<sup>56</sup> *Id.* at 11836-37, paras. 14-16; *see also* 47 CFR § 73.3555.

<sup>57</sup> NAB Comments at 15.

Section 310(b)(4) petitions involving broadcast stations.<sup>58</sup> The disclosure requirement is designed to ensure that the Commission has sufficient information to understand the licensee's ownership structure and to verify the identity and ultimate control of the foreign investor for which the petitioner seeks specific approval. Accordingly, in the common carrier context, we rely on the ownership disclosure requirements applicable to most common carriers. We find that it is similarly appropriate to rely on the attribution rules and policies applicable to broadcast licensees in adopting the broadcast ownership disclosure requirements.

21. This approach provides regulatory certainty and ease of compliance while minimizing disruption to broadcasters. The attribution rules represent longstanding broadcast policy, and broadcasters are familiar with these rules, as they are used in the application and disclosure of multiple ownership, among other requirements.<sup>59</sup> Broadcasters have also structured their organizations in reliance on the attribution standards.<sup>60</sup> Applying the common carrier disclosure requirements to broadcasters would result in undue hardship without producing any discernable public interest benefits. Thus, we do not believe that the public interest would be served by requiring broadcasters to conform to the foreign ownership rules regarding disclosable interests applicable to common carriers.<sup>61</sup>

## 2. Specific Approval of Named Foreign Investors

22. We adopt our proposal to extend to broadcast licensees the specific approval rules in Section 1.991(i)-(j), applicable to common carrier licensees, with certain modifications as proposed in the *2015 Foreign Ownership NPRM*. First, as discussed in further detail in Section IV.B.3. below, broadcast licensees will use the insulation criteria set forth in the broadcast attribution rules for purposes of determining whether a licensee's petition for declaratory ruling must include a request for specific approval of one or more foreign investors because the investor holds, or would hold, directly and/or indirectly, more than 5 percent (or, in certain situations, more than 10 percent) of the controlling U.S. parent's equity or voting interests.<sup>62</sup>

23. Second, to the extent a broadcast licensee identifies a foreign entity that requires specific approval under Section 1.5001(i) of the new rules, the petition must include the information specified in

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<sup>58</sup> See 47 CFR § 73.3555, Note 2. NAB recommends placing certain limitations on which attributable interest holders should be disclosed. NAB Comments at 14 n.43. The Commission's media attribution rules seek to identify those interests in or relationships to broadcast 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. As a result, it is appropriate for the Commission to consider all attributable interest holders when evaluating a controlling U.S. parent's ownership and control structure in a Section 310(b)(4) petition involving broadcast stations. We find that excluding certain attributable interest holders would hinder the Commission's ability to determine the locus of control of a petitioner's U.S. parent company and the potential impact of proposed foreign investment of the management and operations of the broadcast licensee; therefore, we decline to pursue NAB's recommendations. We note that NAB also recommends re-evaluating the broadcast attribution standards. NAB Comments at 16. We determine that any consideration of modification of our attribution rules and policies is beyond the scope of the instant proceeding.

<sup>59</sup> See NAB Comments at 14-17; 21<sup>st</sup> Century Fox Comments at 4; Media General Reply at 2.

<sup>60</sup> Joint Broadcasters *Ex Parte* at 3 (noting that broadcasters have "designed their ownership and control structures in conformance with these criteria for generations"); NAB Comments at 14.

<sup>61</sup> The disclosable interest holder rules can be found in Appx. B Final Rules (§ 1.5001(e)-(g)). We remind broadcasters that the term "disclosable interest holder" in the foreign ownership context is not coterminous with the use of that term in the auction context. See, e.g., 47 CFR § 1.2112(a)(6).

<sup>62</sup> As proposed in the *2015 Foreign Ownership NPRM*, we will issue foreign ownership rulings to broadcast licensees—as we do now in the common carrier context—subject to routine terms and conditions, including the requirement that licensees file a new petition before any previously unapproved foreign investor acquires an interest that requires specific approval. The routine terms and conditions, as amended in this Report and Order, can be found in Appx. B, Final Rules (§ 1.5004).

Section 1.5001(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, an *attributable* interest in the foreign entity for which the petitioner requests specific approval.<sup>63</sup> As we tentatively concluded in the *2015 Foreign Ownership NPRM*, we do not believe it would be appropriate to require broadcast petitioners to use the 10 percent standard that applies (and will continue to apply under the new rules) to petitions filed by common carrier licensees.<sup>64</sup> No commenter disagreed with this proposed approach.

24. We note that several commenters, at times, appeared to conflate the broadcast attribution criteria that we proposed broadcast petitioners use for purposes of identifying their “disclosable U.S. and foreign interest holders” with the specific approval criteria that we proposed to extend to broadcast licensees. The broadcast attribution criteria, however, are not co-extensive with the specific approval requirements that apply to common carrier licensees. These specific approval requirements, as proposed, will apply to broadcast licensees under the new rules—with the limited exception allowing broadcast licensees to calculate whether a foreign investor requires specific approval using the *insulation* criteria that such licensees use in calculating their attributable interests under Section 73.3555. As noted above, the specific approval rules for Section 310(b)(4) petitions require petitioners to request specific approval for any foreign investor that holds, or would hold, directly or indirectly, more than 5 percent, and in certain circumstances, more than 10 percent of the controlling U.S. parent’s total outstanding capital stock (equity) and/or voting stock (or a controlling interest). In contrast, the broadcast attribution rules, with limited exception, do not apply to non-voting equity interests.<sup>65</sup> In this respect, the specific approval requirements are broader in scope than the broadcast attribution rules, consistent with Commission precedent that reads Section 310(b) to evince Congress’ separate concern with the scope of foreign equity interests in a licensee and any controlling U.S. parent company.<sup>66</sup> We also note, because it may be a source of confusion, that the general specific approval requirement applies to interests of *more than 5 percent*, not interests of *5 percent or more* as under the broadcast attribution rules. The Commission set the specific approval thresholds in the *2013 Foreign Ownership Second Report and Order* so they are aligned with the SEC’s beneficial ownership reporting requirements.<sup>67</sup>

### 3. Insulation Criteria

25. Our current 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>68</sup> As discussed above, and as proposed in the *2015 Foreign Ownership NPRM*, this methodology will now be applicable to broadcast licensees.<sup>69</sup> The *2015 Foreign Ownership*

<sup>63</sup> See *2015 Foreign Ownership NPRM*, 30 FCC Rcd at 11836-37, para. 16.

<sup>64</sup> *Id.*

<sup>65</sup> See, e.g., 47 CFR § 73.3555 (setting forth the criteria for the equity/debt plus (EDP) rule, which attributes certain equity interests that would otherwise be non-attributable under the broadcast attribution rules).

<sup>66</sup> *2013 Foreign Ownership Second Report and Order*, 28 FCC Rcd at 5801, para. 114. See also *Applications of BBC License Subsidiary L.P.*, 10 FCC Rcd 10968, 10973, para. 25 (1995) (*BBC License Subsidiary*) (“As recently discussed by the Commission in *Fox Television Stations, Inc.*, FCC 95-188 at [para.] 37 [10 FCC Rcd 8452, 8468, para. 37 (1995)], the plain language of Section 310(b) indicates Congress’s separate concern with the scope of alien beneficial interest in a licensee and its parent company.”).

<sup>67</sup> See *infra* Section IV.C.2.a.

<sup>68</sup> 47 CFR § 1.991(i). See 47 CFR § 1.992 (stating how to calculate indirect equity and voting interests under Section 1.991); 47 CFR § 1.993 (providing insulation criteria for interests in limited partnerships, limited liability partnerships, and limited liability companies). The same rules apply for purposes of determining a common carrier licensee’s U.S. and foreign disclosable interest holders pursuant to Sections 1.991 (e) through (g) of the rules. 47 CFR § 1.991 (e)-(g).

<sup>69</sup> See Section IV.A; *2015 Foreign Ownership NPRM*, 30 FCC Rcd at 11834-835, 11858, paras. 8-12, Appx., Proposed Rule 1.5001, Note to paragraph (i)(1) (noting that broadcasters should employ the methodology in the (continued....))

*NPRM*, however, sought comment on the appropriate insulation criteria for broadcasters 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).<sup>70</sup>

26. For purposes of determining whether a particular interest is insulated, we proposed in the *2015 Foreign Ownership NPRM* to rely on the broadcast insulation criteria set forth in the broadcast attribution rules, rather than those applicable to common carriers.<sup>71</sup> The *2015 Foreign Ownership NPRM* notes that 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>72</sup> We sought comment on whether there were any particular public interest benefits from requiring broadcasters to comply with the insulation rules applicable to common carriers.<sup>73</sup>

27. Commenters support the proposal to use the broadcast insulation criteria when calculating foreign voting interests, and no commenter opposed.<sup>74</sup> According to NAB, applying common carrier insulation standards to broadcasters in the foreign ownership petition process will create significant administrative complexities and uncertainty for broadcasters.<sup>75</sup> NAB further states that in order for a broadcaster to comply with the common carrier licensee insulation standard, it would have to modify its organizational documents to effectively create two different levels of insulation, which would be a “herculean” task.<sup>76</sup>

28. Accordingly, we will rely on the insulation criteria applicable to broadcast licensees rather than those applicable to common carriers. Broadcast entities are familiar with these criteria, and many broadcast interests have relied upon and have executed their organizational documents based on these insulation criteria.<sup>77</sup> We agree with commenters that modifying these agreements would be difficult and costly, and we are unable to identify any corresponding public interest benefits in requiring such modification. Therefore, we find that imposing common carrier insulation criteria on broadcasters for

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foreign ownership rule sections for the purpose of identifying foreign interests that require specific approval pursuant to Section 310(b)(4)).

<sup>70</sup> *2015 Foreign Ownership NPRM*, 30 FCC Rcd at 11837-38, para. 18. Sections 1.992 and 1.993 of the Commission’s 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>71</sup> *2015 Foreign Ownership NPRM*, 30 FCC Rcd at 11837, para. 18; *see also* 47 CFR § 73.3555, Note 2.

<sup>72</sup> *2015 Foreign Ownership NPRM*, 30 FCC Rcd at 11838, para. 18 (citing 47 CFR § 73.3555, Note 2). Pursuant to the broadcast attribution rules that govern partnerships and LLC interests, all general partners and non-insulated limited partnerships and LLC interests are attributable. *Id.* 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. *Id.*

<sup>73</sup> *Id.* at 11838, para. 19.

<sup>74</sup> NAB Comments at 21-23; 21<sup>st</sup> Century Fox Comments at 4. NAB advocates for several modifications to the current broadcast insulation policies. *See* NAB Comments at 23-25. However, we find that such modifications are beyond the scope of this proceeding.

<sup>75</sup> NAB Comments at 22.

<sup>76</sup> *Id.* For example, NAB states that each broadcaster’s organizational documents would need to apply traditional broadcast insulation to limited partners that cannot hold an attributable interest in the broadcaster due to multiple ownership or cross-ownership issues. NAB recommends that the Commission initiate a rulemaking to harmonize the insulation requirements applicable to wireless licensees and broadcasters, and that these new standards be applied to broadcasters for all purposes, including general attribution and foreign ownership compliance, in order to be practical. *Id.* at 23-24. We decline to initiate a new proceeding at this time.

<sup>77</sup> *2015 Foreign Ownership NPRM*, 30 FCC Rcd at 11838, para. 19.

purposes of calculating foreign voting interests for Section 310(b) purposes would create an undue hardship. Ultimately, we find that consistency with our broadcast insulation rules and policies is appropriate in these circumstances.<sup>78</sup>

#### 4. Service- and Geographic-Specific Rulings

29. We sought comment in the *2015 Foreign Ownership NPRM* on how the current process should be modified, if at all, to address service- and geographic-specific rulings.<sup>79</sup> For example, the foreign ownership rules allow a ruling for common carrier licensees that applies to all types of common carrier services, e.g., satellite, Commercial Mobile Radio Services (CMRS), microwave, and Advanced Wireless Services (AWS); these rulings are not geographic-specific.<sup>80</sup> We asked commenters to address whether we should issue broadcast rulings on a service and/or geographic basis, e.g., issuing broadcast television rulings independently of broadcast radio rulings.<sup>81</sup> Additionally, we solicited comment on how to address petitions filed by a common carrier licensee that seeks to acquire a broadcast licensee, i.e., whether a ruling for common carrier licenses would apply prospectively to broadcast licenses that the licensee sought to acquire.<sup>82</sup> We tentatively concluded 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.<sup>83</sup>

30. NAB states that, as with wireless licensees, the grant of a broadcast petition should apply to all radio and television broadcast stations then owned or subsequently acquired by the petitioner and its covered subsidiaries and affiliates, irrespective of the markets that they serve.<sup>84</sup> NAB suggests that there is no reasonable justification for the Commission to apply a different standard to the review and approval of a broadcast petition based on whether the petitioner holds, or proposes to acquire, a radio station or television station—or to apply a different standard based on the market the broadcaster wishes to serve.<sup>85</sup> NAB is the only commenter on the issue of service- and geographic-specific rulings.

31. Consistent with the common carrier rules, we will not issue broadcast rulings on a service-specific or geographic-specific basis.<sup>86</sup> Licensees will not be required to file new petitions for each broadcast station acquisition. Except as noted below, licensees, including any covered affiliates or subsidiaries, that have rulings for foreign investment in the broadcast service may apply those rulings to after-acquired broadcast licenses, regardless of the broadcast service or the geographic area in which the stations are located.<sup>87</sup> We believe this approach will provide the greatest amount of regulatory flexibility possible, is consistent with the existing common carrier practice, and will encourage investment in the

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<sup>78</sup> The revised rule on insulation criteria applicable to broadcasters can be found in Appx. B Final Rules (§ 1.5003(a), (b)).

<sup>79</sup> *2015 Foreign Ownership NPRM*, 30 FCC Rcd at 11838-39, paras. 20-23.

<sup>80</sup> *Id.* at 11839, para. 22. We noted that a licensee does not need separate rulings to provide service in the conterminous United States and Puerto Rico. *Id.*

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

<sup>82</sup> *Id.* at 11839, para. 23.

<sup>83</sup> *Id.*

<sup>84</sup> NAB Comments at 20.

<sup>85</sup> *Id.* at 21.

<sup>86</sup> While this will apply as a routine term and condition under the rules, the Commission retains the discretion to limit the scope of any petition grant based on the facts and circumstances presented in a particular case.

<sup>87</sup> No commenter opposed this approach.

domestic transactional market, infusing capital into the industry.<sup>88</sup> The transfer and assignment of individual broadcast station licenses, however, will continue to be subject to petitions to deny and informal objections, where interested parties may comment on whether the particular transaction, including its foreign ownership, is consistent with the public interest.<sup>89</sup>

32. We will, however, limit our foreign ownership rulings to common carrier and broadcast services, as applicable. Entities that have obtained a broadcast ruling may not use that ruling to cover an after-acquired common carrier—and vice versa. As we observed in the *2015 Foreign Ownership NPRM*, the Commission has noted previously the important distinctions between common carrier services and broadcast media in the context of the public interest analysis under Section 310(b)(4).<sup>90</sup> Given these considerations, we believe it is appropriate to adopt the tentative conclusion in the *2015 Foreign Ownership NPRM* and require licensees to separately file common carrier petitions from broadcast petitions. However, if the licensee specifically requests approval as both a common carrier and broadcaster, the Commission will entertain such petitions, provided that the petitioner includes all the relevant common carrier and broadcast petition information. If approved, such a ruling would apply to subsequent acquisitions of common carrier and broadcast licenses, subject to any limitations adopted in the particular ruling.<sup>91</sup>

### 5. Filing and Processing of Broadcast Petitions

33. The *2015 Foreign Ownership NPRM* noted that the existing rules for common carrier licensees require that petitions for declaratory ruling be filed electronically through the International Bureau Filing System (IBFS).<sup>92</sup> However, we proposed that broadcast petitions for declaratory ruling be filed electronically as an attachment to the underlying applications for a construction permit, assignment, or transfer of control that are electronically filed through the Commission's Consolidated Database System (CDBS) or any successor database.<sup>93</sup> Additionally, for those broadcast petitions filed without an underlying broadcast construction permit, assignment, or transfer of control application, we proposed that 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>94</sup> We also sought comment on various procedural aspects, including public notice and comment.<sup>95</sup> Commenters did not address the proposals for handling broadcast petitions.

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<sup>88</sup> We emphasize that rulings are granted to petitioning licensees (and their subsidiaries and affiliates as defined in the rules) pursuant to Appx. B, Final Rules (§ 1.5004(b)), and not to the foreign individuals/entities that are specifically approved in the ruling to hold specified levels of equity and voting interests in the licensee's U.S. parent. *See supra* note 62. Thus, the specifically approved foreign investor cannot rely on the licensee's ruling for purposes of acquiring a controlling or non-controlling interest in an unaffiliated company.

<sup>89</sup> We note that this also affords the relevant Executive Branch agencies opportunity to raise applicable national security, law enforcement, foreign policy, or trade policy concerns.

<sup>90</sup> *2015 Foreign Ownership NPRM*, 30 FCC Rcd at 11838-39, para. 21.

<sup>91</sup> The transfer and assignment of individual licenses will continue to be subject to the appropriate Commission approval processes.

<sup>92</sup> *2015 Foreign Ownership NPRM*, 30 FCC Rcd at 11839, para. 24.

<sup>93</sup> *Id.* at 11839, para. 24; *see also Media Bureau Announces Completion of First Phase of Licensing and Management System for Full Power TV Stations*, 29 FCC Rcd 11585 (MB 2014). Although the Licensing and Management System (LMS) may ultimately replace CDBS as the e-filing system for all radio and television broadcasters, it currently applies only to video services. *Id.*

<sup>94</sup> *2015 Foreign Ownership NPRM*, 30 FCC Rcd at 11840, para. 25.

<sup>95</sup> *Id.* at 11839-40, paras. 24-25.

34. We will adopt the processes described in the *2015 Foreign Ownership NPRM* for the filing and processing of broadcast petitions.<sup>96</sup> Thus, broadcast petitions for declaratory ruling must be filed electronically as an attachment to the underlying applications for a construction permit, assignment, or transfer of control that are electronically filed with the Commission. As proposed in the *2015 Foreign Ownership NPRM*, such applications, if otherwise acceptable for filing, will be placed on public notice denoting that the application is “accepted for filing.” This public notice initiates the formal processing of the application, triggers the legal timeframe for the filing of petitions to deny, and provides notice to interested members of the public who may wish to comment on the application. A foreign ownership petition, filed as part of an underlying application, will separately receive a docket number, and the Commission will issue a separate public notice to solicit comment on the petition. A broadcast petition filed in the absence of an underlying broadcast construction permit, assignment, or transfer of control application shall be initially submitted electronically with the Commission’s Office of the Secretary via ECFS as a non-docketed filing.<sup>97</sup> The petition will subsequently receive a docket number and a public notice seeking comment will be released. Broadcasters are familiar with filing applications/petitions in the relevant filing systems, and we find that that these procedures will promote regulatory consistency.<sup>98</sup> The Commission will continue to coordinate applications and petitions with the relevant Executive Branch agencies, as necessary and appropriate.

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

#### 1. Overview

35. As discussed below, we adopt a methodology for U.S. public companies to assess compliance with the foreign ownership limits in Sections 310(b)(3) and 310(b)(4) of the Act. We adopt the approach proposed in the *2015 Foreign Ownership NPRM* to permit a broadcast or common carrier licensee that is controlled by a U.S. public company to rely on ownership information that is known or reasonably should be known to the public company to determine its aggregate levels of foreign ownership.<sup>99</sup> We adopt the same approach for licensees’ determinations of compliance with Section 310(b)(3) to the extent the licensee is a public company. We find that adopting such a rule for “eligible” publicly traded licensees and U.S. parent companies<sup>100</sup> is supported by the record developed in this

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<sup>96</sup> An applicant shall inform the Commission that it is covered by an existing ruling and that it is in compliance with that ruling if the applicant seeks approval for a subsequent assignment/transfer of control pursuant to the terms and conditions of that ruling.

