Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington D.C. 20554

In the Matter of

Request for Declaratory Ruling
Concerning the Citizenship
Requirements of Sections 310(b)(3)
and (4) of the Communications Act
of 1934, as amended

MEMORANDUM OPINION AND ORDER

Adopted: September 23, 1986 Released: October 9, 1986

By the Commission:

1.Before the Commission are petitions filed by TA Associates and Wiley & Rein requesting reconsideration or clarification of our *Declaratory Ruling*[1] construing the alien ownership provisions of the Communications Act of 1934, as amended.[2] In that *Declaratory Ruling*, we determined that limited partnership interests are subject to the citizenship requirements contained in Section 310(b)(3) and (4) of the Communications Act[3] and described the manner in which these statutory provisions applied to both partnership and corporate interests.

2. While neither petitioner has challenged the validity of our conclusion, in the *Declaratory Ruling*, that limited partnership interests are within the scope of the alien ownership provisions, the petitions before us question or seek clarification of five matters involving our construction of Section 310(b). First, TA Associates urges us to adopt a generic waiver for certain nonattributable alien investment in excess of the benchmarks contained in Section 310(b)(4). Second, that petitioner requests us to clarify that the "multiplier" is applicable to nonvoting stock to the same extent that it is used in conjunction with adequately insulated limited partnership interests. Third, TA Associates asserts that preferred stock should be excluded from the definition of "capital stock" contained in Section 310(b)(3) and (4) in situations in which that stock contains none of the indicia generally associated with equity ownership. Fourth, TA Associates asks that we define ownership interests in limited partnerships on the basis of partnership share rather than upon equity contribution. Fifth, with respect to the restrictions on alien ownership and positional interests established in Section 310(b), Wiley & Rein urges the Commission, in effect, to treat non-limited partners[4] in the same manner as "insulated" and nonattributable limited partners.

3. After a careful review of the petitions, we are persuaded to extend the scope of the "multiplier" to encompass remote nonvoting, common stock interests. We decline, however, to make any other changes requested by the petitioners in our interpretation of the alien ownership provisions of the Communications Act.

Public Interest Determination

4. TA Associates, a general partnership composed entirely of United States citizens, is a private venture capital management firm. It states that it holds investments in a variety of companies, including firms involved in broadcasting, cable television and cellular radio. TA Associates notes that its investments in communications companies usually include subordinated debt and equity securities. The latter are convertible, nonvoting stock which "give [TA Associates] the right, in certain cases, to obtain majority control of the communications companies in which [it] invests." [5] TA Associates also states that it is the sole general partner of venture capital funds structured as limited partnerships. According to the petitioner, "the vast majority of the capital"[6] for the funds is provided by investors, including aliens, who hold limited partnership interests which fully comply with the insulation criteria reflected in the Commission's attribution rules.[7]

5. In situations in which its investments are made in companies which hold controlling interests in Commission licensees, TA Associates requests the Commission to provide a routine and generic exemption from the statutory benchmarks contained in Section 310(b)(4) for the financing arrangements described in its Petition. It notes that the Commission, in its *Declaratory Ruling*, stated that it would entertain requests for an exemption to the benchmarks contained in Section 310(b)(4) on a case-by-case basis. Nonetheless, it asserts that, absent specific guidance by the Commission, the waivers could require a substantial amount of time to process and that such processing delays could, in turn, impede the financing of new communications entities by venture capital firms such as TA Associates. In this regard, the petitioner notes that the Commission, at the time that it revised the attribution rules, expressly recognized the importance of venture capital firms in the establishment and expansion of new broadcasting companies. Asserting that the purpose underlying the alien ownership restrictions is to guard against foreign influence in the broadcasting industry, TA Associates contends that its investments pose no danger that aliens will influence United States broadcasting because the "alien interests are plainly passive and totally insulated."[8] As a consequence, it argues that "there is no apparent public interest reason for case-by-case consideration of [its] investments."[9]

6. TA Associates suggests that the most useful and efficient mechanism by which to implement a generic exemption is by means of a certification procedure. Under this approach, the Commission would determine that the public interest standard embodied in Section 310(b)(4) is satisfied if a limited partnership with alien investments above the statutory benchmark certifies that:

(i) management and operation is vested solely in the general partner;
(ii) limited partners are expressly precluded from involvement in management and operational activities;
(iii) limited partners have no authority to remove a general partner, nor may they admit a new general partner without the permission of existing general partners; and
(iv) no limited partner acts as an employee, consultant or manager of the limited partnership nor provides any service to it or to any entity in which it invests (other than the advancement of funds).[10]

In effect, the petitioner requests the Commission to declare, without reference to a specific factual context, that the class of "insulated" alien investment generically described by TA Associates in its petition would not contravene the public interest standard of Section 310(b) notwithstanding the fact that such investment exceeds the ownership benchmark of that provision.[11]

7. We believe that adoption of the policy proposed by the petitioner would disserve the public interest. While we recognized, in the *Declaratory Ruling*, that conformance with attribution insulation criteria would be a significant factor in determining whether to permit alien investment above the statutory benchmark, we nonetheless specified that "the attribution criteria [would] not [be] exhaustive or dispositive."[12] The adoption of the equity benchmarks in Section 310(b) reflects congressional concern over substantial alien ownership of Commission licensees and persons or companies controlling these licensees even where the alien's ownership interest is non-influential in nature.[13] The fact that we have discretion to leave unchallenged alien investment above 25 percent in companies controlling a licensee does not negate our statutory obligation to scrutinize the relevant facts before affirmatively determining that the investment comports with the public interest.

8. The current case-by-case procedure assures that the Commission has the facts necessary for a meaningful public interest decision as to whether or not alien investment in excess of the ownership benchmark in Section 310(b)(4) comports with the public interest yet provides the agency with the flexibility to sanction alien investment above the statutory benchmark in situations where it is appropriate. In contrast, the adoption of of a generic approach, by its very nature, provides no assurance that the Commission would have available all facts that are relevant, and possibly determinative, to an informed public interest determination.[14]

9. In addition, we do not believe that policy reasons advanced by the petitioner would justify the adoption of this approach. In this regard, we are unpersuaded that the desirability of facilitating investment in broadcasting facilities supports a routine and generic determination that certain "insulated" alien investment in excess of the statutory benchmark comports with the public interest. Section 310(b)(4) reflects congressional policy to permit restriction of alien ownership of broadcasting facilities notwithstanding the fact that such a restriction, by its very nature, may foreclose certain types of investment in these facilities.[15] Further, while the petitioner correctly notes that processing individual requests entails administrative costs, we believe that these costs are an inevitable result of implementing Section 310(b)(4).

10. In conclusion, we believe that it would be inappropriate to generically and routinely find that certain alien investments which exceed the ownership benchmark of Section 310(b)(4) nonetheless meet the public interest criteria of that provision, either by a simple declaration that the financing arrangements described by TA Associates are always in the public interest or by the adoption of its proposed certification procedure. We find that the more prudent course of action is to make individualized assessments in the context of specific factual situations as to whether or not a particular ownership profile would further the public interest. We emphasize, however, that in denying the petitoner's request, we do not intend to prejudge the merits of any request by TA Associates, in a specific factual context, for a Commission ruling that alien investment above the statutory benchmark comports with the public interest.[16] Rather, we determine only that the petitioner has not justified the adoption of the broad generic approach that it has requested in this proceeding.

Applicability of the Multiplier to Nonvoting Stock Interests

11. TA Associates requests us to clarify that the "multiplier" applies in calculating the amount of equity held in a licensee through non-voting stock interests in a vertical ownership chain. While the petitioner notes that the Commission, in its *Declaratory Ruling*, employed a "multiplier" in computing remote interests held by aliens in a licensee through minority voting, stock and adequately insulated, domestically organized limited partnership interests,[17] the petitioner states that we did not address the use of a "multiplier" in connection with nonvoting, common stock. After careful consideration of the petitioner's arguments, we have decided to grant its request.