<sup>97</sup> See *Commission Announces That Petitions for Rulemaking May Be Submitted Online*, Public Notice, 30 FCC Rcd 2366 (2015) (explaining how to submit a non-docketed filing via ECFS).

<sup>98</sup> The filing rules applicable to broadcasters can be found in Appx. B, Final Rules (§ 1.5000). In circumstances in which a petition involves common carrier and broadcast licenses, filers should comply with all applicable filing requirements for those services. The Commission will tailor the public notice and comment process, as appropriate.

<sup>99</sup> We noted in the *2015 Foreign Ownership NPRM* the challenges faced by widely held, publicly traded U.S. companies in ascertaining the citizenship of their shareholders for the purpose of certifying their compliance with the foreign ownership limits in Section 310(b). *2015 Foreign Ownership NPRM*, 30 FCC Rcd at 11840-43, paras. 26-36 (discussing, *inter alia*, concerns raised by NAB and MMTC in the *2015 Pandora Declaratory Ruling* proceeding 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 held public companies). See also *id.* at 11840, para. 27 (citing MMTC Pandora Reply at 1-2 for the proposition that broadcasters that are public companies need flexible, practical, and efficient means to estimate their foreign ownership).

<sup>100</sup> An “eligible” U.S. public company is defined in the new rules as a U.S.-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 §§ 13(d) or 13(g) of the Exchange Act and corresponding Exchange Act Rule 13d-1, 17 CFR § 240.13d-1. See Appx. B, Final Rules (§ 1.5000(d)). This definition tracks the definition of “public company” in Section 1.990(g)(9) (to be renumbered as Section 1.5000(g)(9)) except that it is limited to U.S.-organized public companies. We recognize that the Securities and Exchange Commission (SEC) rules and forms

(continued....)

proceeding and will provide licensees with greater certainty and reduced burdens in determining their aggregate levels of foreign ownership given the difficulties of ascertaining the identity and citizenship of widely dispersed public company shareholders.

36. The methodology will eliminate the need for publicly traded licensees and U.S. parent companies to attempt to conduct surveys or random samplings of their shares and apply presumptions about the citizenship of their unknown shareholders, based on the informal staff guidance routinely provided to applicants and licensees since the early 1970s.<sup>101</sup> At the same time, we find that this methodology will allow publicly traded licensees and U.S. parent companies to identify those foreign interest holders likely to have the ability to influence company policies and operations. The methodology recognizes the realities of today's marketplace for the equity securities of public companies by allowing companies to focus their compliance efforts and resources on identifying and determining the citizenship of those shareholders that may present a realistic potential to influence or control the company, rather than on those interests that are not influential.

37. The difficulties associated with ascertaining the foreign ownership of U.S. public companies arise, in large part, out of the changing nature of stock ownership in the United States. As commenters note, most shares of publicly traded companies are now held in "street name" (i.e., in the name of an intermediary bank or broker holding legal title to a share on behalf of a third party). In 1934, when Congress adopted the provisions of Section 310(b)(4), only about 10 percent of shares in U.S. markets were held by an individual or institution on behalf of someone else; it has been estimated that at least 85 percent of shares are now held this way.<sup>102</sup> Moreover, as noted below, it has proven increasingly difficult to ascertain the identity, much less the citizenship, of a public company's shareholders.

## 2. Identification of Interest Holders

38. In the *2015 Foreign Ownership NPRM*, we proposed 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 25 percent foreign ownership benchmark in Section 310(b)(4).<sup>103</sup> We requested comment on whether any changes we make regarding the ascertainment of a licensee's foreign ownership under Section 310(b)(4) should also apply to the ascertainment of a licensee's foreign ownership under Section 310(b)(3).<sup>104</sup> We also asked if we should limit this proposed approach to U.S.-organized public

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referenced in this Report and Order may be eliminated, redesignated, or otherwise modified in the future by the SEC. To ensure that the Commission's rules continue to refer to the correct SEC rules and forms, we delegate to the International Bureau the authority to make technical and ministerial edits to the rules adopted in this Report and Order for this purpose.

<sup>101</sup> *2015 Pandora Declaratory Ruling*, 30 FCC Rcd at 5094-95, para. 3 n.3 (citing Letter from Peter H. Doyle, Chief, Audio Division, FCC Media Bureau, to John M. Pelkey, Esq. and Melodie A. Virtue, Esq., Counsel, Pandora Media, Inc. at Attach. A, Suggestions for Meeting Citizenship Requirements of Corporate Applicants (Sept. 23, 2013) (on file in Ref. No. 1800B3-CEG ([http://licensing.fcc.gov/cgi-bin/prod/cdbs/forms/prod/getimportletter\\_exh.cgi?import\\_letter\\_id=43784](http://licensing.fcc.gov/cgi-bin/prod/cdbs/forms/prod/getimportletter_exh.cgi?import_letter_id=43784)) (Doyle Letter).

<sup>102</sup> NAB Comments at 2; see Daniel Michaeli, *Foreign Investment Restrictions in Coastwise Shipping: A Maritime Mess*, 89 N.Y.U. L. Rev. 1047, 1050, 1057 n.40 (2014) (citing U.S. Sec. & Exch. Comm'n, Report on Authority to Enforce Exchange Act Rule 12g5-1 and Subsection (b)(3) Act (2012) at 8 n.26, <https://www.sec.gov/news/studies/2012/authority-to-enforce-rule-12g5-1.pdf>). See also U.S. Sec. & Exch. Comm'n, Securities Exchange Act, Issuer Restrictions or Prohibitions on ownership by Securities Intermediaries, 69 Fed. Reg. 70852, 70854 n.28 (Dec. 7, 2004) (noting the Depository Trust Company's (DTC) finding that, as of 2002, approximately 84 percent of the shares issued by domestic companies listed on the NYSE and 88 percent of the domestic companies listed on the Nasdaq were on deposit at DTC).

<sup>103</sup> *2015 Foreign Ownership NPRM*, 30 FCC Rcd at 11842, para. 32.

<sup>104</sup> *Id.* 30 FCC Rcd at 11840, para. 27.

companies, and/or companies for which a certain percentage of their officers and directors are U.S. citizens.<sup>105</sup>

39. In addition, we requested comment on the types of shareholder data licensees should be required to produce to satisfy their “best efforts” to comply with the statute,<sup>106</sup> and we asked whether equity and voting ownership should be treated the same or, for example, whether there should be a different, greater obligation to know the voting ownership.<sup>107</sup> We also requested comment on whether the Commission should accept shareholder addresses, alone, as a proxy for citizenship<sup>108</sup> and on whether a U.S. public company’s use of the SEG-100 program of the Depository Trust Company (DTC) or an equivalent program would be sufficient for purposes of demonstrating compliance with the Section 310(b) limits on foreign ownership.<sup>109</sup>

40. Moreover, we sought comment in the *2015 Foreign Ownership NPRM* on NAB’s suggestion that the Commission eliminate the presumption that unidentified shareholders be counted as foreign,<sup>110</sup> and we solicited comment on alternatives to this presumption and asked whether, if we were to change the presumption, applicants should be allowed to extrapolate foreign ownership percentages based on known shareholders.<sup>111</sup> We also requested comment on whether there should be an upper limit on the relative number of unknown shareholders that can be estimated under any such approach.<sup>112</sup>

41. Industry commenters unequivocally voice their concerns regarding the difficulty of determining the identity and citizenship of shareholders of U.S. public companies due to changes in how shares are held today.<sup>113</sup> MMTC states that providing the detailed ownership information required under the Commission’s current broadcast foreign ownership rules is a complicated and costly process, involving extensive legal analysis, detailed surveys and investigations of generally unavailable shareholder information.<sup>114</sup> Additionally, 21<sup>st</sup> Century Fox argues that, in contrast to a private or closely-held enterprise, large public companies have little to no knowledge of the identity of the vast majority of

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<sup>105</sup> *Id.* at 11842, para. 32.

<sup>106</sup> *Id.*

<sup>107</sup> *Id.*

<sup>108</sup> *Id.* We address this issue below. *See infra* paras. 63-64.

<sup>109</sup> *2015 Foreign Ownership NPRM*, 30 FCC Rcd at 11843, para. 34.

<sup>110</sup> *Id.* at 11843, para 35.

<sup>111</sup> *Id.* (“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 would that multiple be?”).

<sup>112</sup> *Id.*

<sup>113</sup> Joint Broadcasters *Ex Parte* at 4 (stating that public companies “typically have little, and may not have any, knowledge of the identity of the vast majority of their shareholders because shares are held in ‘street name’ (*i.e.*, by a broker.”); T-Mobile Comments at 2 (“Interests of five percent or less often are held in street name, meaning publicly traded companies may not be able to ascertain their beneficial shareholders’ citizenship no matter what resources are thrown at the task.”); Nexstar Comments at 5 (stating that it is no longer workable to require licensees to survey their shareholders to determine jurisdiction of ownership and to assume that any non-responsive or unknown shareholder be deemed foreign for purposes of determining compliance with Section 310(b)(4)). Nexstar also asserts that SEC regulations limit the ability of companies to obtain information regarding their shareholders. *Id.*

<sup>114</sup> MMTC Comments at 2; *see also* Media General Reply at 1-2.

their shareholders.<sup>115</sup> NAB asserts that publicly traded broadcasters currently face substantial obstacles in determining the identity of certain of their shareholders.<sup>116</sup>

42. Many commenters also express concern with the Commission's current approach to its treatment of unknown or unidentifiable ownership interests and urge the Commission to change the current presumption that unknown shareholders of U.S. public companies are foreign.<sup>117</sup> Commenters assert that unknown shareholders lack the ability to influence or control the U.S. public company. T-Mobile, for example, states that a shareholder with 5 percent or lower interest in a widely held company is likely unknown to the company and its executives and, for that reason, cannot have any influence; and the small amount of that individual's shares means that his or her vote will have little ability to influence corporate affairs.<sup>118</sup> In particular, Comcast and Nexstar argue that it is not plausible that an unknown shareholder would have the concerted influence that Congress sought to address in Section 310(b)(4).<sup>119</sup>

43. Commenters proposed various approaches to update the Commission's rules and policies and make them less burdensome while providing the Commission with sufficient information to discharge our public interest obligations under Section 310(b). Generally, commenters support permitting licensees to rely primarily on ownership information that is reasonably available to U.S. public companies when determining foreign ownership levels. For example, Comcast supports the *2015 Foreign Ownership NPRM's* proposal whereby licensees owned by U.S. public companies would be able to "rely solely on information that is known or reasonably should be known to the public company" to determine compliance with Section 310(b)(4).<sup>120</sup> Comcast argues that this proposal would establish a clear, practical, and efficient means for U.S. public companies to certify compliance with Section 310(b)(4).<sup>121</sup> Comcast and NAB recommend that the Commission deem certain categories of shareholders to be reasonably identifiable: (1) registered shareholders (including officers, directors, and employees); (2) information routinely provided in filings with the Securities and Exchange Commission (SEC); and (3) any information that, upon reasonable inquiry, the company receives from non-objecting beneficial owners (NOBOs) of the company's shares.<sup>122</sup> T-Mobile proposes that the Commission establish a

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<sup>115</sup> 21<sup>st</sup> Century Fox Comments at 5.

<sup>116</sup> NAB Comments at 25.

<sup>117</sup> Comcast Comments at 13 (a presumption that shareholders that cannot be identified are foreign likely results in a gross overstatement of a company's foreign ownership); NAB Comments at 2 (the Commission's current policy of treating such unidentifiable shareholders as foreign is certain to drastically overstate the actual foreign ownership of a broadcaster given the high percentage of the shares of most public companies that are held by objecting beneficial owners (OBOs)); Nexstar Comments at 7-8 (assuming a shareholder is foreign when such shares are unknown has no basis in fact, and it is equally as likely that such shareholder is a U.S. citizen as a non-U.S. citizen); 21<sup>st</sup> Century Fox Comments at 9 (eliminate the presumption and permit companies to extrapolate foreign ownership percentages based on the ratio of known non-U.S. shareholders).

<sup>118</sup> T-Mobile Comments at 6-7; *see also* Comcast Comments at 13 (unknown shareholders are not capable of influencing the company's policy decisions because they are below the existing SEC reporting thresholds, have chosen not to be registered owners, are not officers or directors, and are shareholders that have declined to provide sufficient ownership information to the company).

<sup>119</sup> Comcast Comments at 16 ("With respect to foreign *influence* from *unknown* shareholders (that may or may not be foreign), ... it simply is not plausible that a shareholder (foreign or not) of a widely held company that is not required to make an SEC Schedule 13D or 13G filing would have the kind of concerted *influence* that Congress sought to address in Section 310(b)(4)."); Nexstar Comments at 8 (unknown shareholders are most likely going to be individuals that hold small amounts of the company's shares and are extremely unlikely to have any influence over the company at all).

<sup>120</sup> Comcast Comments at 2, 18.

<sup>121</sup> *Id.* at 2; Comcast Reply at 1.

<sup>122</sup> NAB Comments at 29, 30 n.84.

rebuttable presumption that shareholders holding interests of 5 percent or less in a public company do not raise public interest concerns under Sections 310(b)(3) and 310(b)(4) and thus need not be disclosed or considered in assessing foreign ownership under these subsections.<sup>123</sup> Nexstar and NAB argue that the Commission should consider participation in DTC's SEG-100 program as a standalone method for demonstrating foreign ownership compliance.<sup>124</sup> However, T-Mobile argues against requiring U.S. public companies to enroll in SEG-100.<sup>125</sup>

**a. Known or Reasonably Should Be Known Standard**

44. Based on the record before us, we conclude that a U.S. public company knows, or reasonably should know, in the exercise of due diligence, the identity and citizenship of certain individuals and entities that hold, directly and/or indirectly, equity and/or voting interests in the U.S. public company as described in further detail below. Accordingly, the rules we adopt today will permit a licensee that is, or is controlled by, a U.S. public company to rely on such information to ascertain the company's foreign equity and voting interests under Sections 310(b)(3) and 310(b)(4).

45. We find record support<sup>126</sup> for our conclusion that U.S. public companies should know the identity of shareholders that report their beneficial ownership, or other persons who may be identified in such report as holding a pecuniary interest, in the equity securities of the company pursuant to Section 13(d) of the Securities Exchange Act of 1934, as amended (the "Exchange Act"), and Exchange Act Rule 13d-1.<sup>127</sup> In general, Exchange Act Rule 13d-1 requires a person or "group" that becomes, directly or indirectly, the "beneficial owner" of more than 5 percent of a class of equity securities registered under Section 12 of the Exchange Act to report the acquisition to the SEC.<sup>128</sup> The absence of a reporting requirement under Exchange Act Rule 13d-1 for beneficial owners of 5 percent or less of a class of equity securities also means that the identity and citizenship of such smaller shareholders may not be readily available to the issuing company.<sup>129</sup>

46. The rules we adopt today will require that licensees or their controlling U.S. parents that are eligible U.S. public companies within the meaning of the rules review the beneficial ownership reports, Schedules 13D and 13G, filed with the SEC, and monitor other widely available sources of

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<sup>123</sup> T-Mobile Comments at 3, 15; Comcast Reply at 2-3 (stating that Comcast does not object to T-Mobile's proposed presumption, should the Commission choose to adopt it).

<sup>124</sup> Nexstar Comments at 7; NAB Comments at 28-29, 33; NAB Reply at 11.

<sup>125</sup> T-Mobile Comments at 13-14. *See also* NAB Reply at 11 ("NAB agrees that participation in SEG-100 should not be mandatory.").

<sup>126</sup> Comcast Comments at 1; NAB Comments at 29, 30, n.84; Media General Reply at 2; NAB Reply at 10.

<sup>127</sup> 15 U.S.C. § 78m(d)(1); 17 CFR § 240.13d-1.

<sup>128</sup> For purposes of Exchange Act Rule 13d-1, Exchange Act Rule 13d-3(a) defines a beneficial owner of a security to include any person who, directly or indirectly, through any contract, arrangement, understanding, relationship, or otherwise has or shares voting power, which includes the power to vote, or to direct the voting of, such security; and/or investment power, which includes the power to dispose, or to direct the disposition of, such security. 17 CFR § 240.13d-3(a). Exchange Act Rule 13d-1(i) defines the term "equity security" as any equity security of a class which is registered pursuant to Section 12 of that Act as well as certain equity securities of insurance companies and equity securities issued by closed-end investment companies registered under the Investment Company Act of 1940. The term "equity security," however, does not include securities of a class of non-voting securities. *Id.* § 240.13d-1(i).

<sup>129</sup> 2013 *Foreign Ownership Second Report and Order*, 28 FCC Rcd at 5771, para. 54. As discussed in Section IV.C.7., we agree with commenters that small, unknown interest holders that hold 5 percent or less of a U.S. public company's outstanding shares or qualified institutional investors that hold interests of 10 percent or less, as a general rule, do not have the ability or pose a realistic potential to exert influence or control over that U.S. public company. *See supra* para. 42.

information about institutional ownership of U.S. publicly traded equity securities, specifically, information derived from SEC Form 13F reports, as we expect they do now in the ordinary course of business.<sup>130</sup> Generally, Schedule 13D is required to be filed by any person who acquires, directly or indirectly, beneficial ownership exceeding 5 percent of a class of an issuer's equity securities (as defined by Exchange Act Rule 13d-1(i)).<sup>131</sup> Schedule 13D must be filed with the SEC within 10 days after the acquisition that triggered the reporting requirement<sup>132</sup> and must include, among other things, 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.<sup>133</sup>

47. Qualified institutional investors may use an abbreviated “short-form” disclosure statement, known as Schedule 13G, pursuant to Exchange Act Rule 13d-1(b), to report their beneficial ownership in excess of 5 percent of a class of equity securities, including amounts in excess of 10 percent, to the SEC, when the institutional investor acquires its shares “in the ordinary course of [its] business and not with the purpose nor with the effect of changing or influencing the control of the issuer....”<sup>134</sup> Where an institutional investor's beneficial ownership exceeds 5 percent, but not 10 percent, of a class of equity securities in a given calendar year, the Schedule 13G need not be filed until 45 days after the end of the calendar year (and only then if the investor or “group” continues to own more than 5 percent at year end).<sup>135</sup> Exchange Act Rule 13d-1(b) covers a broad range of institutional investors, such as registered

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<sup>130</sup> For example, we note that various SEC forms filed by issuers, including their annual reports (or proxy statements) and quarterly reports, require the issuer to include a beneficial ownership table that contains, *inter alia*, the name and address of any individual or entity, or “group” (as that term is used in Section 13(d)(3) of the Exchange Act), who is known to the issuer to be the beneficial owner of more than 5 percent of any class of the issuer's *voting* securities (not limited to securities registered pursuant to Section 12 of the Exchange Act) and the percentage of the class held. *See* SEC Regulation S-K, 17 CFR § 229.403 ((Item 403) Security ownership of certain beneficial owners and management.). *See also* 17 CFR § 229.10. Thus, Item 403 requires that issuers include beneficial ownership of any class of their voting securities regardless of whether the securities are registered under Section 12 of the Exchange Act (in contrast to the requirements of Exchange Act Rule 13d-1, which requires reporting of beneficial ownership of an issuer's *equity* securities (defined in Section 13d-1(i) as generally including only registered, voting securities). *See* 17 CFR § 240.13d-1(i). Pursuant to Item 403 of Regulation S-K, issuers must determine their beneficial ownership in accordance with Exchange Act Rule 13d-3 (applicable as well to Schedules 13D and 13G). For purposes of Item 403, the issuer “shall be deemed to know the contents of any statements filed with [the SEC] pursuant to Section 13(d) or 13(g) of the Exchange Act.” When applicable, the issuer may rely upon information set forth in such statements unless it “knows or has reason to believe that such information is not complete or accurate or that a statement or amendment should have been filed and was not.” 17 CFR § 229.403 (Instructions to Item 403).

<sup>131</sup> 17 CFR § 240.13d-1(i).

<sup>132</sup> 17 CFR § 240.13d-1(a). *See also* 2013 *Foreign Ownership Second Report and Order*, 28 FCC Rcd at 5770-1, para. 53.

<sup>133</sup> 17 CFR § 240.13d-101 (Schedule 13D).

<sup>134</sup> 17 CFR § 240.13d-1(b). *See also* 2013 *Foreign Ownership Second Report and Order*, 28 FCC Rcd at 5773, para. 59. The Schedule 13G may also be used in lieu of the Schedule 13D to report beneficial ownership of more than 5 percent of a class of equity securities where, *inter alia*, the shareholder is not directly or indirectly the beneficial owner of as much as 20 percent of the class and can certify that the subject securities were not acquired with any purpose, or with the effect of, changing or influencing the control of the issuer, or in connection with or as participant in any transaction having that purpose or effect. 17 CFR § 240.13d-1(c). Such investors choosing to report on Schedule 13G must file their initial Schedule 13G within 10 calendar days after acquiring beneficial ownership of more than 5 percent of the class of subject securities. 17 CFR § 240.13d-1(c).

<sup>135</sup> 17 CFR § 240.13d-1(b)(2). If, however, the institutional investor's beneficial ownership exceeds 10 percent of the class of equity securities prior to the end of the calendar year, the initial Schedule G reporting the investor's beneficial ownership must be filed within 10 days after the end of the first month in which the interest exceeded 10 percent, computed as of the last day of the month. 17 CFR § 240.13d-1(b)(2).

brokers and dealers, banks, insurance companies, investment companies, investment advisers, employee benefit plans, and savings associations.<sup>136</sup>

48. Both the Schedule 13D and 13G include citizenship information for the beneficial owner. In the case of a Schedule 13D that is filed by a general or limited partnership, syndicate or other group, which group could include a limited liability company, the schedule also requires, *inter alia*, the identity and citizenship of each partner of a general partnership, each partner who is denominated as a general partner or who functions as a general partner of such limited partnership, each member of such syndicate or group, and each person controlling such partner or member. When the Schedule 13D is filed by a corporation, the schedule similarly requires, *inter alia*, the identity and citizenship of each executive officer and director, each person controlling the corporation, and each executive officer and director of any corporation or other person ultimately in control of such corporation. Thus, U.S. public companies should review Schedules 13D and 13G to identify their interest holders (and to determine their citizenship).<sup>137</sup>

49. In addition, licensees and controlling U.S. parents should assess the ownership of their publicly traded equity securities more broadly through additional sources of information; specifically, institutional equity ownership information about U.S. publicly traded companies which is available from a variety of entities, including, for example: (i) Internet-based news and other sources; and (ii) data gatherers that compile and distribute information and analysis about ownership of publicly traded equity securities for a fee. A considerable amount of such equity ownership information is based on the quarterly Form 13F reports that are required under Section 13(f) of the Exchange Act and the rules thereunder.<sup>138</sup> Form 13F is required to be filed with the SEC within 45 days of the end of each calendar quarter by an institutional investment manager, including a foreign-organized manager, with investment discretion over an aggregate value of \$100 million or more in U.S. exchange-traded equity securities. Such securities, referred to as “Section 13(f) securities,” generally are the common stock of issuers that are listed and traded on the primary U.S. stock exchanges.<sup>139</sup> Each Form 13F report discloses, as of the end of the calendar quarter, the number of shares in each reportable Section 13(f) security over which the Form 13F reporting manager exercised investment discretion. While a Form 13F report does not necessarily reveal the ultimate beneficial owner of a company’s U.S. exchange-traded stock, it provides material insight into the holders of such stock, and can be an important element in determining ultimate voting control.<sup>140</sup> We find that information available in the Form 13F about the institutional ownership of its shares reasonably should be known to the company in the ordinary course of business.<sup>141</sup>

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<sup>136</sup> *Id.* § 240.13d-1(b)(ii).

<sup>137</sup> *See infra* Section IV.C.3.

<sup>138</sup> We note that, “[a]s the primary source of data about institutional equity holdings, Form 13F information is monitored, analyzed, and distributed by market data services for use by investors and other participants in the U.S. equity markets.” *See In the matter of Full Value Advisors, LLC*, Securities and Exchange Act Release No. 61327 (Jan. 11, 2010), <https://www.sec.gov/rules/other/2010/34-61327.pdf>.

<sup>139</sup> 17 CFR § 240.13f-1. Form 13F identifies, among other things, the total number of a public company’s Section 13(f) securities for which the filer (and sometimes its related parties) exercises investment discretion. The Form 13F also identifies voting authority for such positions, although its specialized reporting instruction captures voting authority only over “non-routine” matters (e.g., a contested election of directors; a merger or sale of substantially all of the issuer’s assets). *See* 17 CFR § 249.325 (Form 13F).

<sup>140</sup> A Form 13F report also can assist in identifying the citizenship of an equity owner because, as a starting point for determining citizenship, the cover page of Form 13F requires that the filing manager’s name and address be provided. Form 13F reports are filed on the SEC’s EDGAR database, and list holdings to facilitate the utility to end users of the reported U.S. equity holdings data. Because a material number of institutional investment managers that file Form 13F are registered under the Investment Advisers Act of 1940, the investment adviser registration form, Form ADV, may be useful in this context. *See* 17 CFR §§ 279.1 (Form ADV), 275.204-1 (Amendments to Form ADV). For example, Form ADV may have information relevant to determining the citizenship of a registered

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50. A U.S. public company also can avail itself of certain other sources of reliable information about the ownership of its publicly traded stock, available in the ordinary course of business. First, U.S. public companies should know the ownership of the shares registered with the company and the shares held by officers and directors.<sup>142</sup> Second, U.S. public companies should know the citizenship of at least some of the shareholders of the company's securities that are not publicly traded (e.g., non-registered securities (whether voting or non-voting) held by pre-IPO founders of the company and non-registered voting shares held by beneficial owners required to be identified in a company's annual reports (or proxy statements) and quarterly reports).<sup>143</sup> Third, other shareholders and their citizenship may be known to the public company, including those identified as a result of shareholder litigation, financing transactions, and proxies voted at annual or other meetings.<sup>144</sup> Fourth, shareholders whose interests and citizenship are actually known to the company by whatever source, whether the interests exceed 5 percent or not, will be considered "known" under the new rules, and companies will be required to include such equity and/or voting interests in calculating the percentages of their foreign voting interests and their foreign equity interests under Section 310(b). For example, we note that information gleaned from Schedules 13D and 13G may indicate that the company has foreign beneficial owners holding interests in excess of 5 percent of a particular class of voting stock that does not equate to an interest exceeding 5 percent of the company's total outstanding shares of voting stock. Nevertheless, the rules will treat these interests as "known." We require U.S. public companies to include all of the above-mentioned information in their foreign ownership calculations.<sup>145</sup>

51. The methodology adopted in this Report and Order generally will not require U.S. public companies to identify *de minimis* interest holders. NOBO shareholders that are not otherwise identifiable (as through SEC filings) are such *de minimis* interest holders. Nonetheless, Comcast and NAB recommend that the Commission deem any information that, upon reasonable inquiry, a company receives from NOBOs to be reasonably identifiable.<sup>146</sup> We decline to require U.S. public companies, as a matter of course, to send out NOBO letters to obtain citizenship information, as was required in the *Pandora Declaratory Ruling*.<sup>147</sup> Based on our experience and the comments we have received, we do not believe such letters consistently generate responses from addressees. Therefore, any information gleaned

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investment adviser that may be identified in a Schedule 13D/G or Form 13F as holding investment discretion and voting authority for such positions in a public company.

<sup>141</sup> See, e.g., Comcast Comments at 6-7 (stating that the SEC Schedules 13D and 13G and SEC Form 13F provide existing, significant sources of shareholder information that can be used for Section 310(b)(4) certification purposes; SEC rules governing these filings are rigorously enforced; and the information provided by filers is considered to be very reliable); NAB Comments at 29-30 (stating that the Commission should deem filers of SEC Schedules 13D and 13G and SEC Form 13F as reasonably identifiable).

<sup>142</sup> Comcast Comments at 9 (stating that it is reasonable to expect a company to maintain citizenship and shareholding information about officers and directors because they are either employees of the company and/or have fiduciary obligations with respect to the company); NAB Reply at 10.

<sup>143</sup> See *supra* note 130.

<sup>144</sup> Comcast Comments at 1; NAB Comments at 29, 30, & n.84; 21<sup>st</sup> Century Fox Comments at 9.

<sup>145</sup> As more information regarding the citizenship of beneficial owners becomes available as a result of improved, revised or increased disclosure requirements, registries or databases, we expect U.S. public companies to include such information for purposes of determining their foreign ownership levels. For example, we note that, as part of the 2016 Anti-Corruption Summit in London, various countries have made commitments to implement measures in an effort to improve disclosure of beneficial ownership. See *Anti-Corruption Summit: London 2016* (May 12, 2016), <https://www.gov.uk/government/topical-events/anti-corruption-summit-london-2016> (last visited, Sept. 28, 2016).

<sup>146</sup> NAB Comments at 29, 30 n.84. See also Comcast Comments at 8-9.

<sup>147</sup> See *2015 Pandora Declaratory Ruling*, 30 FCC Rcd at 5102, para. 21.

directly through NOBO letters may be incomplete or redundant, and thus potentially difficult to reconcile with the citizenship information obtained using the methodology we are adopting in this Report and Order.<sup>148</sup>

52. We recognize that SEC Schedules 13D and 13G provide limited information as to those persons or entities that hold the pecuniary interests associated with a public company's voting shares that are subject to reporting under Exchange Act Rule 13d-1.<sup>149</sup> Notwithstanding the limited information that may be publicly available as to a company's equity interest holders, we do not believe that Section 310(b) allows us to limit foreign ownership review to include only those investors that possess voting rights in a company.<sup>150</sup> We therefore decline to adopt a methodology that focuses only on voting power.<sup>151</sup>

#### b. Surveys

53. Publicly traded companies have, in the past, attempted to undertake surveys or random sampling of their shareholders' equity and voting interests to determine whether they are in compliance with Section 310(b).<sup>152</sup> Industry commenters argue that the results of such surveys or random samples generally are not reliable in light of the large numbers of non-responses and do not justify the costs and burdens they impose on common carrier and broadcast licensees that are, or that are controlled by, a U.S.

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<sup>148</sup> However, to the extent a U.S. public company has identified an interest holder under our methodology, direct inquiries—including by letter—are encouraged as noted in Section IV.C.3 below.

<sup>149</sup> Information as to those persons holding the pecuniary interest in the company's voting, equity securities is limited: a beneficial owner required to report under Section 13d-1 by filing the requisite Schedule 13D or Schedule 13G is required to state whether any other person is known to have the right to receive or the power to direct the receipt of dividends from, or the proceeds from the sale of, such securities. If such interests relate to more than 5 percent of the class being reported, however, the Schedule 13D or Schedule 13G requires that such person be identified. However, a listing of the shareholders of an investment company registered under the Investment Company Act of 1940 or the beneficiaries of an employee benefit plan, pension fund, or endowment fund is not required. 17 CFR § 240.13d-101 (Schedule 13D) (*see* Special Instructions for Complying with Schedule D, Instruction C, Item 5(d)); 17 CFR § 240.13d-102 (Schedule 13G) (*see* Special Instructions for Complying with Schedule G, Instruction C, Item 6).

<sup>150</sup> *See supra* para. 24 n.66.

<sup>151</sup> We requested comment in the *2015 Foreign Ownership NPRM* whether equity and voting interests should be treated the same or, for example, whether there should be a different, greater obligation to know the voting ownership. *2015 Foreign Ownership NPRM*, 30 FCC Rcd at 11842, para. 32. Industry commenters do not expressly address this question, but they generally agree that it is more difficult for a U.S. public company to identify those persons that ultimately hold the pecuniary (equity) interests in the company's shares than those persons that hold the right to vote or direct the voting of its shares. NAB asserts, for example, that SEC Schedule 13F filings can be used to determine voting control of a company's stock, but not the person(s) that hold the pecuniary interests in the stock. NAB Comments at 29-30. T-Mobile states that the challenges of identifying equity interest holders are even more pronounced where there is a publicly traded company several ownership levels above the licensee, which is expected to include in its foreign ownership assessment the citizenship of even remote, non-controlling equity interest holders. T-Mobile Comments at 6. The methodology we are adopting takes into account that it may not be possible for a publicly traded licensee or U.S. parent, even with the exercise of the required diligence, to identify the individuals or entities that ultimately have the pecuniary interest in voting shares of the company that are subject to reporting by the beneficial owner under Exchange Act Rule 13d-1 (and that therefore should reasonably be known to the company).

<sup>152</sup> *See Applications of Cellco Partnership d/b/a Verizon Wireless and Atlantis Holdings LLC; For Consent to Transfer Control of Licenses, Authorizations, and Spectrum Manager and De Facto Transfer Leasing Arrangements and Petition for Declaratory Ruling that the Transaction is Consistent with Section 310(b)(4) of the Communications Act*, WT Docket No. 08-95, Memorandum Opinion and Order and Declaratory Ruling, 23 FCC Rcd 17444, 17544, para. 229 (2008), *recon. denied*, 26 FCC Rcd 11763 (2011) (*2011 Cellco Order on Reconsideration*).

public company.<sup>153</sup> Commenters also assert that there are difficulties involved with trying to determine the identity and citizenship of the beneficial ownership of stock held by broker-dealers in street name on behalf of objecting beneficial owners (OBOs).<sup>154</sup> As noted above, the methodology adopted in this Report and Order will eliminate the need for a publicly held licensee or controlling U.S. parent to attempt to use surveys or random sampling techniques for purposes of ensuring that the licensee is able to certify compliance with Section 310(b) or obtain the Commission's approval, under Section 310(b)(4), before the U.S. public company's foreign equity and/or voting interests exceed 25 percent.

**c. SEG-100**

54. In the *2015 Foreign Ownership NPRM*, we sought comment on whether a public company's participation in DTC's SEG-100 program, or an equivalent program, would provide the Commission with sufficient information to discharge its public interest obligations pertaining to foreign ownership in broadcast licensees.<sup>155</sup> We note that several parents of broadcast licensees participate in SEG-100 or similar programs which allow for the deposit of foreign-owned shares into a segregated account for monitoring foreign owned shares. Nexstar and NAB argue that the Commission should consider participation in DTC's SEG-100 program as a standalone method for demonstrating foreign ownership compliance.<sup>156</sup> However, T-Mobile argues against requiring publicly traded companies to enroll in SEG-100 because it would increase regulatory and compliance costs and burdens on licensees, without any concomitant benefit.<sup>157</sup> T-Mobile argues that because the SEG-100 program requires participation of the actual shareholder, the program may be prone to lack of participation issues.<sup>158</sup>

55. We note that when an issuer requests to be included in the SEG-100 program, DTC notifies its participating banks/brokers that they must apply SEG-100 procedures to future trades of

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<sup>153</sup> See, e.g., Nexstar Comments at 5 (stating that it is no longer workable to require licensees to survey their shareholders to determine jurisdiction of ownership and to assume that any non-responsive or unknown shareholder be deemed foreign for purposes of determining compliance with Section 310(b)(4)); T-Mobile Comments at 6 (noting that "[p]ublic companies may undertake surveys of shareholders' equity and voting interests, yet the vast majority of shareholders do not respond to surveys."); MMTCC Comments at 2; Media General Reply at 1-2. See also NAB Comments at 27.

<sup>154</sup> See, e.g., Comcast Comments at 8-9; NAB Comments at 26. The *2015 Pandora Declaratory Ruling* noted that Pandora maintained that it was "unable to determine the specific identity—and thus the citizenship—of the beneficial owners of 'at least half of [Pandora Media's] shares.'" See *2015 Pandora Declaratory Ruling*, 30 FCC Rcd at 5095, para. 4. Specifically, Pandora explained that SEC privacy regulations, "effectively preclud[e]" public companies from communicating directly with shareholders who object to such direct communications and where shares are held "in street name" through broker dealer and bank intermediaries. *Id.* Pandora noted that a company "theoretically" may request brokers and bank intermediaries to seek citizenship information in order to demonstrate its compliance with the limits of Section 310(b), but Pandora raised a question about whether such entities would be obligated to honor such a request. According to Pandora, objecting shareholders are "presumably unwilling" to disclose such citizenship information. *Id.* Consequently, Pandora argued that any attempt at a statistically valid random survey of beneficial owners would be likely to result in a very low response percentage. *Id.* We find that while it is not apparent from the OBO/NOBO rules that they constitute an absolute barrier to Section 310(b) citizenship inquiries with respect to OBOs (as opposed to proxy solicitation by the company), our methodology does not conflict with the SEC's OBO/NOBO rules and can co-exist with them. We note that it is unlikely that a beneficial owner of shares required to be reported on a Schedule 13D or 13G would also be an OBO with respect to shares that it is reporting, or to assert it is not subject to the U.S. public company's shareholder restrictions that would allow the company to make citizenship inquiries and, if needed, redeem shares or take other action to ensure it remains compliant with the foreign ownership limits.

<sup>155</sup> *2015 Foreign Ownership NPRM*, 30 FCC Rcd at 11843, para. 34.

<sup>156</sup> Nexstar Comments at 7; NAB Comments at 28-29, 33; NAB Reply at 11.

<sup>157</sup> T-Mobile Comments at 13-14.

<sup>158</sup> T-Mobile Comments at 14.

stock.<sup>159</sup> The issuer may provide specific instructions to DTC to forward to participating banks/brokers regarding how to determine citizenship of potential purchasers of the issuer's stock. DTC participants are obligated to make inquiries of their client account holders and to place the shares of such holders who are non-citizens in the DTC participant's segregated account.<sup>160</sup> Such a process allows issuers, 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.<sup>161</sup>

56. While we find that participation in SEG-100 serves as a useful check on monitoring foreign ownership levels and may be used as a tool to prevent transactions that would render a licensee noncompliant with foreign ownership thresholds, we are not persuaded that the SEG-100 program can be used as a standalone method for demonstrating compliance with Section 310(b).<sup>162</sup> We decline, in part, because there are many variables that might impact the effectiveness of the program in any given circumstance. For example, the instructions issuers provide DTC to guide DTC participants in making inquiries could have varying degrees of accuracy and detail. Furthermore, the effectiveness of the program would be impacted by the extent to which participants apply the guidelines in the instructions when making client inquiries to determine their citizenship. We also hesitate to require U.S. public companies that are not currently participating in SEG-100 to enroll in the program.<sup>163</sup> We believe that relying on the methodology outlined above is a more uniform approach that can be implemented consistently. Nonetheless, we recognize that many companies, broadcasters in particular, participate in SEG-100 and have found its services useful for a range of purposes, including monitoring of compliance with foreign ownership restrictions. Thus, while we will not permit participation in SEG-100 to serve as a standalone compliance methodology, it is not our intention to discourage the use of this program to the extent that companies find it valuable.

### 3. Determining Citizenship

57. Industry commenters agree that U.S. public companies currently face substantial obstacles in determining not only the identity but also the citizenship of their shareholders.<sup>164</sup> Based on the record and the Commission's experience with foreign ownership, we provide the following guidance as to the criteria Section 310(b) licensees can use to determine the citizenship of their identifiable interest holders.<sup>165</sup> As discussed in Section IV.C.2. above with respect to identifying an eligible U.S. public

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<sup>159</sup> 2015 *Foreign Ownership NPRM*, 30 FCC Rcd at 11843, para. 34.

<sup>160</sup> *Id.* at 11843, para. 34.

<sup>161</sup> *Id.* at 11852, para. 33 n.60. *See also* 21<sup>st</sup> Century Fox Comments at 6 (stating that although the SEG-100 program can be one effective tool for helping public companies track foreign ownership, "participation in the SEG-100 program is helpful only to the extent that it provides *information* about the level of foreign ownership. It does not, in and of itself, prevent any stock transaction, or series of transactions, that may result in a public company's level of foreign-held shares moving under or over the 25 percent benchmark").

<sup>162</sup> NAB Comments at 33 (arguing that publicly traded broadcasters that participate in SEG-100 should not be required to also conduct separate periodic foreign ownership assessments and, instead, should be permitted to rely on the SEG-100 program to monitor and maintain their Section 310(b) compliance on an ongoing basis).

<sup>163</sup> *See, e.g.*, T-Mobile Comments at 13-14 (arguing that requiring publicly traded companies to enroll in SEG-100 would serve to increase regulatory and compliance costs and burdens on licensees).