12. In applying the ownership benchmarks contained in Section 310(b), the "multiplier" is utilized to calculate the amount of equity held in the licensee through the ownership of non-controlling interests in a vertical chain. For example, the "multiplier" is used in quantifying the interest held by aliens in a licensee through non-controlling, voting stock in intervening corporations.[18] Similarly, we have employed a "multiplier" in computing the equity held in a licensee through intervening nonattributable limited partnership interests, and given the insulated nature of such interests, we have done so irrespective of the percentage of equity held by the limited partner.[19]

In the *Attribution Order*, we determined that non-voting stock, whether or not convertible to voting stock,[20] is not cognizable under the attribution rules.[21] The Commission reasoned that non-voting stock by its nature does not convey the ability to influence, let alone control, corporate affairs.[22] Because the holder of non-voting stock does not possess a controlling ownership interest, we find it appropriate to apply the "multiplier" to this type of ownership interest. Further, the non-controlling nature of this interest is unaffected by the quantity of non-voting stock which is owned; therefore, the "multiplier" will be employed irrespective of the percentage of stock held by the non-voting shareholder.[23]

Treatment of Preferred Stock

14. TA Associates requests us to clarify the definition of "capitalstock" contained in Sections 310(b) (3) and (4) of the Act.[24] Specifically, it urges us to disregard preferred stock in determining compliance with the ownership benchmarks contained in Section 310(b) in situations in which the "equity" interest holders are functioning solely as subordinated lenders and the applicant certifies that the preferred stock contains none of the indicia normally associated with equity ownership.

15. We believe that TA Associates' request should be denied. It is an axiom of statutory construction that the language of a statute is, in general, the key to its meaning. As the United States Supreme Court has stated, it is "obvious . . . that, in determining the scope of a statute, one is to look first at its language;"[25] in the "|a]bsen|ce] of a clearly expressed legislative intention to the contrary, that language must ordinarily be regarded as conclusive."[26] In adopting the alien ownership restrictions presently codified in Sections 310(b)(3) and (4) of the Communications Act, Congress expressly restricted the amount of "capital stock" that aliens may own of record or vote in broadcast licensees or their parent companies. The term "capital stock" is generally understood to encompass various classes of stock, including preferred stock,[27] and we find nothing in the legislative history which would justify an

interpretation of this provision which contravenes its plain meaning. Accordingly, we shall consider preferred stock as "capital stock" in construing Section 310(b) of the Communications Act.

Definition of Ownership Interests in Limited Partnerships

16. In the *Declaratory Ruling*, the Commission determined to define ownership interests in a limited partnership in terms of the equity contributions of the limited partners.[28] TA Associates states that the use of contribution as the criterion of measuring ownership interests is inappropriate. It states that this measurement ignores customary business practices "in which passive investors receive equity in exchange for substantial cash contributions while active principals receive equity for much smaller cash contributions."[29] As a consequence, it urges us to substitute partnership share for contribution in calculating whether or not a licensee is in compliance with the ownership benchmarks contained in Section 310(b) of the Communications Act.

17. We recognize that contribution may not accurately measure the ownership interests in a limited partnership, particularly in situations in which a general partner obtains "sweat equity" in exchange for active participation in business management. However, based on our experience at this time, we are not convinced that reliance upon partnership share as the measure of ownership interest would provide a more appropriate measurement. For example, the use of partnership share as a means by which to quantify ownership interests under Section 310(b) is susceptible of manipulation. In this regard, the partners could agree that the alien investors would receive disproportionately small partnership shares but would have the opportunity to "recover" their investment by means of an inordinately high interest loan or receipt of other consideration outside the share provisions of the partnership agreement. In this situation, partnership share could seriously understate the actual equity interest of the aliens.[30] Moreover, because partnership share may be a volatile term in a partnership agreement, it is more difficult to ascertain than equity contribution. For example, partnership share may be computed upon a fixed percentage or be tied to a complex formula that in turn depends upon some variable term such as the amount of gross receipts or profits of the business in a specific year. In addition, the partnership may change the method of computing the share at any time. Finally, in light of the potential for manipulation and the possible complexity in computing partnership share, its use in quantifying the equity interest of aliens in a partnership could place substantial administrative burdens upon the Commission.