<sup>164</sup> *See, e.g.*, T-Mobile Comments at 2 ("Interests of five percent or less often are held in street name, meaning publicly traded companies may not be able to ascertain their beneficial shareholders' citizenship no matter what resources are thrown at the task.").

<sup>165</sup> We use the term "identifiable" interest holders to refer to those individuals and entities identified by the licensee using the methodology described in Section IV.C.2. as holding equity and/or voting interests in the publicly traded licensee or controlling U.S. parent.

company's interest holders, we expect licensees will exercise due diligence in determining the citizenship of their identifiable interest holders.<sup>166</sup>

58. Under our new framework, Section 310(b) licensees must make a determination in the first instance as to whether an identifiable interest holder should be deemed "foreign."<sup>167</sup> We find that, for purposes of determining the citizenship of their directors, officers, and employees, U.S. public companies should obtain citizenship information through direct inquiry.<sup>168</sup> If the company has other registered shareholders (other than directors, officers, employees), it should rely on publicly available information (if any), and/or attempt to query these interest holders directly to the extent citizenship is not included in the share registry.<sup>169</sup>

59. We also find that companies are entitled to rely on publicly available information with respect to non-registered identifiable interest holders, including information gleaned from SEC filings that were used to identify the shareholder,<sup>170</sup> other SEC filings made by the interest holder (e.g., a Form ADV where the interest holder is a registered investment adviser),<sup>171</sup> information specifically known to the company, and/or information received by the company through direct inquiries. We find direct inquiries by the U.S. public company of its identifiable interest holders constitutes a reasonable measure,<sup>172</sup>

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<sup>166</sup> NAB suggests that broadcasters be permitted to use "reasonable measures" to determine the citizenship of reasonably identifiable shareholders, rather than a "best efforts" standard as referenced in the *2015 Foreign Ownership NPRM*, 30 FCC Red at 11842, para. 32. NAB Comments at 27, 30; NAB Reply at 10. See also Comcast Comments at 3, 13-14 (stating that FCC precedent provides that "a company should use 'reasonable methods' to ensure compliance with Section 310(b)(4)"); 21<sup>st</sup> Century Fox Comments at 10 n.14 (citing *Westinghouse Radio* for the proposition that "[t]he Commission has long recognized that perfectly measuring ownership is infeasible, and thus permits widely held corporations to make reasonable efforts to ascertain their levels of foreign ownership," *Westinghouse Radio Stations, Inc.*, 19 FCC 1359, 1451 (1955) (*Westinghouse Radio*)). We find that the methodology we are adopting in this Report and Order, including the due diligence standard, constitutes a reasonable approach to determining U.S. public company compliance with Sections 310(b)(3) and 310(b)(4), as relevant.

<sup>167</sup> See Joint Broadcasters *Ex Parte* at 4 (stating that a key element of an approach that allows public companies to rely on multiple inputs in determining compliance is that public companies have the ability, in the reasonable exercise of their good faith judgment, to collate and analyze information derived from disparate sources to establish their compliance).

<sup>168</sup> See Comcast Comments at 2, 4-5 (stating that, because officers and directors of a public company are either employees of the company and/or have fiduciary obligations with respect to the company, it is reasonable to expect a company to maintain citizenship and shareholding information about such individuals); Media General Reply at 2.

<sup>169</sup> According to NAB, the citizenship of registered shareholders generally can be determined by direct communications with the shareholders because most registered shareholders are likely to be officers, directors, and employees. NAB Comments at 30.

<sup>170</sup> See NAB Comments (noting that "the citizenship of filers of Schedules 13D and 13G is listed directly on the schedules").

<sup>171</sup> As noted in Section IV.C.2.a., the Form ADV may have information relevant to determining citizenship of registered investment advisers, who may also be identified in a Schedule 13D or 13G, or in a Form 13F, as holding a voting interest in a public company. See 17 CFR §§ 279.1 (Form ADV), 275.204-1 (Amendments to Form ADV).

<sup>172</sup> We note that a reporting person filing a Schedule 13G as a "parent holding company/control person" pursuant to Sections 13d-1(b)(ii)(G), 13d-1(c), or 13d-1(d), is required to identify the subsidiary(ies) that acquired the shares being reported by the parent /control person. Unless the subsidiary is itself deemed to hold a reportable interest in some or all of same shares (in which case the subsidiary would be required to report, *inter alia*, its identity, citizenship, and number/percentage of shares over which it has sole or shared voting power), the Schedule 13G filed by the parent/control person will not necessarily specify the number/percentage of shares held by the subsidiary or its citizenship. We find it reasonable to expect that, in these circumstances, the public company will inquire directly with the parent/control person as to the number/percentage of shares over which the subsidiary has voting power (if any). If the subsidiary has the right to vote or direct the voting of the shares, the company should inquire as to

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particularly in circumstances where: (1) the U.S. public company knows or has reason to believe that information reported to the SEC is not complete or accurate or that a statement or amendment should have been, but was not, filed;<sup>173</sup> or (2) the U.S. public company's otherwise known or should be known aggregate foreign equity or voting interests are approaching the statutory limits.<sup>174</sup>

60. If the identifiable interest holder is itself a U.S. public company, some ownership information as to that company should be publicly available, such as in the company's annual reports<sup>175</sup> (or proxy statements<sup>176</sup>) and quarterly reports<sup>177</sup> that it files with the SEC. We find it reasonable to expect the licensee to make direct inquiries of the U.S. public company where the licensee determines that direct inquiries are necessary to assess the effect that the investing company's foreign ownership may have on the publicly traded licensee's or U.S. parent's aggregate levels of foreign ownership. Depending on the publicly traded licensee's or U.S. parent's individual circumstances, we would expect it to consider whether additional measures are necessary to ensure compliance with the applicable statutory limit, e.g., obtaining the agreement of the U.S. public company investor to assess its own known or reasonably should be known aggregate foreign equity and/or voting interests and to advise the licensee or U.S. parent when such interests reach a level—to be determined by the licensee or U.S. parent—that could render the licensee or U.S. parent non-compliant with Section 310(b). To address instances where the investor may not agree, a licensee (or U.S. parent, as relevant) may choose, but is not required, to have the ability,

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subsidiary's place of organization. If the subsidiary is foreign-organized, the company should treat the voting interests in the shares as identifiable foreign voting interests, regardless of the number/percentage of shares held.

<sup>173</sup> See, e.g., discussion of SEC Regulation S-K, *supra* note 130.

<sup>174</sup> See *2015 Pandora Declaratory Ruling*, 30 FCC Rcd at 5101, para. 21 (requiring Pandora to monitor its foreign ownership and stating that Pandora should consider, *inter alia*, contacting its institutional investors or other persons filing SEC reports as necessary (and permissible under SEC regulations and Pandora's governance documents) to determine the citizenship of Pandora's beneficial owners and equity interest holders).

<sup>175</sup> Annual reports pursuant to Sections 13 or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m or 78o(d)) must be submitted on Form 10-K and filed with the SEC. 17 CFR § 249.310 ("Form 10-K, for Annual and Transition Reports Pursuant to Sections 13 or 15(d) of the Securities Exchange Act of 1934"). See also 17 CFR § 240.13a-1 (requiring every issuer that holds securities registered pursuant to Section 12 of the Exchange Act, 15 U.S.C. 78l, to file an annual report on the appropriate form); 17 CFR § 240.15d-1 (requiring every registrant under the Securities Act of 1933 to file an annual report on the appropriate form). Annual reports under Sections 13 or 15(d) of the Securities Exchange Act must also provide information required by Item 403 of Regulation S-K (17 CFR § 229.403). See *supra* note 130. See also Form 10-K, Annual Report Pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934: General Instructions.

<sup>176</sup> Proxy statements must be filed with the SEC. See 17 CFR § 240.14a-6. Each proxy statement furnished to security holders pursuant to 17 CFR § 240.14a-3(a) must be accompanied or preceded by an annual report to security holders containing information specified in paragraph (b) of this section if the solicitation is made on behalf of the registrant and relates to an annual (or special meeting in lieu of the annual) meeting of security holders, or written consent in lieu of such meeting, at which directors are to be elected. See 17 CFR § 240.14a-3(b). Copies of the annual report sent to security holders must be mailed to the SEC in accordance with 17 CFR § 240.14a-3(c).

<sup>177</sup> Quarterly reports under Sections 13 or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m or 78o(d)), required to be filed pursuant to 17 CFR § 240.13a-13 or 17 CFR § 240.15d-13, must be submitted on Form 10-Q and filed with the SEC. See 17 CFR § 249.308a ("Form 10-Q for Quarterly and Transition Reports Pursuant to Sections 13 or 15(d) of the Securities Exchange Act of 1934"). See also 17 CFR § 240.13a-13 (requiring every issuer that holds securities registered pursuant to Section 12 of the Exchange Act and is required to file annual reports pursuant to Section 13 of the Exchange Act, and has filed or intends to file such reports on Form 10-K, to file a quarterly report on Form 10-Q for each of the first three quarters of each fiscal year of the issuer, except as noted); 17 CFR § 240.15d-13 (requiring every issuer that holds securities registered pursuant to the Securities Act of 1933 and is required to file annual reports pursuant to Section 15(d) of the Act on Form 10-K, to file a quarterly report on Form 10-Q for each of the first three quarters of each fiscal year of the issuer, except as noted).

under its governance documents, to redeem the investor's shares or take other action if necessary to enable the licensee or U.S. parent to remain in compliance with the statutory limits.

61. For purposes of classifying a U.S. public company's identifiable beneficial ownership (voting) interests and equity interests as "U.S." or "foreign," licensees should apply the following guidelines:

- A licensee may classify beneficial ownership (voting) interests as "U.S." where the licensee has established a reasonable basis for concluding that the beneficial owner and all individuals and entities in the beneficial owner's vertical chain of control are U.S. citizens and/or U.S.-organized entities that are ultimately controlled by U.S. citizens.
- By contrast, where the beneficial owner is itself a foreign-organized entity, or where there is a foreign-organized entity in the beneficial owner's vertical chain of control, the licensee should classify the voting interest in the shares held by the beneficial owner as "foreign" even where the beneficial owner is ultimately controlled by U.S. citizens.<sup>178</sup>
- Where the licensee has identified more than one person as beneficially owning the same shares (e.g., where a SEC Schedule 13G is filed on behalf of more than one reporting person with sole or shared power to vote the same shares), and at least one of such persons is foreign, the licensee should classify the voting interests in those shares as foreign even if the other beneficial owner's interests would otherwise warrant treatment as "U.S."
- With respect to a U.S. public company's identifiable equity interests, the licensee may classify such equity interests as "U.S." where the licensee has established a reasonable basis for concluding that the ultimate beneficiary or beneficiaries of the shares are U.S. citizens or U.S.-organized entities that are controlled by U.S. citizens.<sup>179</sup>

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<sup>178</sup> For example, assume that a Schedule 13D is filed with the SEC with respect to shares of a licensee's publicly traded U.S. parent. The Schedule 13D is filed on behalf of two reporting persons (the beneficial owners), each of which reports holding sole voting power with respect to 7 percent of the U.S. parent's single class of common stock: a foreign-organized limited partnership (described as an investment fund) and a U.S. citizen who is the general partner of the foreign limited partnership. In this example, the block of shares must be counted as foreign voting interests even though a U.S. citizen may have the power to independently vote the foreign-organized investment fund's shares.

<sup>179</sup> As an example, assume that a Schedule 13G is filed with the SEC by a U.S. university's endowment fund to report its beneficial ownership of 7 percent of a publicly traded U.S. parent's single class of common stock. The Schedule 13G states that the endowment fund also holds the pecuniary interest in the reported shares, which constitute 7 percent of the U.S. parent's total outstanding shares. The Schedule 13G and the endowment fund's annual report (which confirms that U.S. citizens control the endowment fund) provide a reasonable basis for treating the equity interests associated with the common stock as "U.S." By contrast, assume that a Schedule 13G is filed by two reporting persons: a qualified institutional investor that is organized in a foreign country in a form equivalent to a Delaware limited liability company; and, the sole member of the limited liability company, who is a U.S. citizen that is also a qualified institutional investor (e.g., an investment adviser). The Schedule 13G states that the reported interests are held on behalf of numerous client accounts and that no person is known to have the right to receive or the power to direct the receipt of dividends from, or the proceeds from the sale of, such securities. In this example, the U.S. parent would treat the voting interests (which constitute 8 percent of the U.S. parent's total outstanding shares of stock) as "foreign;" however, the U.S. parent would not include the 8 percent equity interest associated with the reported shares in its calculation of foreign equity interests. We find it reasonable for the U.S. parent to conclude in these circumstances that no person holds the equity interest in the reported shares in an amount exceeding 5 percent of the company's total capital stock.

62. Commenters assert that it is not possible to conduct an up-the-chain analysis of public companies to determine the citizenship of such companies' indirect interest holders.<sup>180</sup> However, there should be very few instances where a widely held, publicly traded licensee or U.S. parent will need to conduct an up-the-chain analysis under the revised methodology for identifying interests that will be subject to a citizenship determination. As discussed in Section IV.C.2., the relevant interests will be limited to those that are known or reasonably should be known to the public company in the ordinary course of business. Similarly, where a licensee has received a Section 310(b)(4) ruling and is monitoring its foreign ownership to ensure compliance with the specific approval requirements in Rule 1.5004(a)(1), the licensee will not need to engage in an up-the-chain analysis of an identifiable interest holder's direct or indirect interest holders, except to the extent any such interest holder could be calculated as holding an equity or voting interest in the U.S. parent in an amount requiring specific approval.<sup>181</sup> We also find that these guidelines prescribe a reasonable means for licensees to look up the chain of ownership to capture indirect foreign interests. Our new guidelines enable companies to use information that reasonably should be known (or that can be, or is, in fact, known) to the companies.<sup>182</sup>

63. We decline, however, to allow the use of shareholder addresses to establish the citizenship of identifiable interest holders. The *2015 Foreign Ownership NPRM* asked if the Commission should accept shareholder addresses, alone, as a proxy for citizenship.<sup>183</sup> NAB, 21<sup>st</sup> Century Fox, Comcast, and MMTC argue that a company should be allowed to use a shareholder's address of record as a proxy for that shareholder's citizenship under certain circumstances.<sup>184</sup> NAB states that, if the

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<sup>180</sup> Nexstar asserts that the Commission's current requirement for broadcasters to determine up-the-chain ownership for their institutional shareholders is not feasible or reasonable because obtaining such information may be impossible. Nexstar Comments at 6. Nexstar requests that, where an institutional shareholder is U.S.-organized with a U.S. disclosed address in its SEC filings, the licensee be permitted to treat the shareholder's entire interest to be non-foreign without further inquiry or investigation of who holds the equity interest associated with the shares or who holds voting control of the institutional shareholder. *Id.* See also NAB Comments at 32 ("Given the challenges . . . that broadcasters face when attempting to determine their own percentages of domestic and foreign equity and voting ownership, it is unrealistic to expect a broadcaster with disperse ownership to conduct a similar analysis for each and every one of its indirect interests *ad infinitum*, which could number in the hundred[s], thousands, or, for the largest corporations, the hundreds of thousands.").

<sup>181</sup> For example, assume that a broadcast licensee with a publicly traded controlling U.S. parent has received a Section 310(b)(4) ruling. As part of its on-going monitoring, the licensee's U.S. parent determines from an SEC Schedule 13D that a private equity fund ("Delaware Fund I," which is organized as a Delaware limited liability company) is the beneficial owner of 6 percent of a class of the U.S. parent's equity securities. The parent is able to determine from the Schedule 13D that a U.S. citizen, who is also deemed a reporting person as to the same shares, controls the fund indirectly through another Delaware limited liability company ("Delaware Fund II") that is the sole managing member of Delaware Fund I and is deemed a reporting person as to the same shares. Through direct inquiry with the controlling fund principal, the U.S. parent determines that, with the exception of the sole managing member, Delaware Fund II, all of Delaware Fund I's members are insulated consistent with the broadcast insulation requirements and none holds an equity interest in the fund in an amount that, when multiplied by the fund's 6 percent interest in the U.S. parent, exceeds 5 percent. The U.S. parent need not make any inquiries with respect to the citizenship of the fund's insulated members.

<sup>182</sup> See *supra* Section IV.C.2.a.

<sup>183</sup> *2015 Foreign Ownership NPRM*, 30 FCC Rcd at 11842, para. 32.

<sup>184</sup> See NAB Comments at 31; 21<sup>st</sup> Century Fox Comments at 9; Comcast Comments at 2, 9-10; MMTC Comments at 3. Commenters note that the Commission has permitted the use of shareholder addresses of record as proxies for citizenship on a fact-specific, case-by-case basis. See, e.g., NAB Comments at 31 (citing *2011 Cellco Order on Reconsideration*, 26 FCC Rcd at 11772, para. 21). See also Comcast Comments at 9-13. The Commission has permitted the use of shareholder addresses primarily in reviewing common carrier licensees' Section 310(b)(4) petitions for declaratory ruling. In such cases, the issue presented was: (1) the extent to which the U.S. parent's direct or indirect foreign equity and voting interests would be held by investors that were citizens of, or that had their principal places of business in, countries that were not members of the World Trade Organization (WTO); or  
(continued....)

citizenship of an identifiable shareholder cannot be obtained from a publicly available source and the shareholder cannot reasonably be asked about its citizenship directly, then a broadcaster should be permitted to use alternative proxies, such as addresses of record, for determining the shareholder's citizenship.<sup>185</sup> 21<sup>st</sup> Century Fox argues that the Commission should accept shareholder addresses as a proxy for citizenship absent circumstances under which the company has actual knowledge that a domestic address has been used by a non-U.S. holder.<sup>186</sup>

64. We find that use of a shareholder's address of record is not, by itself, a reasonable measure to determine citizenship and is unnecessary where, as here, the number of citizenship inquiries will be limited and other sources of information, including direct inquiries, should be available to the public company.<sup>187</sup> It is quite possible that a citizen of a foreign country may have or use a U.S. address for mailing purposes. A foreign-organized company may have a U.S. address if the company has a subsidiary or some of its operations in the United States.<sup>188</sup> A foreign company may also have a U.S. address for purposes of its dealings, sales or investments in the United States. In any event, having a U.S. address of record does not provide reasonable assurance that an individual is a U.S. citizen or that an entity with a U.S. address should be treated as a U.S.-organized and U.S.-controlled entity for compliance purposes under Section 310(b).<sup>189</sup> However, if a public company's share registry or other information available to the company identifies a beneficial owner or equity interest holder only with reference to a foreign address, the interests held should be counted as foreign unless the public company conducts a further inquiry to determine that the individual is a U.S. citizen or the entity is a U.S.-organized entity controlled by U.S. citizens.

65. Our new rules provide U.S. public companies the flexibility to use relevant and publicly available information for purposes of determining the citizenship of their identifiable interest holders. To

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(2) whether a common carrier licensee with an existing ruling was in compliance with the ruling at the time it filed an application for a new common carrier wireless license or to acquire such licenses by transfer or assignment. These particular cases did not raise an issue as to whether the petitioning licensee was in compliance with the Section 310(b)(4) benchmark at the time it filed the petition. The Commission eliminated the distinction between foreign investment from WTO Member countries and non-WTO Member countries in the *2013 Foreign Ownership Second Report and Order*, 28 FCC Rcd at 5754-5758, paras. 20-27. Broadcast and common carrier licensees shall use the methodology adopted here in determining their compliance with existing foreign ownership rulings and rulings issued under the new rules.

<sup>185</sup> NAB Reply at 10; NAB Comments at 31 (suggesting that, in addition to permitting use of a shareholder's street address, companies should be permitted to assign citizenship to stockholders using the "principal place of business" test previously used by the Commission to determine the "home market" of foreign entities seeking to invest in common carrier licensees).

<sup>186</sup> 21<sup>st</sup> Century Fox Comments at 9.

<sup>187</sup> Under the methodology adopted here for determining the citizenship of a public company's identifiable interest holders, a publicly traded licensee's or U.S. parent's citizenship inquiry will be limited to those individuals or entities that are known or reasonably should be known to the public company in the ordinary course of business and thus will exclude interests of 5 percent or less (or 10 percent or less in the case of a qualified institutional investor) unless such interests are in fact known to the company. In such cases, the company is likely to know the citizenship of the interest holder, which may be an officer, director, employee, or former employee of the company.

<sup>188</sup> See, e.g., Michaeli, *supra* note 102, at 1062 & n. 63 ("Beneficial owners' addresses are likely to be unreliable as indications of their citizenship status. Many foreign corporations maintain offices and hold bank and brokerage accounts in the United States, and many U.S. citizens have business operations and accounts overseas." *footnotes omitted*.)

<sup>189</sup> In the *2015 Pandora Declaratory Ruling*, we granted Pandora some flexibility in the specific means of monitoring compliance with its foreign ownership ruling but stated that "we expect Pandora Media to use sources other than shareholder mailing addresses or corporate headquarters locations." *2015 Pandora Declaratory Ruling*, 30 FCC Rcd at 5101-02, para. 21.

the extent the public company cannot obtain some of the information, the company should make direct inquiries with its identifiable interest holders to inform the company's citizenship analysis. We encourage licensees and their controlling U.S. parents to keep the Commission apprised of the extent to which direct inquiries of beneficial owners are, or are not, productive. This will allow the Commission to gauge the effectiveness of the new rules and to adjust this approach as licensees implement the rules in practice.

66. Finally, the *2015 Foreign Ownership NPRM* requested comment on whether we should limit the percentage of a U.S. public company's foreign officers and directors in connection with our proposed methodology for U.S. public companies. Comcast argues that there should be no requirement that a certain percentage of officers and directors are U.S. citizens.<sup>190</sup> We agree and decline to establish a specific limit on the percentage of a U.S. public company's foreign officers or directors.<sup>191</sup>

#### 4. Calculating Foreign Ownership Levels

67. We received various suggestions on reforming the method for calculating aggregate foreign ownership (equity and voting) levels. Some commenters advocate that the Commission adopt an extrapolation method that would use the percentage of known shareholders that are foreign as an estimate of a company's total foreign ownership for purposes of Section 310(b)(4).<sup>192</sup> Comcast argues that a company should only be required to seek a declaratory ruling if its known foreign ownership exceeds 25 percent.<sup>193</sup> In circumstances where a public company has not requested or been granted permission to exceed the 25 percent benchmark, or in the event that non-attributable foreign shareholders hold voting stock in excess of whatever presumptive new limit the Commission may establish, 21<sup>st</sup> Century Fox suggests that the Commission permit broadcast licensees to determine compliance with the foreign voting test in Section 310(b)(4) by counting shares of stock actually voted, rather than voting shares merely held by non-U.S. shareholders.<sup>194</sup>

68. As discussed above, we find that only those interests that are known or reasonably should be known to a U.S. public company in the ordinary course of business need to be included for purposes of calculating the company's aggregate levels of foreign ownership under Section 310(b).<sup>195</sup> Thus, for purposes of calculating aggregate levels of foreign ownership under Section 310(b), a licensee that is, or is controlled by, an eligible U.S. public company will base its foreign ownership calculations on the public company's known or reasonably should be known foreign equity and voting interests as specified in Section IV.C.2.a. and Section IV.C.3. above. The licensee will then aggregate the public company's known or reasonably should be known foreign voting interests and separately aggregate its known or reasonably should be known foreign equity interests. If the public company's known or reasonably should be known foreign voting interests *and* its known or reasonably should be known foreign equity

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<sup>190</sup> See Comcast Comments at 5 n.10.

<sup>191</sup> We also note that our proposed methodology rule for U.S. public companies also included an eligibility requirement that the company be headquartered in the United States. See *2015 Foreign Ownership NPRM*, 30 FCC Rcd 11830, Appx., Proposed Rule 1.5000, Note 1. No commenter addressed this aspect of the proposed rule, and we did not specifically seek comment on this restriction. We decline to adopt this proposed restriction in the absence of comment on it, and because the restriction may conflict with other federal rules and policies.

<sup>192</sup> NAB Comments at 32; NAB Reply at 10; 21<sup>st</sup> Century Fox Comments at 9. *But see* Nexstar Comments at 8 (urges the Commission not to adopt a requirement for a licensee to extrapolate unknown foreign ownership levels to the extent the licensee participates in the SEG-100 program or calculates its foreign ownership through an SEC analysis).

<sup>193</sup> Comcast Comments at 12; Comcast Reply at 4.

<sup>194</sup> 21<sup>st</sup> Century Fox Comments at 11; NAB Reply at 11.

<sup>195</sup> Generally, these interests are not known because they are not subject to the SEC's beneficial ownership reporting requirements. See *supra* Section IV.C.2.a.

interests do not exceed 25 percent (20 percent in the case of a publicly traded licensee subject to Section 310(b)(3)) of the company's total outstanding voting shares *or* 25 percent (20 percent in the case of a publicly traded licensee subject to Section 310(b)(3)) of the company's total outstanding shares (whether voting or non-voting), respectively, then the company shall be deemed compliant under our rules with the applicable statutory limit.

69. As an example of how the methodology would work, assume that a licensee's controlling U.S. parent is an eligible U.S. public company. The publicly traded U.S. parent has one class of stock consisting of 100 total outstanding shares of common voting stock. The licensee (and/or the U.S. parent on its behalf) has exercised the required due diligence in following the above-described methodology for identifying and determining the citizenship of the U.S. parent's known or reasonably should be known interest holders. The U.S. public company has identified one foreign shareholder that owns 6 shares (i.e., 6 percent of the total outstanding shares) and another foreign shareholder that owns 4 shares (i.e., 4 percent of the total outstanding shares). The licensee would add the U.S. parent's known foreign shares and divide the sum by the number of the U.S. parent's total outstanding shares. In this example, the licensee's U.S. parent would be calculated as having an aggregate 10 percent foreign equity interests and 10 percent foreign voting interests (6+4 foreign shares = 10 foreign shares; 10 foreign shares divided by 100 total outstanding shares = 10 percent). Thus, in this example, the licensee would be deemed compliant with Section 310(b)(4).

70. We note that the extrapolation approach supported by several commenters would assume that the percentage of unknown equity and voting interests that are foreign is the same as the percentage of known equity and voting interests that are foreign. We find it unnecessary to apply any presumed percentage of foreign ownership to the unidentifiable shareholders of a U.S. public company in light of our finding that small, unknown interest holders, as a general rule, do not have the ability or pose a realistic potential to exert influence of control over such company.<sup>196</sup>

71. We also asked whether 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.<sup>197</sup> Comcast, NAB and 21<sup>st</sup> Century Fox supported the concept of permitting a U.S. public company to have nonattributable foreign ownership up to an aggregate 49.99 percent non-controlling amount.<sup>198</sup> We decline to do so in this Report and Order. We determine that the Commission's actions in this Report and Order provide a more carefully tailored approach that addresses the commenters' concerns in a way that is consistent with our statutory obligations. The Commission intends to monitor how the rules we adopt today respond to the needs and concerns of interested parties, and may review these issues again at a later date once the effectiveness of our new rules is evaluated and assessed.

72. Finally, we decline to adopt 21<sup>st</sup> Century Fox's suggestion that the Commission permit broadcast licensees to determine compliance with the foreign voting prong of Section 310(b)(4) by

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<sup>196</sup> See *infra* Section IV.C.7. See also Comcast Comments at 12; NAB Comments at 32. *But see* Nexstar Comments at 8 (urges the Commission not to adopt a requirement for a licensee to extrapolate unknown foreign ownership levels to the extent the licensee participates in the SEG-100 program or calculates its foreign ownership through an SEC analysis). Likewise, we decline to adopt an approach that would apply another multiple to the remaining unknown equity and voting interests. *2015 Foreign Ownership NPRM*, 30 FCC Rcd at 11843 at para. 35. No commenter addressed such an approach in response to our request for comment.

<sup>197</sup> *2015 Foreign Ownership NPRM*, 30 FCC Rcd at 11843, para. 36.

<sup>198</sup> See, e.g., Comcast Reply at 3-4; NAB Comments at 9-12; NAB Reply at 5-6; 21<sup>st</sup> Century Fox Comments at 9-13.

counting shares of stock actually voted, rather than voting shares merely held by non-U.S. shareholders.<sup>199</sup> We find that a foreign beneficial owner of U.S. public company shares that is known to the company may have the ability, in a particular case, to exert influence over the company regardless of whether the beneficial owner decides to vote its shares on any given matter that requires shareholder approval. We find that the calculation approach we adopt here will rationalize the process for licensees' determinations of compliance with Section 310(b)—with concomitant reductions in the costs and burdens associated with determinations of compliance—without disturbing the substantive standards for our public interest review of foreign ownership.

## 5. Compliance Procedures

73. We conclude that monitoring is a reasonable approach to ensure compliance with the statute and individual foreign ownership rulings. As discussed in Section IV.C.5.b. below, we formalize the current equitable practice of recognizing a licensee's good faith efforts to comply with the Section 310(b) requirements, the terms and conditions of a licensee's Section 310(b)(4) ruling, and the Commission's rules.

### a. Monitoring Compliance

74. In the *2015 Foreign Ownership NPRM*, we asked how frequently a company should be required to assess the extent of its foreign ownership in order to ensure compliance with the statute and the Commission's foreign ownership rules and policies.<sup>200</sup> In response, NAB proposes that a broadcaster fulfill its foreign ownership monitoring obligations by conducting an evaluation of the citizenship of its reasonably identifiable interest holders every four years and that individual broadcasters be permitted to determine when to conduct such evaluations.<sup>201</sup> According to NAB, this will enable broadcasters to reduce costs and increase the effectiveness of their ownership studies by conducting them in conjunction with other shareholder outreach and management activities that broadcasters may be otherwise required to undertake.<sup>202</sup> 21<sup>st</sup> Century Fox suggests that the Commission allow companies to measure their levels of foreign ownership at reasonable intervals, such as once every two years, noting that a lack of guidance puts some companies in a position of attempting to constantly determine their ownership base.<sup>203</sup>

75. We decline to adopt the periodic compliance and monitoring options proposed by commenters. We find that limiting monitoring of foreign ownership levels to two- or four-year intervals would not adequately ensure that entities are maintaining compliance with Section 310(b) and/or any relevant foreign ownership rulings. In light of significant steps we have taken in this Report and Order to simplify the process for U.S. public companies in determining their foreign ownership levels, however, we find that it is reasonable and appropriate to require companies to ensure their foreign ownership levels

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<sup>199</sup> 21<sup>st</sup> Century Fox Comments at 11. Specifically, 21<sup>st</sup> Century Fox suggests that broadcasters be permitted to determine the number of shares held by non-U.S. shareholders that are present for a shareholder vote and that would be entitled to vote but for Section 310(b)(4) and count as eligible votes all shares voted by non-U.S. individuals or entities, up to a total of 25 percent of the total shares voted. *Id.* 21<sup>st</sup> Century Fox adds that if voted shares held by non-U.S. shareholders represent a higher percentage of total shares than the applicable benchmark, the shares voted by non-U.S. shareholders could be reduced *pro rata* until the voted shares held by non-U.S. shareholders represent only an amount equal to the benchmark. *Id.* at 12. *See also* NAB Reply at 11.

<sup>200</sup> *2015 Foreign Ownership NPRM*, 30 FCC Rcd at 11841, para. 32.

<sup>201</sup> NAB Comments at 34.

<sup>202</sup> *Id.* at 35. For example, NAB asserts that such flexibility will permit broadcasters to conduct foreign ownership compliance evaluations after events that are likely to cause significant changes in the broadcaster's ownership, such as stock buybacks and mergers. *Id.*

<sup>203</sup> 21<sup>st</sup> Century Fox Comments at 10.

are in compliance with the statutory foreign ownership limits and/or their relevant foreign ownership rulings.<sup>204</sup>

76. This approach is consistent with Commission practice and precedent. In the *2013 Foreign Ownership Second Report and Order*, the Commission stated that licensees that receive a foreign ownership ruling have an obligation to monitor and stay ahead of changes in their foreign ownership levels to ensure that the licensee obtains Commission approval before a change in foreign ownership renders the licensee out of compliance with its ruling(s) or our rules.<sup>205</sup> The Commission determined that, in the context of common carrier wireless licensees, it would not require periodic certification of compliance with its foreign ownership rulings, but would require certification whenever a licensee files an application with the Commission for a new license, a transfer of control, or an assignment of license that does not also require the filing of a petition for declaratory ruling under the Commission's Section 310(b)(3) forbearance approach or under Section 310(b)(4), as well as certification in renewal applications.<sup>206</sup>

77. We reiterate that licensees, their controlling parent companies, and other entities in the licensee's vertical ownership chain may choose, but are not required, to place restrictions in their bylaws or other organizational documents to enable the licensee to ensure continued compliance with the terms of its ruling.<sup>207</sup> Finally, we encourage broadcast and common carrier licensees to observe the specific monitoring<sup>208</sup> and compliance tools identified in the *2015 Pandora Declaratory Ruling*.<sup>209</sup>

#### **b. Remedial Procedures**

78. Under the methodology set forth in the rules we adopt in this Report and Order, U.S. public companies will rely on ownership information that is known or reasonably should be known to the U.S. public company in the ordinary course of business, including information obtained from SEC filings, to assess compliance with Section 310(b)(3) and Section 301(b)(4). In certain situations, a company relying on information gleaned from SEC filings in the ordinary course of business to make its foreign ownership determination may not become aware of new investments in the company until after a

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<sup>204</sup> As discussed in Section IV.C.6. below, we find that it is reasonable to require privately held entities to monitor their foreign ownership levels, but also continue to consider mitigating circumstances in that context.

<sup>205</sup> *2013 Foreign Ownership Second Report and Order*, 28 FCC Rcd at 5788, para. 87.

<sup>206</sup> *Id.* at 5811, para. 135, n.354. See *Fox Television Stations, Inc.*, 10 FCC Rcd 8452, 8474-77, paras. 52-55 (*Fox I*) (stating that "[i]t is clear that section 310(b)(4) gives the Commission discretion with respect to alien ownership in excess of the statutory benchmark. It is equally clear that the statute requires that the Commission be made aware whenever foreign ownership could exceed the benchmark level, so that it can exercise that discretion") (citing *Moving Phones Partnership L.P. v. FCC*, 998 F.2d 1051, 1057-58 (D.C. Cir. 1993)). Several common carrier and broadcast forms require periodic certification regarding compliance with the foreign ownership limits (e.g., FCC Forms 312, 314-316, 601, 603, 608).

<sup>207</sup> *2013 Foreign Ownership Second Report and Order*, 28 FCC Rcd at 5788, para. 87 (noting that stock ownership restrictions are a common means of ensuring compliance with the foreign ownership limitations in Section 310(b) of the Act and other federal statutory provisions that restrict foreign ownership of U.S. companies and assets). See also *2013 Broadcast Clarification Order*, 28 FCC Rcd at 16251, para. 13 (noting that applicants seeking approval of broadcast assignments or transfers must continue to inform the Commission of their proposed transaction's compliance with Section 310 of the Act).

<sup>208</sup> However, as discussed in Section IV.C.2.a., we decline to require U.S. public companies, as a matter of course, to send out NOBO letters to obtain citizenship information, as was required in the *Pandora Declaratory Ruling*. See *2015 Pandora Declaratory Ruling*, 30 FCC Rcd at 5102, para. 21.

<sup>209</sup> See *Pandora Declaratory Ruling*, 30 FCC Rcd at 5101-02, paras. 20, 21. Although we decline to impose a specific periodic certification requirement here, the Commission or the Bureaus may consider such requirements and conditions where appropriate based on specific facts and circumstances in a particular case, in order to ensure continuing compliance with the statute, the Commission's rules, procedures and policies.

transaction has occurred and an investor discloses the interest in accordance with the SEC's reporting requirements.<sup>210</sup> NAB states that the Commission "should not deem a broadcaster to have violated Section 310(b) due to circumstances beyond its control that are not reasonably foreseeable to the broadcaster."<sup>211</sup> NAB also notes that, in circumstances where a broadcaster has received a Section 310(b)(4) ruling, proposed Section 1.5004(f)(1) would require the broadcaster to proactively report to the Commission within 30 days any non-compliance by the broadcaster with the terms of the previously-granted ruling and would subject the broadcaster to possible enforcement action.<sup>212</sup> NAB proposes that, under either scenario, the Commission permit a broadcaster to file a petition seeking retroactive approval of unapproved foreign interests within 30 days of learning of the circumstances.<sup>213</sup> For public companies, NAB proposes that the 30-day period commence when the foreign investor files a notice with the SEC.<sup>214</sup> NAB states that, if the Commission declines to approve the petition, the broadcaster should be required to have a mechanism available to cure what might otherwise be deemed a Section 310(b) violation within 30 days following the Commission's decision.<sup>215</sup>

79. We discuss below certain limited situations relevant to our new rules and consistent with existing Commission practice, where a broadcast or common carrier licensee may file a petition for declaratory ruling in the exercise of its required due diligence to remedy its inadvertent non-compliance with the foreign ownership benchmark in Section 310(b)(4) or the terms and conditions of the company's existing Section 310(b)(4) ruling with reasonable assurance that the Commission will not take enforcement action. In providing the following clarifications, we formalize in the limited context of U.S. public company compliance with Section 310(b) what has been the equitable practice of the Commission in recognizing a licensee's good faith efforts to comply with the Section 310(b) statutory requirements, the terms and conditions of a licensee's Section 310(b)(4) ruling, and the Commission's rules.<sup>216</sup>

80. Where a licensee's controlling U.S. parent is an eligible U.S. public company, the licensee may file a remedial petition for declaratory ruling under Section 310(b)(4) seeking approval of the U.S. parent's above-benchmark, aggregate foreign ownership interests or approval of any particular foreign equity and/or voting interests that require specific approval under the licensee's existing Section

<sup>210</sup> See, e.g., 17 CFR § 240.13d-1. NAB expresses concern that it is often not possible for a publicly traded broadcaster to know in advance that a foreign entity will acquire a new greater-than-5 percent stock interest in the broadcaster or that an existing foreign interest holder will increase its voting interest in the broadcaster above 5 percent. NAB states that a publicly traded broadcaster may first learn of these interests through an SEC filing made by the foreign investor. See NAB Comments at 17.

<sup>211</sup> NAB Comments at 17 (citing *2015 Foreign Ownership NPRM*, 30 FCC Rcd at 11869-11870, Appx. § 1.5004(f)(1)). NAB asserts that a broadcaster cannot adequately resolve these issues by inserting a prophylactic provision in its organizational documents that purports to limit the transferability of its stock to prohibit a foreign investor from causing the broadcaster to exceed the Section 310(b)(4) foreign ownership threshold because, *inter alia*, the investor has no way of knowing the broadcaster's current level of foreign ownership and therefore cannot know whether its investment will cause the broadcaster to exceed the threshold. *Id.* at 18.

<sup>212</sup> *Id.* at 18 n.56. NAB believes that it is inappropriate to hold a broadcaster responsible for any such noncompliance that was not reasonably foreseeable to the broadcaster. *Id.*

<sup>213</sup> *Id.* at 17.

<sup>214</sup> *Id.*

<sup>215</sup> *Id.*

<sup>216</sup> The clarification is consistent with the Commission's long-held view that the 25 percent foreign ownership benchmark in Section 310(b)(4) may be exceeded only after the Commission affirmatively finds that the aggregate foreign ownership of a licensee's controlling U.S. parent company in excess of that amount is in the public interest. *2013 Broadcast Clarification Order*, 28 FCC Rcd at 16250, para. 12 (reiterating Commission precedent that broadcast licensees "may not exceed the 310(b)(4) benchmark absent the express prior consent of the Commission"). See also *2013 Foreign Ownership Second Report and Order*, 28 FCC Rcd at 5759-5763, paras. 30-36.