18. Given these considerations, we continue to believe that contribution offers the better approach to calculating alien limited partner ownership interests for purposes of Section 310(b) of the Act. We have already recognized, however, that in selecting a contribution or share based standard, we were confronted with the difficult task of choosing between reasonable policy alternatives.[31] Indeed, in the *Declaratory Ruling* we acknowledged that

> there may be other means, including partnership shares, by which such interests can be calculated. Further, if we find, through implementation of the statutory benchmarks, that the definition of ownership adopted in this *Declaratory Ruling* is inappropriate, we will revisit this determination.[32]

We reiterate our willingness to reconsider this determination if experience proves that reliance on contribution is inappropriate.[33]

Insulation of Non-Limited Partnership Interests

19. In the *Declaratory Ruling*, we determined that Section 310(b) -- including the restrictions in that statute governing alien "officers" and "directors" -- applied to partnerships and limited partnerships.[34] Recognizing that non-limited partners have the authority to bind the company and to manage its affairs, we concluded that these partnership interests were comparable to high level positional interests in a corporation and interpreted the restrictions governing alien officers and directors in Section 310(b) to encompass these types of interests.[35] In its petition, Wiley & Rein requests us to reconsider several aspects of our decision relating to the treatment of non-limited partners under Section 310(b) of the Act.

20. First, the petitioner objects to the Commission's decision to apply the statutory proscriptions relating to alien officers and directors to all non-limited partners. While the petitioner acknowledges that "non-limited partners characteristically do not relinquish day-to-day control"[36] over partnership affairs, Wiley & Rein asserts that these partners, if they choose, can insulate themselves from the management and operation of the partnership by means of private contractural arrangements.[37] The petitioner emphasizes that the Commission expressly excluded adequately insulated limited partners from the statutory restrictions governing alien officers and directors[38] and urges us to similarly exempt from these provisions "insulated" non-limited partners.[39]

21. In addition, the petitioner notes that the Commission, in its *Attribution Order*, permitted officers and directors of corporations holding cognizable interests in a licensee to be exempt from attribution by demonstrating that their duties are wholly unrelated to the activities of the licensee.[40] It contends that the Commission should extend this policy to the alien ownership provisions of Section 310(b). Specifically, the petitioner requests the Commission to exempt from the statutory proscriptions governing alien officers or directors alien non-limited partners who are insulated from involvement in the affairs of the licensee but who exercise control over other aspects of the partnership business.

22. We believe that our decision to include non-limited partners within the scope of the alien officer and director provisions of Section 310(b) was correct. The position which non-limited partners occupy in a partnership is directly comparable to that held by officers and directors in a corporation. Under state law, it is well-established that the management functions of a corporation are performed by the officers and directors[41] while in a partnership those functions are undertaken by the non-limited partners.[42] While it is true that these partners may not be precluded under state law from relinquishing control over partnership affairs,[43] we believe that such a relinquishment would be extremely unusual. The petitioner itself acknowledges that there is no independent business reason for a partner with unlimited liability to relinquish managerial power; indeed, it admits that the motivation underlying such a contractural arrangement would be to obtain an exclusion from the alien officer and director provisions contained in Section 310(b).[44]

23. Further, it would be inappropriate for us to "exempt" either "passive" non-limited partners or unattributed officers and directors from the scope of the alien

officer and director proscriptions contained in Section 310(b).[45] We have no power to accord a statutory "exemption" to a person holding a positional interest otherwise subject to the scope of Section 310(b) because he or she agrees, as a matter of private contract, not to exercise the powers inherent in that position.[46]. As the petitioner correctly notes, our attribution rules permit corporate officers and directors to be relieved from attribution by disclaiming involvement in the management and operation of the licensee.[47] While the Commission may properly consider the existence of a private contractural relinquishment of managerial powers in determining to grant an exemption from its own administrative rules and policies, we have no power to accord a comparable exemption from a statutorily mandated proscription. Accordingly, we find that "insulated" corporate officers and directors -- and their functional equivalents in a partnership -- are fully subject to the restrictions governing positional interests contained in Section 310(b).