310(b)(4) ruling. Alternatively, the U.S. parent has the option to remedy the non-compliance by, for example, redeeming the foreign interest(s) that rendered the licensee non-compliant with Section 310(b)(4) or the licensee's existing Section 310(b)(4) ruling. In either case, we do not, as a general rule, expect to take enforcement action related to the non-compliance provided that: (1) the licensee notifies the relevant Bureau by letter no later than 10 days after learning of the investment(s) that rendered the licensee non-compliant and specifies in the letter that it will file a petition for declaratory ruling or, alternatively, take remedial action to come into compliance within 30 days of the date it learned of the non-compliant foreign interest(s); and (2) the licensee demonstrates in its petition for declaratory ruling (or in a letter notifying the relevant Bureau that the non-compliance has been timely remedied) that the licensee's non-compliance with the Section 310(b)(4) benchmark or the terms of the licensee's existing Section 310(b)(4) ruling was due solely to circumstances beyond the licensee's control that were not reasonably foreseeable to or known by the licensee with the exercise of the required due diligence.

81. Where the licensee has opted to file a Section 310(b)(4) petition, we will not require that the licensee's U.S. parent redeem the non-compliant foreign interest(s) or take other action to remedy the non-compliance during the pendency of its petition. If the Commission ultimately declines to approve the petition, however, the licensee must have a mechanism available to come into compliance with Section 310(b)(4) or the terms of its existing ruling, as relevant, within 30 days following the Commission's decision. We reserve the right to require immediate remedial action by the licensee where we find in a particular case that the public interest requires that we take such action—for example, where we find, after consultation with the relevant Executive Branch agencies, that the foreign interest presents national security or other significant concerns that require immediate mitigation.

82. We also clarify that a publicly traded *broadcast* licensee that is, or becomes, non-compliant with the 20 percent statutory limit in Section 310(b)(3) must take steps to come into compliance immediately upon learning of the non-compliance. We do not expect to take enforcement action related to the broadcast licensee's non-compliance provided that: (1) the licensee notifies the relevant Bureau by letter no later than 10 days after learning of the investment(s) that rendered the licensee non-compliant with Section 310(b)(3) and specifies in the letter that it will take remedial action to come into compliance within 30 days of the date it learned of the non-compliant foreign interest(s); and (2) the licensee sufficiently explains that its non-compliance with Section 310(b)(3) was due solely to circumstances beyond the licensee's control that were not reasonably foreseeable to or known by the licensee with the exercise of the required due diligence. In the case of a publicly traded *common carrier* licensee that is, or becomes, non-compliant with Section 310(b)(3), the common carrier licensee may be eligible to file a petition for declaratory ruling under the Commission's Section 310(b)(3) forbearance approach.<sup>217</sup> In such a case, the common carrier licensee will have the option of following the remedial procedures specified above with respect to publicly traded U.S. parent companies.<sup>218</sup>

83. We do not expect the Commission to take enforcement action related to a licensee's non-compliance with the statutory foreign ownership limits or the terms of a licensee's existing foreign ownership ruling where the Commission finds that the broadcast or common carrier licensee has satisfied the burden of demonstrating that: (1) the licensee exercised due diligence in monitoring its foreign ownership or the foreign ownership of its controlling U.S. parent, as relevant, including whether there are stock redemption provisions in the licensee's or controlling U.S. parent's corporate charter and/or other provisions to promptly remedy foreign ownership violations; and (2) enforcement action by the Commission is not warranted because the licensee's non-compliance with the statutory foreign ownership limits or the terms of the licensee's existing foreign ownership ruling was due solely to circumstances beyond the licensee's control that were not reasonably foreseeable to or known by the licensee with the exercise of the requisite diligence. By avoiding the implications of changes in citizenship of the

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<sup>217</sup> See *supra* note 14.

<sup>218</sup> See *supra* paras. 80-81.

unidentifiable shareholders of a U.S. public company, the Commission's new rules will substantially reduce the risk that such a situation will occur.

84. We emphasize that we do not in this Report and Order change Commission policy requiring all licensees, including those who use this methodology, to obtain Commission approval before their aggregate direct or indirect foreign ownership exceeds the relevant statutory limits in Section 310(b)(3) or 310(b)(4).<sup>219</sup> In this Report and Order, we reiterate that all licensees have an affirmative duty to monitor their foreign equity and voting interests. All licensees must calculate these interests in accordance with the Commission's foreign ownership rules and policies. Further, all licensees must otherwise ensure continuing compliance with the provisions of Section 310(b) of the Act.<sup>220</sup>

## 6. Privately Held Entities

85. We sought comment on our tentative conclusion in the *2015 Foreign Ownership NPRM* that privately held corporations, partnerships, and LLCs should have knowledge of all of their owners, and be able to track their foreign ownership relatively easily.<sup>221</sup> We also sought comment on whether it is appropriate to adopt any measures to facilitate the ability of privately held companies to demonstrate compliance with Section 310(b)(4), including any or all of the proposals described in the *2015 Foreign Ownership NPRM*.<sup>222</sup>

86. NAB disagrees with our tentative conclusion, arguing that it is "not feasible" for a privately held broadcaster with dispersed indirect ownership, such as a broadcaster owned by multiple private equity firms, to continually monitor the citizenship of all of its indirect owners, each of which may change from U.S. to foreign at any time given the global reach of today's investors.<sup>223</sup>

87. We are not persuaded that we should extend at this time the methodology we adopt today to privately held entities. We affirm our tentative finding in the *2015 Foreign Ownership NPRM* that privately held entities should have knowledge of all of their owners, including their citizenship, and should be able to track their foreign ownership levels relatively easily. These entities do not face the same challenges in identifying shareholders/interest holders as publicly traded companies (e.g., shares held largely in the name of a bank or broker), and they have greater flexibility to enact controls—such as restrictions on the transfer of ownership interests—necessary to ensure continued compliance with Section 310(b). Accordingly, we find that it is reasonable to require privately held entities to continue to account for the ownership of all their voting and non-voting equity interests consistent with our policies and procedures.

88. However, a privately held entity may use the methodology we adopt in this Report and Order that is applicable to U.S. publicly traded companies, e.g., if, in a particular case, there are significant impediments that prevent a privately held entity from conducting an up-the-chain analysis to

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<sup>219</sup> 47 U.S.C. § 310(b)(3), (4); *2013 Broadcast Clarification Order*, 28 FCC Rcd at 16250, para. 12 (stating that Section 310(b)(4) applicants for broadcast licenses "may not exceed the 310(b)(4) benchmark absent the express prior consent of the Commission"). See also *2013 Foreign Ownership Second Report and Order*, 28 FCC Rcd at 5759-5763, paras. 30-36.

<sup>220</sup> 47 U.S.C. § 310(b)(3), (4); *2013 Broadcast Clarification Order*, 28 FCC Rcd 16244. See also *2013 Foreign Ownership Second Report and Order*, 28 FCC Rcd at 5811, para. 135.

<sup>221</sup> *2015 Foreign Ownership NPRM*, 30 FCC Rcd at 11841, para. 30.

<sup>222</sup> *Id.*

<sup>223</sup> NAB Comments at 18.

ascertain all of its indirect ownership interests, including non-voting equity interests held by remote, insulated investors.<sup>224</sup>

#### 7. Legal Authority under Section 310(b)

89. As required by Sections 310(b)(3) and 310(b)(4), the Commission assesses whether more than 20 percent of the capital stock of the licensee or whether more than 25 percent of the capital stock of the licensee's direct or indirect controlling U.S. parent is owned of record or voted by aliens or their representatives or by a foreign government or representative thereof or by any corporation organized under the laws of a foreign country.<sup>225</sup> The Commission has long held that any equity or voting interest held by an individual other than a U.S. citizen or by a foreign government or an entity organized under the laws of a foreign government must be counted in the application of the statutory limits.<sup>226</sup> The list of cognizable interests includes nearly all forms of equity and voting interests held in the licensee and its controlling U.S. parent. Specifically, in applying the statutory foreign ownership limits, the Commission has interpreted the term "capital stock," as it applies to non-corporate entities, to encompass the many alternative means by which equity and voting interests are held in these entities, including partnership interests, policyholders of mutual insurance companies, church members, union members, and beneficiaries of irrevocable trusts.<sup>227</sup>

90. The Commission has long recognized the difficulty licensees or their controlling U.S. parents face in ascertaining their ownership for purposes of complying with Section 310(b).<sup>228</sup> In 1974, the Commission's Broadcast Bureau recognized that it is impossible to identify the citizenship of all of the shares issued by a widely held public company. Based on the current record, we believe that the methodology we adopt in this Report and Order with respect to U.S. public companies is a reasonable approach to implementing the provisions of Sections 310(b)(3) and 310(b)(4), which establish limits of 20 percent and 25 percent, respectively, of the capital stock "owned of record" or voted by foreign investors.<sup>229</sup> Our approach is consistent with the history and purpose of that phrase as adopted in the Communications Act of 1934.

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<sup>224</sup> We note that the Commission staff frequently works with private entities to address and resolve impediments to identifying ownership interests, and we expect that this collaborative process will continue as private entities explore whether it is appropriate to rely on the revised methodology we adopt today for U.S. publicly traded companies.

<sup>225</sup> See *supra* at para. 5; 47 U.S.C. § 310(b)(3), (b)(4).

<sup>226</sup> See *2013 Foreign Ownership Second Report and Order*, 28 FCC Rcd at 5758, para. 28 (citing *Wilner & Scheiner I*, 103 FCC 2d 511, 514-15 (1985) (*Wilner & Scheiner I*), *reconsidered in part*, 1 FCC Rcd 12 (1986) (*Wilner & Scheiner II*); *BBC License Subsidiary*, 10 FCC Rcd at 10973-74, paras. 22-25 (establishing the Commission's methodology for calculating foreign equity and voting interests in a licensee, under Section 310(b)(3), and in the controlling U.S. parent of a licensee, under Section 310(b)(4), where such foreign ownership interests are held through intervening entities).

<sup>227</sup> See *Wilner & Scheiner I*, 103 FCC 2d at 515-16, para. 9; *Applications of PrimeMedia, et al.*, Memorandum Opinion and Order, 3 FCC Rcd 4295 (1988).

<sup>228</sup> See, e.g., *Westinghouse Radio*, 19 FCC at 1451 (given "millions of shares outstanding, an absolute showing on shareholder citizenship and non-citizenship at any given time would be impracticable, if not impossible"); FCC Form 314, Instructions, Section III.G. (noting that "[c]orporate applicants and licensees whose stock is publicly traded have employed a variety of practices, including sample surveys using a recognized statistical methodology . . . to ensure the accuracy and completeness of their citizenship disclosure and their continuing compliance with Section 310").

<sup>229</sup> We requested comment in the *Foreign Ownership NPRM* on whether any changes that we make regarding what licensees need to do to ensure compliance with Section 310(b)(4) should also apply to ensuring compliance with Section 310(b)(3). *2015 Foreign Ownership NPRM*, 30 FCC Rcd at 11840-41, para. 27. This question did not elicit a response by commenters with the exception of T-Mobile's proposal to establish a rebuttable presumption that shareholders holding interests of 5 percent or less in a public company do not raise public interest concerns under

(continued....)

91. The provisions that became Section 310(b)(3) and 310(b)(4) in their current form were enacted as part of the Communications Act of 1934. The Radio Act of 1927 had included a version of what is now Section 310(b)(3)—which applies to interests held in the licensee—but not to holding companies. During the Senate hearings, the President of International Telephone & Telegraph Corporation identified the challenges associated with “practical compliance” with such a requirement for a public company. He noted that “no corporation is ever in a position to know who are the real owners of its stock.” As he explained, “All it knows is who are registered as such on its transfer books.”<sup>230</sup> Thus, the language of the bill then before the committee, which covered all shares “owned” or voted by foreign investors,<sup>231</sup> was in his view “totally impractical in its present form.”<sup>232</sup>

92. Senator Dill, the Chairman of the committee and floor manager of what became the Act, suggested as a solution that the words “as of record” be added to the bill. While he recognized that this would not directly address the problem of “ownership of record . . . in one place and the beneficial and real ownership . . . in an entirely different place,”<sup>233</sup> he responded: “I do not know any other way.” He rejected the alternative of “set[ting] up a secret service system to follow down every ownership of stock.”<sup>234</sup> Following this discussion, the bill was amended to change the word “owned”—in what has become Section 310(b)(3) and also in what has become Section 310(b)(4)—to the phrase “owned of record.”<sup>235</sup>

93. Our methodology is consistent with the recognition by Congress, even as early as 1934, of these practical difficulties in ascertaining the ownership of the shares of U.S. public companies. While at that time only about 10 percent of shares were held on behalf of another person, as noted above it is estimated that at least 85 percent of shares are held in this way today.<sup>236</sup> Thus, as commenters have noted, the owner of record for most shares may be (or be holding on behalf of) an intermediary bank or broker for the ultimate beneficiary. Our methodology requires the licensee to exercise due diligence, including but not limited to review and necessary follow-up based on SEC filings, to ascertain the ultimate ownership and citizenship of its shares. But Congress did not intend for public companies to “set up a secret service system to follow down every ownership of stock,” and we do not require them to do so. We thereby give reasonable meaning to the terms of the Act, and avoid unreasonable consequences.<sup>237</sup>

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Sections 310(b)(3) and 310(b)(4) and thus need not be disclosed or considered in assessing foreign ownership under these subsections. T-Mobile Comments at 3, 14-15.

<sup>230</sup> *A Bill to Provide for the Regulation of Interstate and Foreign Communications by Wire or Radio, And For Other Purposes: Hearings on S. 2910 Before the S. Comm. on Interstate Commerce, 73d Cong. 2d Sess. 122 (1934) (Senate Hearings).*

<sup>231</sup> S. 2910, 73d Cong., 2d Sess. (as introduced in the Senate on Feb. 20, 1934).

<sup>232</sup> Senate Hearings at 124.

<sup>233</sup> Senate Hearings at 125.

<sup>234</sup> *Id.*

<sup>235</sup> S. 3285, 73d Cong., 2d Sess. (as introduced in the Senate on Mar. 28, 1934). *See also* H.R. Rep. No. 73-1918, at 23 (1934).

<sup>236</sup> *See supra* Section IV.C.1.

<sup>237</sup> We note that the Commission has in other contexts accepted showings of statutory or regulatory compliance based on demonstrations of “reasonable diligence.” In some contexts the Communications Act or the pertinent rule expressly provides for a “reasonable diligence” standard. 47 U.S.C. 317(c); *Amendment of Section 73.1205*, 59 FCC 2d 786 (1976) (former fraudulent billing rule). The Commission has also applied a reasonable diligence standard with respect to other public interest obligations. *See, e.g., Washingtonian Magazine, Inc.*, 87 FCC 2d 441 n.4 (1981) (false, misleading or deceptive advertising). The D.C. Circuit has recognized that the Communications Act should if possible be given a reasonable meaning, and that unreasonable consequences should be avoided. *L.B. Wilson, Inc. v. FCC*, 170 F.2d 793, 800 (D.C. Cir. 1948).

Indeed, the Commission has previously recognized that in calculating compliance with the Section 310(b) limits, licensees must “take reasonable steps” to ensure such compliance.<sup>238</sup> In the past, for public companies such steps have included periodic surveys and random sampling of shareholders,<sup>239</sup> but we have also permitted public companies to use other methods.<sup>240</sup> The Commission’s overarching principle has been, and continues to be, that a public company should include foreign ownership information “that [it] has reason to know.”<sup>241</sup> Based on the record of this proceeding demonstrating the impracticabilities of using surveys and random sampling to identify foreign ownership when an estimated 85 percent of shares are now held of record on behalf of other persons, we believe that our methodology, which includes a due diligence standard, is a reasonable one that is consistent with our prior guidance.<sup>242</sup>

94. In any event, as a separate and independent basis for adopting the process described in this Report and Order for demonstrating compliance with Sections 310(b)(4), we note that Section 310(b)(4) provides the Commission discretion to allow foreign ownership of a licensee’s direct or indirect controlling U.S. parent to exceed 25 percent unless the Commission finds that such ownership is inconsistent with the public interest.<sup>243</sup> In the *2015 Foreign Ownership NPRM*, we requested comment on whether there is a legal and policy basis for concluding 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 Commission 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.<sup>244</sup> Pursuant to the discretion afforded by Section 310(b)(4), we determine, on a blanket basis, that unknown equity or voting

<sup>238</sup> *2013 Foreign Ownership Second Report and Order*, 28 FCC Rcd at 5765, para. 40. See also *WWOR-TV, Inc.* 6 FCC Rcd 6569, 6572, para. 13 (1991), *appeal dismissed sub nom. Garden State Broadcasting Partnership, Ltd. v. FCC*, 996 F.2d 386 (D.C. Cir. 1993) (expectation that broadcaster would “use reasonable methods to insure compliance”).

<sup>239</sup> *Id.*

<sup>240</sup> *2011 Cellco Order on Reconsideration*, 26 FCC Rcd at 11770, para. 15, 11774-75, para. 24. See also *Applications of Cellco Partnership d/b/a Verizon Wireless and Rural Cellular Corporation for Consent to Transfer Control of Licenses, Authorizations, and Spectrum Manager Leases and Petitions for Declaratory Ruling that the Transaction is Consistent with Section 310(b)(4) of the Communications Act*, WT Docket No. 07-208, Memorandum Opinion and Order and Declaratory Ruling, 23 FCC Rcd 12463, 12524-26, paras. 147-49 (2008) (*Verizon Wireless-RCC Order*); *Applications of Cellco Partnership d/b/a Verizon Wireless and Atlantis Holdings LLC for Consent to Transfer Control of Licenses, Authorizations, and Spectrum Manager and De Facto Transfer Leasing Arrangements and Petition for Declaratory Ruling that the Transaction is Consistent with Section 310(b)(4) of the Communications Act*, WT Docket No. 08-95, Memorandum Opinion and Order and Declaratory Ruling, 23 FCC Rcd 17444, 17543-45, paras. 227-29 (2008) (*Verizon Wireless-Alltel Order*); *WWOR-TV, Inc.*, 6 FCC Rcd at 6572, para. 13 (accepting reliance on “preliminary results of a nonscientific survey” in addition to identification of stockholders with foreign mailing addresses for IRS purposes, to confirm compliance following earlier survey).

<sup>241</sup> *2011 Cellco Order on Reconsideration*, 26 FCC Rcd at 11770, para. 15.

<sup>242</sup> In the past, the Commission has suggested that, “in the broadcast context,” we would prefer “the more reliable method of statistical surveys” to reliance on mailing addresses. See *2011 Cellco Order on Reconsideration*, 26 FCC Rcd at 11775, para. 24 n.92. *But cf. WWOR-TV, Inc.*, 6 FCC Rcd at 6572, para. 13. For the reasons stated above, we agree that it is inappropriate to rely on mailing addresses as a proxy for citizenship. But we believe that our methodology, which includes a due diligence standard, constitutes a reasonable methodology for use by public companies, and we agree with the views of commenters that it is not necessary or appropriate to require any methodology for identifying foreign ownership of shares in public companies that hold or control broadcast licenses that differs from that applicable in the common carrier context.

<sup>243</sup> See generally *2015 Foreign Ownership NPRM*, 30 FCC Rcd 11830; see, e.g., T-Mobile Comments at 10 (noting that Section 310(b)(4) grants the Commission discretion to allow foreign ownership unless it finds that such ownership is inconsistent with the public interest).

<sup>244</sup> *2015 Foreign Ownership NPRM*, 30 FCC Rcd at 11843, para. 36.

interests held directly or indirectly in a licensee's publicly traded U.S. parent by a single foreign investor in an amount no greater than 5 percent (or no greater than 10 percent, in the case of such interests held by a qualified institutional investor) do not raise public interest concerns sufficient to outweigh the difficulties of identifying them.<sup>245</sup> Thus, licensees subject to Section 310(b)(4) will no longer be required to seek Commission approval for proposed foreign ownership, except when the aggregate foreign ownership by greater than 5 percent interest holders (or, in the case of qualified institutional investors, greater than 10 percent interest holders), together with any other known or reasonably should be known foreign shareholders, exceeds 25 percent of the U.S. parent's capital stock.

95. We note that the disclosure requirements of Section 13(d) of the Exchange Act informed the Commission's decision, in the *2013 Foreign Ownership Second Report and Order*, to require Section 310(b)(4) petitions filed by common carrier licensees to identify and request specific approval only for those foreign investors that hold or would hold, directly or indirectly, more than 5 percent, and in the case of a qualified institutional investor, more than 10 percent of the U.S. parent's equity and/or voting interests, or a controlling interest. The Commission found that it could exclude a company's 5 percent or less interest holders from the specific approval requirements with little risk of overlooking a foreign investor that possesses a realistic potential for influencing or controlling a licensee.<sup>246</sup> We believe this determination applies with equal force for purposes of the Section 310(b)(4) public interest finding we make here.

96. Based on our understanding of the realities of today's marketplace for the equity securities of public companies and our experience in assessing foreign ownership of common carrier licensees, we acknowledge that smaller, unknown interest holders that hold 5 percent or less of a U.S. public company's outstanding shares or qualified institutional investors that hold interests of 10 percent or less are tracked somewhat less directly, based largely on information obtained from Form 13F reports that are filed quarterly with the SEC by certain institutional investment managers. Such institutional ownership information about U.S. publicly traded equities is available from various sources, and typically is monitored in the ordinary course of business by a company whose stock trades publicly on U.S. securities exchanges.<sup>247</sup>

97. We also recognize and find that interests that are not known to a U.S. public company (generally because they are not subject to reporting requirements under the U.S. federal securities laws and the regulations thereunder), and that the public company cannot reasonably be expected to know in the ordinary course of business, are not contrary to the public interest in the absence of countervailing

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<sup>245</sup> See generally *2013 Foreign Ownership Second Report and Order*, 28 FCC Rcd 5741; see, e.g., T-Mobile Comments at 12-13 ("The express language of section 310(b), which permits the Commission to exercise its discretion in allowing foreign ownership that is consistent with the public interest, authorizes the Commission to make a finding that shareholders holding interests of five percent or less generally do not raise public interest concerns. In addition, just as the Commission previously has made blanket findings that certain foreign interests are not contrary to the public interest, the Commission can here similarly adopt a rebuttable presumption that interests of five percent or less in a widely held, publicly traded company are not contrary to the public interest and need not be considered further.").

<sup>246</sup> *2013 Foreign Ownership Second Report and Order*, 28 FCC Rcd at 5771, para. 54. The disclosure requirements of Section 13(d) of the Exchange Act also informed the Commission's decision in 1984 to establish a 5 percent voting stock interest as the benchmark amount for attributing ownership of a broadcast licensee's facilities to an individual corporate shareholder. *Id.* at 5770, para. 52 (citing *Reexamination of the Commission's Rules and Policies Regarding the Attribution of Ownership Interests in Broadcast, Cable Television and Newspaper Entities*, MM Docket No. 83-46, Report and Order, FCC 84-115, 97 F.C.C. 2d 997, 1002-12, paras. 6-29 (1984) (establishing a 5 percent voting stock interest as the benchmark amount for attributing broadcast ownership based on the Commission's finding that, as a general rule, a stockholder with a smaller interest does not have the ability to influence or control core decisions of the licensee, regardless of whether the licensee is a widely held or closely held company)); 47 C.F.R. § 73.3555, Note 2a to § 73.3555 (codifying the 5 percent attribution standard).

<sup>247</sup> See *supra* para. 49.

evidence and do not need to be included for purposes of calculating a licensee's aggregate levels of foreign ownership under Section 310(b). However, we remain concerned that voting and non-voting equity investors that are known to a public company may have the ability in a particular case to exert influence over the affairs of the company.<sup>248</sup>

98. We believe that the public interest benefits of disregarding such smaller foreign interests that cannot be identified consistent with the methodology herein outweigh any potential costs of doing so and will allow companies to focus their efforts on ascertaining the citizenship of those foreign interests that may present a realistic potential to influence or control the company, rather than on those interests that are not influential. In addition, the methodology will provide certainty and consistency in implementation of the statute, while reducing the burdens associated with a public company's ascertainment of its foreign equity and voting interests. Commenters have stated that this will, in turn, promote public company financing that has access to foreign investment, and may encourage reciprocal trade benefits.<sup>249</sup>

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

99. In the *2015 Foreign Ownership NPRM*, we proposed to make certain technical corrections to the foreign ownership rules and sought comment on several clarifying changes as well as on any other changes commenters may suggest to improve the structure and clarity of the rules.<sup>250</sup> No commenters responded to our proposals. As such, we adopt our corrections and clarifications to the rules as discussed below.

100. First, in Section 1.5001 of the final rules, which lists the required contents of petitions for declaratory ruling, we adopt our proposal to include a cross-reference to Section 1.5000(c), which imposes 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 Commission's rules.<sup>251</sup> As we indicated in the *2015 Foreign Ownership NPRM*, our experience is that it is not uncommon for petitions to be filed without the required certification and a cross-reference to the certification requirement will highlight to filers this critical aspect of our rules.<sup>252</sup>

101. Second, we adopt our proposal to include two Notes in Section 1.5001(i) of the rules to clarify that certain foreign interests of 5 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 unincorporated

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<sup>248</sup> As we noted in the *2013 Foreign Ownership Second Report and Order*, in adopting the equity/debt plus (EDP) rule in the context of the broadcast attribution rules, the Commission observed, *inter alia*, that preferred stockholders which do not have voting rights in a company "might exert significant influence through contractual rights or other methods of access to a licensee," such as negotiating for the right to select the persons who will run for the board of directors. See *2013 Foreign Ownership Second Report and Order*, 28 FCC Rcd at 5801, para. 114, n.305 (citing *Broadcast Attribution Reconsideration Order*, 16 FCC Rcd at 1104, para. 14 (citing 1999 *Broadcast Attribution Order*, 14 FCC Rcd at 12582-83, para. 48)). While such opportunities may be more limited in the case of a public company, as compared to a privately held company, we believe such opportunities may nonetheless exist, particularly where a company has one or more classes of stock that are not registered under Section 12 of the Exchange Act.

<sup>249</sup> See *supra* at para. 13 n.40.

<sup>250</sup> *2015 Foreign Ownership NPRM*, 30 FCC Rcd at 11844-45, paras. 37-41.

<sup>251</sup> See Appx. B, Final Rules (§ 1.5001(l)). The certification requirement at Section 1.990(c) of the Commission's rules is now recodified at Section 1.5000(c). See Appx. B, Final Rules (§ 1.5000(c)). The certification requires 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. *Id.* at (§ 1.5000(c)(1)).

<sup>252</sup> *2015 Foreign Ownership NPRM*, 30 FCC Rcd at 11844, para. 38.

partnership interests or uninsulated interests held by members of an LLC.<sup>253</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. 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 5 percent and, because it is an uninsulated voting interest, it does not qualify as exempt from the specific approval requirements. We find that these two Notes will improve the clarity of the specific approval requirements.

102. Third, we sought 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 Section 1.5003 of the proposed rules.<sup>254</sup> We similarly requested comment on the inclusion of additional permissible minority shareholder protections in Section 1.5001(i)(5) of the proposed rules.<sup>255</sup> Because we received no comments, we decline to adopt additional permissible voting or consent rights, or additional permissible minority shareholder protections in this proceeding.

103. Finally, we correct two cross-references,<sup>256</sup> and make additional clarifying changes as identified in the *2015 Foreign Ownership NPRM*.<sup>257</sup>

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

104. Consistent with the process adopted in the *2013 Foreign Ownership Second Report and Order*, we proposed in the *2015 Foreign Ownership NPRM* to apply prospectively any changes adopted in this proceeding.<sup>258</sup> We believe that this approach is appropriate in order to afford the Commission and the relevant Executive Branch agencies an opportunity to evaluate the potential effects of the new rules on licensees that are subject to existing rulings and on pending petitions. No commenter objected to our tentative proposal. Thus, licensees subject to an existing ruling as of the effective date of the rules adopted in this proceeding will 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>259</sup> Further, licensees may request a new ruling under the revised rules we adopt herein; however, they are not required to do so. Petitions for declaratory ruling that are pending before the Commission as

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<sup>253</sup> *Id.* at 11844, para. 39; *see* Appx. B, Final Rules (§ 1.5001(i), Note to paragraphs (i)(1) and (2)); *id.* (§ 1.5001(i), Note to paragraph (i)(3)(ii)(C)).

<sup>254</sup> *2015 Foreign Ownership NPRM*, 30 FCC Rcd at 11844, para. 40; *see* Appx. B, Final Rules (§ 1.5003).

<sup>255</sup> *2015 Foreign Ownership NPRM*, 30 FCC Rcd at 11844, para. 40; *see* Appx. B, Final Rules (§ 1.5001(i)(5)).

<sup>256</sup> *2015 Foreign Ownership NPRM*, 30 FCC Rcd at 11845, para. 41; *see* Appx. B, Final Rules (§§ 1.5001(e)(1), (2)).

<sup>257</sup> *2015 Foreign Ownership NPRM*, 30 FCC Rcd at 11845, para. 41; *see* Appx. B, Final Rules (§§ 1.5001(i)(3)(ii)(A)-(C)).

<sup>258</sup> *2015 Foreign Ownership NPRM*, 30 FCC Rcd at 11845, para. 42.

<sup>259</sup> *Id.* n.74. As we noted in the *2015 Foreign Ownership NPRM*, we emphasize that licensees with an existing foreign ownership ruling have an obligation to seek a new ruling under any revised rules *before* exceeding the scope of their rulings. *Id.* Failure to meet a condition of a foreign ownership ruling may result in monetary sanctions or other enforcement action by the Commission.

of the effective date of the rules adopted in this Report and Order will be decided based on the new rules.<sup>260</sup>

## V. CONCLUSION

105. In this Report and Order, we 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 reform the methodology used by common carrier and broadcast licensees that are, or are controlled by, U.S. public companies to assess compliance with the foreign ownership limits in Sections 310(b)(3) and 310(b)(4) of the Act. As discussed above, we determine that these actions are in the public interest and 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 U.S. broadcast and telecommunications infrastructure.

## VI. PROCEDURAL ISSUES

### A. Regulatory Flexibility Act

106. As required by the Regulatory Flexibility Act (RFA),<sup>261</sup> an Initial Regulatory Flexibility Certification was incorporated into the *2015 Foreign Ownership NPRM*.<sup>262</sup> Pursuant to the Regulatory Flexibility Act of 1980, as amended,<sup>263</sup> the Commission's Final Regulatory Flexibility Certification relating to this Report and Order is attached as Appendix C.

### B. Paperwork Reduction Act of 1995

107. This Report and Order contains new or modified information collection requirements subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104-13. The requirements will be submitted to the Office of Management and Budget (OMB) for review under Section 3507(d) of the PRA. OMB, the general public, and other Federal agencies are invited to comment on the new or modified information collection requirements contained in this proceeding. In addition, we note that pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107-198, *see* 44 U.S.C. 3506(c)(4), we previously sought specific comment on how the Commission might further reduce the information collection burden for small business concerns with fewer than 25 employees.

108. In this Report and Order, we extend the streamlined rules and procedures developed for foreign ownership reviews for common carrier and certain aeronautical licensees under Section 310(b)(4) of the Act to the broadcast context. We also reform the methodology used by common carrier and broadcast licensees that are, or are controlled by, U.S. public companies to assess compliance with the foreign ownership limits in Sections 310(b)(3) and 310(b)(4) of the Act. We have assessed the effects of the new rules on small business concerns. We find that the streamlined rules and procedures adopted here will minimize the information collection burden on licensees subject to 310(b), including small businesses.

### C. Congressional Review Act

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

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<sup>260</sup> If necessary, parties will be given an opportunity to amend any pending foreign ownership petitions to address the revised rules adopted herein.

<sup>261</sup> *See* 5 U.S.C. § 603.

<sup>262</sup> *2015 Foreign Ownership NPRM*, 30 FCC Rcd at 11846-47, paras. 46-49.

<sup>263</sup> *See* 5 U.S.C. § 604.

**VII. ORDERING CLAUSES**

110. Accordingly, IT IS ORDERED pursuant to Sections 1, 2, 4(i), 4(j), 303(r), 309, and 310 of the Communications Act of 1934, as amended, 47 U.S.C. Sections 151, 152, 154(i), 154(j), 303(r), 309, and 310 this Report and Order is ADOPTED.

111. IT IS FURTHER ORDERED that parts 1, 25, 73 and 74 of the Commission's rules ARE AMENDED as set forth in Appendix B.

112. IT IS FURTHER ORDERED that, pursuant to 47 U.S.C. Section 155(c) and 47 CFR Section 0.261, the Chief of the International Bureau IS GRANTED DELEGATED AUTHORITY to make technical and ministerial edits to the rules adopted in this Report and Order consistent with any technical and ministerial modifications made by the Securities and Exchange Commission to its rules and forms.

113. IT IS FURTHER ORDERED that this Report and Order SHALL BE effective 60 days after publication in the Federal Register, except those provisions that contain new or modified information collection requirements that require approval by the Office of Management and Budget under the Paperwork Reduction Act WILL BECOME EFFECTIVE after the Commission publishes a notice in the Federal Register announcing such approval and the relevant effective date.

114. IT IS FURTHER ORDERED that the Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, SHALL SEND a copy of this Report and Order to Congress and the Government Accountability Office pursuant to the Congressional Review Act, *see* 5 U.S.C. 801(a)(1)(A).

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

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch  
Secretary

## APPENDIX A

## Commenters

<u>Commenter</u>	<u>Abbreviation</u>
21 <sup>st</sup> Century Fox, Inc.	21 <sup>st</sup> Century Fox
A. L. Mabray	A. L. Mabray
American's Survival	American's Survival
Barbara Croyle	Barbara Croyle
Comcast Corporation	Comcast
Frank Kenney	Frank Kenney
George Aylwin	George Aylwin
Gerald J. Kenney, Jr.	Gerald J. Kenney, Jr.
Jennifer Pedrick	Jennifer Pedrick
Joanne Hallenbeck	Joanne Hallenbeck
Melanie Coles	Melanie Coles
Multicultural Media, Telecom and Internet Council	MMTC
National Association of Broadcasters	NAB
Nexstar Broadcasting Group, Inc.	Nexstar
Norman Baillie	Norman Baillie
Richard W. Firth	Richard W. Firth
Richard Hilliard	Richard Hilliard
Roxanna Mote	Roxanna Mote
Sandra Cowen	Sandra Cowen
S-R Broadcasting Co., Inc.	S-R Broadcasting
Steve Combs	Steve Combs
T-Mobile USA, Inc.	T-Mobile
William Jud	William Jud
William Robinson	William Robinson

## Reply Commenters

<u>Reply Commenter</u>	<u>Abbreviation</u>
Betty R. Crawford	Betty R. Crawford
Comcast Corporation	Comcast
National Association of Broadcasters	NAB
Media General, Inc.	Media General
Multicultural Media, Telecom and Internet Council	MMTC
William J. Kirsch	William J. Kirsch Reply 1
William J. Kirsch	William J. Kirsch Reply 2

## APPENDIX B

## Final 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.

§§ 1.990 through 1.994 [Removed]

2. In Subpart F, remove the undesignated center heading “Foreign Ownership of Common Carrier, Aeronautical En Route, and Aeronautical Fixed Radio Station Licensees” and §§ 1.990 through 1.994.
3. Add subpart T to read as follows:
4. Subpart T—Foreign Ownership of Broadcast, Common Carrier, Aeronautical En Route, and Aeronautical Fixed Radio Station Licensees

**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.

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.**

The rules in this subpart 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. These rules also establish the methodology applicable to eligible U.S. public companies for purposes of determining and ensuring their compliance with the foreign ownership limitations set forth in sections 310(b)(3) and 310(b)(4) 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 paragraph (a): 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 2 to paragraph (a): 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 Aug. 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 5 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 5 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 through the International Bureau Filing System (IBFS) or any successor system thereto. For information on filing a 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 (CDDBS) 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.

(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 (2) of this part.

(e)(1) This rule sets forth the methodology applicable to broadcast, common carrier, aeronautical en route, and aeronautical fixed radio station licensees and common carrier spectrum lessees that are, or are directly or indirectly controlled by, an eligible U.S. public company for purposes of monitoring the licensee's or spectrum lessee's compliance with the foreign ownership limits set forth in sections 310(b)(3) and 310(b)(4) of the Act and with the terms and conditions of a licensee's or spectrum lessee's foreign ownership ruling issued pursuant to § 1.5000(a)(1) or 1.5000(a)(2) of this part. For purposes of this section:

(i) An "eligible U.S. public company" is a company that is organized in the United States; whose stock is traded on a stock exchange in the United States; and 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;

(ii) A "beneficial owner" of a security refers to any person who, directly or indirectly, through any contract, arrangement, understanding, relationship, or otherwise has or shares voting power, which includes the power to vote, or to direct the voting of, such security; and

(iii) An "equity interest holder" refers to any person or entity that has the right to receive or the power to direct the receipt of dividends from, or the proceeds from the sale of, a share.

(2) An eligible U.S. public company shall use information that is known or reasonably should be known by the company in the ordinary course of business, as described in this paragraph, to identify the beneficial owners and equity interest holders of its voting and non-voting stock:

(i) Information recorded in the company's share register;

(ii) Information as to shares held by officers, directors, and employees;

(iii) Information reported to the Securities and Exchange Commission (SEC) in Schedule 13D (17 CFR 240.13d-101) and in Schedule 13G (17 CFR 240.13d-102), including amendments filed by or on behalf of a reporting person, and company-specific information derived from SEC Form 13F (17 CFR 249.325);

(iv) Information as to beneficial owners of shares required to be identified in a company's annual reports (or proxy statements) and quarterly reports;

(v) Information as to the identify and citizenship of a beneficial owner and/or equity interest holder where such information is actually known to the public company as a result of shareholder litigation, financing transactions, and proxies voted at annual or other meetings; and

(vi) Information as to the identity and citizenship of a beneficial owner and/or equity interest holder where such information is actually known to the company by whatever source.

(3) An eligible U.S. public company shall use information that is known or reasonably should be known by the company in the ordinary course of business to determine the citizenship of the beneficial owners and equity interest holders, identified pursuant to paragraph (e)(2) of this section, including information recorded in the company's shareholder register, information required to be disclosed pursuant to rules of the Securities and Exchange Commission, other information that is publicly available to the company, and information received by the company through direct inquiries with the beneficial owners and equity interest holders where the company determines that direct inquiries are necessary to its compliance efforts.

(4) A licensee or spectrum lessee that is, or is directly or indirectly controlled by, an eligible U.S. public company, shall exercise due diligence in identifying and determining the citizenship of such public company's beneficial owners and equity interest holders.

(5) To calculate aggregate levels of foreign ownership, a licensee or spectrum lessee that is, or is directly or indirectly controlled by, an eligible U.S. public company, shall base its foreign ownership calculations on such public company's known or reasonably should be known foreign equity and voting interests as described in paragraphs (e)(2) and (e)(3) of this section. The licensee shall aggregate the public company's known or reasonably should be known foreign voting interests and separately aggregate the public company's known or reasonably should be known foreign equity interests. If the public company's known or reasonably should be known foreign voting interests *and* its known or reasonably should be known foreign equity interests do not exceed 25 percent (20 percent in the case of an eligible publicly traded licensee subject to Section 310(b)(3)) of the company's total outstanding voting shares *or* 25 percent (20 percent in the case of an eligible publicly traded licensee subject to Section 310(b)(3)) of the company's total outstanding shares (whether voting or non-voting), respectively, the company shall be deemed compliant, under this section, with the applicable statutory limit.

Example. Assume that a licensee's controlling U.S. parent is an eligible U.S. public company. The publicly traded U.S. parent has one class of stock consisting of 100 total outstanding shares of common voting stock. The licensee (and/or the U.S. parent on its behalf) has exercised the required due diligence in following the above-described methodology for identifying and determining the citizenship of the U.S. parent's "known or reasonably should be known" interest holders and has identified one foreign shareholder that owns 6 shares (i.e., 6 percent of the total outstanding shares) and another foreign shareholder that owns 4 shares (i.e., 4 percent of the total outstanding shares). The licensee would add the U.S. parent's known foreign shares and divide the sum by the number of the U.S. parent's total outstanding shares. In this example, the licensee's U.S. parent would be calculated as having an aggregate 10 percent foreign equity interests and 10 percent foreign voting interests (6+4 foreign shares = 10 foreign shares; 10 foreign shares divided by 100 total outstanding shares = 10 percent). Thus, in this example, the licensee would be deemed compliant with Section 310(b)(4).