Procedural Matters and Disposition

24. This *Memorandum Opinion and Order* has been analyzed with respect to the Paperwork Reduction Act of 1980, as amended,[48] and found to contain no new or modified form, information collection and/or record keeping, labeling, disclosure, or record retention requirement, and will not increase or decrease the burden hours imposed on the public.

25. Accordingly, IT IS ORDERED, THAT the "Petition for Clarification and Reconsideration," filed by TA Associates, IS GRANTED to the extent described herein and IS OTHERWISE DENIED.

26. Authority for the actions taken herein is contained in Sections 4(i), 4(j), and 405 of the Communications Act of 1934, as amended.[49]

FEDERAL COMMUNICATIONS COMMISSION

William J. Tricarico
Secretary

FOOTNOTES

[1] *Request for Declaratory Ruling Concerning the Citizenship Requirements of Sections 310(b)(3) and (4) of the Communications Act of 1934, as amended*, 103 FCC 2d 511 (1985) [hereinafter referred to as *Declaratory Ruling*].

[2] 47 U.S.C. § 310(b) (1982).

[3] 47 U.S.C. § 310(b)(3)-(4) (1982). Section 310(b)(3) in effect prohibits the grant of a broadcast, common carrier, aeronautical en route or aeronautical fixed radio station license to, or possession of such licenses by: (1) an entity which has any alien officer or director or (2) an entity in which more than 20% of the equity is owned or voted by aliens. Section 310(b)(4) contains comparable but less stringent restrictions relating to the ownership or positional interests of aliens in entities directly or indirectly controlling a licensee. Under Section 310(b)(4), "if the Commission finds that the public interest will be served by the refusal or revocation of such license" [47 U.S.C. § 310(b)(4) (1982)], such companies are barred from having (1) an alien officer, (2) a Board of Directors in which aliens exceed 25%, or (3) aliens holding or voting more than 25% of the equity interest.

[4] In this *Memorandum Opinion and Order*, the term "non-limited partners" is defined to encompass both the partners in a partnership without limited partners and the general partners in a limited partnership.

[5] "Petition for Reconsideration and Clarification," filed by TA Associates (July 25, 1985) at 3 [hereinafter referred to as TA Associates Petition]. Asserting that its intention in acquiring these securities is not to control or to operate communications companies, TA Associates states that it "does not anticipate that it will be necessary to utilize the conversion feature . . . very often." *Id.* at 4.

[6] *Id.* at 5.

[7] 47 C.F.R. § 73.3555, Note 2(g) (1985). *See Reexamination of the Commission's Rules and Policies Regarding the Attribution of Ownership Interests in Broadcast, Cable Television and Newspaper Entities*, FCC 85-252 (released June 24, 1985), 50 Fed. Reg. 27438 (July 3, 1985) [hereinafter referred to as *Attribution Reconsideration Order*].

[8] TA Associates Petition, *supra* note 5 at 8.

[9] *Id.*

[10] *Id.* at 10. In the *Attribution Reconsideration Order*, the Commission stated that it would "scrutinize the close familial relationships" of a limited partner seeking an exemption from attribution. *Attribution Reconsideration Order, supra* note 7 at para. 50. While familial relationships are not addressed in any of the certification criteria suggested by the petitioner, we note that in its petition, TA Associates emphasized that the limited partnership agreements of the TA Funds comply fully with the insulation criteria established in the *Attribution Reconsideration Order*. TA Associates Petition, *supra* note 5 at 6-7. The petitioner also specifically represents that "none of TA's principals have any familial relationship with any of the aliens who have indirect ownership interests in the Funds." Id. at 6. Therefore, in addressing the matters raised by TA Associates, we shall assume that the certification procedure suggested by the petitioner would encompass all the insulation criteria established in the *Attribution Reconsideration Order*.

[11] Alien ownership issues arise in various contexts, including initial licensing and license renewal proceedings and applications for transfer or assignment. Licensees also confront the question of alien ownership in connection with filing annual ownership reports, FCC Form 323, as required by Section 73.3615 of the Commission's Rules.

[12] *Declaratory Ruling*, 103 FCC 2d at 524.