**§ 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 (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 (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 (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 (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 (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, regardless of its equity interest, and any insured partner 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 (100 percent) voting 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 (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).

(1) Indirect U.S. or foreign interests of 10 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 10 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 disclosable 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 held indirectly in the petitioner's controlling U.S. parent shall be calculated in accordance with the principles set forth in §§ 1.5002 and 1.5003. Equity and voting interests held directly in a petitioner's controlling U.S. parent that is organized as a partnership or limited liability company shall be calculated in accordance with Note 1 to paragraph (i)(3)(ii)(C) of this section.

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

(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 held indirectly in the applicant or licensee shall be calculated in accordance with the principles set forth in §§ 1.5002 and 1.5003. Equity and voting interests held directly in an applicant or licensee that is organized as a partnership or limited liability company shall be calculated in accordance with Note 1 to paragraph (i)(3)(ii)(C) of this section.

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 Note 2 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 (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 (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 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 6 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 6 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 10 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 1 to paragraph (i)(3)(ii)(C): For purposes of identifying foreign interests that require specific approval, where the petitioning applicant, licensee, or controlling U.S. parent is itself organized as a partnership or LLC, a general partner, uninsulated limited partner, uninsulated LLC member, and non-member LLC manager shall be deemed to hold a controlling (100 percent) voting interest in the applicant, licensee, or controlling U.S. parent.

Note 2 to paragraph (i)(3)(ii)(C): For purposes of identifying foreign interests that require specific approval, where interests are held indirectly in the petitioning applicant, licensee, or controlling U.S. parent through one or more intervening partnerships or LLCs, a general partner, uninsulated limited partner, uninsulated LLC members, and non-member LLC managers shall be 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 and, ultimately, the same voting interest as the partnership or LLC is calculated as holding 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)). See § 1.5002(b)(2)(ii)(A) and (b)(2)(iii)(A). Where a limited partner or LLC member is insulated, the limited partner’s or LLC member’s voting 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)) is calculated as equal to the limited partner’s or LLC member’s equity interest in the U.S. parent or in the applicant or licensee, respectively. See § 1.5002(b)(2)(ii)(B) and (b)(2)(iii)(B). Thus, depending on the particular ownership structure presented in the petition, a foreign general partner, uninsulated limited partner, LLC member, or non-member LLC manager of an intervening partnership or LLC may be deemed to hold an indirect voting interest in the controlling U.S. parent or in the petitioning applicant or licensee that requires specific approval because the voting interest exceeds the 5 percent amount specified in paragraphs (i)(1) and (2) of this section and, unless the voting interest is otherwise insulated at a lower tier of the petitioner’s vertical ownership chain, 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 (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.**

(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 ( $30\% \times 40\% = 12\%$ ). 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 ( $30\% \times 100\% = 30\%$ ).

(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 unincorporated partnership interest, or an insulated partnership interest as specified in paragraphs (b)(2)(ii)(A) and (B) of this section.

(A) General partnership and other unincorporated partnership interests. A general partner and unincorporated 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 unincorporated 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.

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 unincorporated interest in the partnership.

(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 unincorporated member or an insulated member as specified in paragraphs (b)(2)(iii)(A) and (B) of this section.

(A) Non-member managers and unincorporated membership interests. A non-member manager and an unincorporated 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 unincorporated 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 unincorporated 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 unincorporated 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

(c)(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 through 1.5004 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 5 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 10 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 5 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 10 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 shareholder's 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 5 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 5 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 10 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 5 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 10 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) Continuing compliance.

(1) Except as specified in paragraph (f)(3) of this section, 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.

(3) Where the controlling U.S. parent of a broadcast, common carrier, aeronautical en route, or aeronautical fixed radio station licensee or common carrier spectrum lessee is an eligible U.S. public company within the meaning of § 1.5000(e), the licensee may file a remedial petition for declaratory ruling under § 1.5000(a)(1) seeking approval of particular foreign equity and/or voting interests that are non-compliant with the licensee's foreign ownership ruling or the Commission's rules relating to foreign ownership; or, alternatively, the licensee may remedy the non-compliance by, for example, redeeming the foreign interest(s) that rendered the licensee non-compliant with the licensee's existing foreign ownership ruling. In either case, the Commission does not expect to take enforcement action related to the non-compliance subject to the requirements specified in paragraphs (f)(3)(i) and (f)(3)(ii) of this section and except as otherwise provided in paragraph (f)(3)(iii) of this section.

(i) The licensee shall notify the relevant Bureau by letter no later than 10 days after learning of the investment(s) that rendered the licensee non-compliant with its foreign ownership ruling or the Commission's rules relating to foreign ownership and specify in the letter that it will file a petition for declaratory ruling under § 1.5000(a)(1) or, alternatively, take remedial action to come into compliance within 30 days of the date it learned of the non-compliant foreign interest(s).

(ii) The licensee shall demonstrate in its petition for declaratory ruling (or in a letter notifying the relevant Bureau that the non-compliance has been timely remedied) that the licensee's non-compliance with the terms of the licensee's existing foreign ownership ruling or the foreign ownership rules was due solely to circumstances beyond the licensee's control that were not reasonably foreseeable to or known by the licensee with the exercise of the required due diligence.

(iii) Where the licensee has opted to file a petition for declaratory ruling under § 1.5000(a)(1), the Commission will not require that the licensee's U.S. parent redeem the non-compliant foreign interest(s) or take other action to remedy the non-compliance during the pendency of the licensee's petition. If the Commission ultimately declines to approve the petition, however, the licensee must have a mechanism available to come into compliance with the terms of its existing ruling within 30 days following the Commission's decision. The Commission reserves the right to require immediate remedial action by the licensee where the Commission finds in a particular case that the public interest requires such action—for example, where, after consultation with the relevant Executive Branch agencies, the Commission finds that the non-compliant foreign interest presents national security or other significant concerns that require immediate mitigation.

(4) Where a publicly traded common carrier licensee is an eligible U.S. public company within the meaning of § 1.5000(e), the licensee may file a remedial petition for declaratory ruling under § 1.5000(a)(2) seeking approval of particular foreign equity and/or voting interests that are non-compliant with the licensee's foreign ownership ruling or the Commission's rules relating to foreign ownership; or, alternatively, the licensee may remedy the non-compliance by, for example, redeeming the foreign interest(s) that rendered the licensee non-compliant with the licensee's existing foreign ownership ruling. In either case, the Commission does not, as a general rule, expect to take enforcement action related to the non-compliance subject to the requirements specified in paragraphs (f)(3)(i) and (f)(3)(ii) of this section

and except as otherwise provided in paragraph (f)(3)(iii) of this section.

Note 1 to paragraph (f)(4): For purposes of this paragraph, the provisions in paragraphs (f)(3)(i) through (f)(3)(iii) that refer to petitions for declaratory ruling under § 1.5000(a)(1) shall be read as referring to petitions for declaratory ruling under § 1.5000(a)(2).

#### **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**

1. 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.

2. Section 73.1010 is amended by revising paragraph (a)(9) and adding paragraph (a)(10) to read as follows:

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

(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).

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

1. 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 is amend by revising paragraph (a)(8) and adding paragraph (a)(9) 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).

## APPENDIX C

## Final Regulatory Flexibility Certification

1. The Regulatory Flexibility Act of 1980, as amended (RFA),<sup>1</sup> requires that a final regulatory flexibility analysis be prepared for notice-and-comment rule making proceedings, unless the agency certifies that “the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities.”<sup>2</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>3</sup> In addition, the term “small business” has the same meaning as the term “small business concern” under the Small Business Act.<sup>4</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).<sup>5</sup>

2. In this Report and Order, the Commission modifies the foreign ownership filing and review 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 Act to the broadcast context with certain limited exceptions. Recognizing the difficulty U.S. public companies face in ascertaining their foreign ownership, we also reform the methodology used by common carrier and broadcast licensees that are, or are controlled by U.S. public companies to assess compliance with the foreign ownership limits in Sections 310(b)(3) and 310(b)(4) of the Act, respectively. In particular, the reformed methodology provides a framework for a publicly traded licensee or controlling U.S. parent to ascertain its foreign ownership using information that is “known or reasonably should be known” to the company in the ordinary course of business, thereby eliminating the need for costly shareholder surveys.

3. The new rules are designed to provide the industry with greater transparency and reduce to the extent possible the regulatory costs and burdens that our current foreign ownership policies and procedures impose on broadcast, wireless common carrier and aeronautical applicants, licensees, and spectrum lessees. In particular, as is the case with common carrier licensees, the new standardized filing and review process will provide a clearer path for foreign investment in broadcast licensees that is more consistent with the U.S. domestic investment process, while continuing to protect important interests related to national security, law enforcement, foreign policy, and trade policy.

4. We estimate that the rule changes will facilitate the filing of Section 310(b)(4) petitions for declaratory ruling by broadcast licensees while reducing the time and expense associated with such filings. For example, U.S. parent companies of broadcast licensees that seek Commission approval to exceed the 25 percent foreign ownership benchmark in Section 310(b)(4) will be allowed to include in their petitions requests for specific approval of only those foreign investors that hold or would hold a direct or indirect equity and/or voting interest in the U.S. parent that exceeds 5 percent (or exceeds 10 percent in certain circumstances), or a controlling interest in the U.S. parent. As another example, the new rules will allow the U.S. parent to request specific approval for any non-controlling foreign investors

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<sup>1</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>2</sup> 5 U.S.C. § 605(b).

<sup>3</sup> 5 U.S.C. § 601(6).

<sup>4</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.”

<sup>5</sup> 15 U.S.C. § 632.

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, under the new rules the U.S. parent will 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.

5. We requested 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.<sup>6</sup> Although we did not receive comments specifically addressing the costs and burdens on small business concerns, the Commission has recognized in the past that the current requirements impose significant costs and burdens. Similarly, by extending the streamlined rules and procedures developed for foreign ownership reviews for common carrier to broadcast, the new rules will reduce the costs and burdens of broadcast licensees.<sup>7</sup> Also, the methodology we adopt will facilitate compliance with the statutory foreign ownership limits and the filing of petitions for declaratory ruling by publicly-traded licensees while reducing the time and expense associated with such filings.

6. Overall, the new rules will reduce costs and burdens currently imposed on licensees, including those licensees that are small entities, and streamline and accelerate the foreign ownership review process, while continuing to ensure that we have the information we need to carry out our statutory obligations. Moreover, the new rules will improve regulatory flexibility for broadcast and common carrier licensees for purposes of compliance with Section 310(b)(3) and 310(b)(4) of the Act and provide an incentive for enhanced investment in U.S. broadcast and telecommunications infrastructure. Therefore, we certify that the rules adopted in this Report and Order will not have a significant economic impact on a substantial number of small entities.<sup>8</sup> The Commission will send a copy of this Report and Order, including a copy of this Final Regulatory Flexibility Certification, to the Chief Counsel for Advocacy of the SBA.<sup>9</sup> This final certification will also be published in the Federal Register.<sup>10</sup>

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<sup>6</sup> 2015 *Foreign Ownership NPRM*, 30 FCC Rcd at 11847, para. 48.

<sup>7</sup> See 2013 *Foreign Ownership Second Report and Order*, 25 FCC Rcd at 5815, para. 144.

<sup>8</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 Report and Order applies 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, paras. 141-145; 2011 *Foreign Ownership NPRM*, 26 FCC Rcd at 11742-44, paras. 80-83.

<sup>9</sup> 5 U.S.C. § 605(b).

<sup>10</sup> *Id.*

**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).*

In recent years, improving the Commission's processes to better serve our stakeholders has been a top priority. A consistent theme of our process reforms has been leveling the playing field, so different industries aren't unreasonably held to different standards. With today's item, we simplify our foreign ownership rules and procedures applicable to broadcast licensees to bring them in line with our rules for common carriers.

The Communications Act established a 25 percent benchmark for foreign investment in U.S.-organized entities that control a U.S. broadcast, common carrier, or aeronautical radio licensee. Therefore, we have traditionally required that licensees get FCC approval before foreign ownership exceeds 25 percent.

In 2013, the Commission streamlined the policies and procedures that apply to foreign ownership for common carriers to reduce costs, provide greater transparency, and facilitate investment, while continuing to protect U.S. interests. In 2015, for the first time, the FCC granted a petition to allow Pandora Radio to exceed the 25 percent foreign ownership benchmark. Our experience with the Pandora review illustrated the need for greater clarity and certainty for both broadcasters and investors during the review process.

Today's rules will update the procedures for requesting approval of foreign ownership of broadcast licensees with specific rules that incorporate the same streamlined procedures used for common carrier wireless licensees, with certain exceptions and clarifications. They will modernize our processes so they are better adapted to the current business environment, which has obviously evolved over the decades.

In addition, the item recognizes the difficulty U.S. public companies face in ascertaining their foreign ownership, and establishes a framework for a publicly traded broadcast or common carrier licensee or controlling U.S. parent to ascertain its foreign ownership levels using information that is "known or reasonably should be known" to the company in the ordinary course of business, thereby eliminating the need for shareholder surveys.

Taken together, these reforms will better harmonize the process with the one established in 2013 for other licensees, provide greater certainty for stakeholders, potentially enable greater investment in broadcaster licensees, and update the compliance methodology to better reflect the current marketplace.

Special thanks to Commissioner O'Rielly for his leadership in highlighting this issue.

**STATEMENT OF  
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

As a former owner of a small media outlet, I know all too well the importance of adequate capital to enable operations, support new and innovative service offerings, and provide value to customers.

Today's order recognizes these benefits by extending in large part to the broadcast industry, the streamlined rules and modified procedures the Commission adopted three years ago for foreign ownership reviews of common carrier licensees. We address head-on the complexities and difficulties faced by publicly-traded broadcast companies when attempting to ascertain the extent of foreign ownership. And we provide more efficient approaches, offer greater transparency and predictability, and enhance access to capital opportunities for broadcasters, while reducing regulatory burdens and costs.

The leadership and staff of the International Bureau and Media Bureau are to be commended because this Order is a praiseworthy example of how the Commission unleashes opportunities by harmonizing and streamlining rules to facilitate capital investment as we protect important public policy goals.

**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.

Broadcasting has a storied history. For decades, it has been where we turn for local news and entertainment in communities all across the country. But change is in the air. Spectrum used by broadcast stations is now in demand by other services, a new broadcast standard is in the works, and new media platforms are multiplying. To ensure the future of broadcasting is bright, investment is key.

But the laws that govern broadcast investment can get in the way. That's because they have a distinctly vintage quality. In fact, they were put in place to prevent foreign powers from disrupting ship-to-shore governmental communications during warfare. But just as horses and bayonets are not the tools of modern warfare, the cyber threats we face today are not especially well-guarded by these prohibitions. Moreover, these policies can create artificial constraints that make it tough for broadcasters to access funding on a global scale. This is not right—and not fair.

So today we update our policies by extending to broadcast licensees the same streamlined rules and procedures applicable to common carrier licensees under the law. We clarify our rules for foreign investment across the board. We also improve our method for counting foreign ownership in both common carriers and broadcasters. These actions remove barriers for investment and provide clarity for broadcasters seeking support for new technologies and new ways to reach the communities they serve. This effort has my full support.

**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.

Four years ago, I called for the FCC to relax its restrictions on foreign investment in the broadcast industry.<sup>1</sup> At the time, I said that this could give broadcasters greater access to capital. And I noted that the Commission's rules with respect to foreign investment did not make sense in today's marketplace. For example, our approach allowed a foreign company to own a majority interest in one of our country's nationwide wireless carriers. But it did not allow that same company to own a single AM radio station in rural Kansas.

In 2013, the Commission took action. We ended our *de facto* ban on any foreign investment in U.S. broadcast holding companies exceeding 25%. That was a step in the right direction, and I was pleased to support it. But I also noted that we still had "to develop additional procedures for applicants seeking to take advantage of" the Commission's policy change.<sup>2</sup>

In this *Order*, the Commission does just that. We decide to streamline the procedures that apply to foreign investment in broadcasters. These same streamlined procedures have worked well in the common carrier context, and I'm confident they'll work well in the broadcast context. They'll make it easier for broadcasters to access capital while at the same time still ensuring that any foreign ownership above the 25% benchmark set forth in Section 310(b)(4) of the Communications Act does not compromise our national security or any other public interest. They will also promote regulatory parity and ensure that different sectors of the communications industry can compete for investment on a level playing field.

We also modernize in this *Order* the Commission's methodology for assessing compliance with the foreign ownership limits set forth in Section 310. Our prior approach, which broadly focused on all shareholders, might have made sense given the way that the stock market operated decades ago. But today, about 85% of shares are held by an institution or individual on behalf of someone else. This makes it very difficult for companies to figure out the identity, let alone the citizenship, of many of their shareholders. And that was a particular problem given the Commission's presumption that any unknown shareholders are not U.S. citizens.

Thankfully, the Commission ends that presumption today. And our new methodology focuses only on ownership information that is known or reasonably should be known to a public company. This reform makes sense because these are the ownership interests that could actually influence a company's operations. Furthermore, this reform will eliminate the need for companies to conduct costly and often unreliable surveys of individual shareholders. I am therefore optimistic that this *Order* will reduce the regulatory burdens placed on public companies and make it easier for them to comply with our rules.

At the end of the day, the Commission's rules in this area need to strike a balance. On the one hand, we should promote investment in the United States and make it easier for communications companies to access capital. But on the other hand, we must ensure that any specific foreign investment in this sector of our economy is in the public interest. Because this *Order* generally strikes the right balance, I am pleased to support it and would like to thank the staff of the International Bureau and the Media Bureau for their hard work in this proceeding.

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<sup>1</sup> Remarks of Commissioner Ajit Pai before the Radio Show at 5-6 (Sept. 19, 2012), *available at* [https://apps.fcc.gov/edocs\\_public/attachmatch/DOC-316374A1.pdf](https://apps.fcc.gov/edocs_public/attachmatch/DOC-316374A1.pdf).

<sup>2</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, 16258 (2013) (Statement of Commissioner Ajit Pai).

**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, Report and Order.*

I have often spoken of the need to promote foreign investment opportunities for broadcasters and to further streamline foreign ownership reviews under section 310(b) of the Communications Act. Quite simply, today's order is a helpful step, as the changes are likely to produce significant benefits *without* jeopardizing national security. By allowing broadcasters to follow the streamlined process available to common carrier licensees, we facilitate new avenues of capital that will help stations compete in today's highly competitive video marketplace.

We also modify the methodology that broadcasters and common carriers will use to assess compliance with the statute. The old method of determining foreign ownership levels was practically impossible – and certainly not cost-effective – to implement for publicly-traded companies in today's fast-paced, global markets. Further, by focusing primarily on those shareholders with more than five percent interests, which are reported in certain SEC filings, the burden on licensees will be greatly reduced while retaining the ability to review companies with significant foreign ownership held by entities that are more likely to be able to exert influence over a company.

There are some things, however, that I would have done things differently. For instance, I hoped that the item would raise the overall reporting threshold. Raising this level, which triggers the time-consuming review process, would reduce costs on industry participants, align the U.S. with nations that permit higher levels of foreign investment, and reduce the efforts of other countries to restrict U.S. investment based on our ownership restrictions. While we do not do this today, I am pleased that the item states that we may pursue such measures in the future.

In that regard, the Commission must finish its proceeding on Team Telecom to truly streamline its foreign ownership review. We can take all the steps we want, but if Team Telecom can hold up applications for years in a regulatory abyss, all of these improvements are of little value. Failing to identify the concerns, hiding behind an opaque structure and delaying or refusing to conclude a review, as Team Telecom does right now, is incomprehensible. That docket is nearly universally filled with filings indicating that drastic improvements to Team Telecom are needed, and it needs to be resolved in the very near term.

I thank the Chairman for incorporating my edits, and I cannot thank Mindel De La Torre and Bill Lake's teams enough for all of their hard work on this item.