[13] The current statutory restrictions on alien ownership are derived from the Radio Act of 1927. Section 12 of that Act, inter alia, prohibited the grant or transfer of a license to "any company, corporation, or association of which . . . more than one-fifth of the capital stock may be voted by aliens . . . ." Radio Act of 1927, Pub. L. No. 69-632, § 12, 44 Stat. 1162, 1167 (1927), *reprinted in* Pike and Fischer Radio Regulation, Current Service at para. 20.12. When it adopted the Communications Act of 1934, Congress, inter alia, changed the scope of the statutory benchmark so that it applied to equity interests "owned of record *or* voted . . . by aliens." 47 U.S.C. § 310(a)(5) (1934) (emphasis supplied) [presently codified at 47 U.S.C. § 310(b)(3)-(4) (1982)]. See S. Rep. No. 781, 73rd Cong., 2d Sess. 7 (1934). We believe that the adoption of an independent restriction on equity ownership by aliens in addition to one relating to voting rights indicates a specific congressional concern about substantial equity investment by aliens. *See Declaratory Ruling*, 103 FCC 2d 517, 519, nn. 33, 37.

[14] In addition, as this approach is not based upon particularized facts, it would, a *fortiori*, preclude the Commission from assessing the cumulative impact of various types of relationships between an alien and the licensee.

[15] To the extent that the petitioner suggests that its status as a venture capitalist lends support for its approach to Section 310(b)(4), we disagree. The petitioner correctly points out that the Commission, in revising the attribution rules, expressly recognized that venture capital firms play a critical role in establishing and expanding new broadcast companies. *Reexamination of the Commission's Rules and Policies Regarding the Attribution of Ownership Interests in Broadcast, Cable Television and Newspaper Entities*, 97 FCC 2d 997, 1016 (1984), *recon. granted in part*, FCC 85-252 (released June 24, 1985), 50 Fed. Reg. 27438 (July 3, 1985) [hereinafter referred to as *Attribution Order*]. In that proceeding, however, the Commission declined to accord venture capitalists "passive investor" status or otherwise exempt them from the generally applicable five percent ownership benchmark. *Id.* at 1016-17.

[16] We note that, as a practical matter, certification similar to that proposed by TA Associates submitted in connection with an application or request for declaratory ruling would be a significant factor in the Commission's ultimate resolution of the public interest issue and would substantially ameliorate the time delay concerns expressed by TA Associates. *See* para. 5, *supra*.

[17] *Declaratory Ruling*, 103 FCC 2d at 521-22.

[18] Id. at 522. In contrast, the "multiplier" is not employed in connection with any link reflecting a majority stock interest, as it conveys actual control. *Id.* at 521-22.

[19] *Id.* at 522.

[20] In the *Attribution Order*, the Commission reasoned that:

> If the contingency upon which the conversion right rests is beyond the control of the stockholder, attribution is clearly not appropriate, as no power to control or influence is even arguable. However, even if the contingency is within the stockholder's power to effect and its exercise may be imminent, until the stockholder actually has the power to vote, he should not be able to exercise influence or control subject to our rules. A "threat" to convert stock in order to vote is an empty gesture if such conversion would put the stockholder in violation of the multiple ownership rules. If such a conversion would not violate the rules, reliance upon it to exert influence does not contravene the purpose of the multiple ownership rules.

Attribution Order, 97 FCC 2d at 1021 (footnote omitted).

[21] *See* 47 C.F.R. § 73.3555, Note 2(f) (1985).

[22] *Attribution Order*, 97 FCC 2d at 1020.

[23] As noted above, non-voting stock holdings and adequately insulated limited partnership interests are both nonattributable ownership interests. We believe that it is appropriate to apply the "multiplier" to non-voting stock interests in the same manner as it is used in calculating nonattributable limited partnership interests.

[24] 47 U.S.C. §§ 310(b)(3)-(4) (1982).

[25] *Dickerson v. New Banner Institute, Inc.*, 460 U.S. 103, 110 (1983).

[26] *North Dakota v. United States*, 460 U.S. 300, 312 (1983), *quoting Consumer Products Safety Commission v. GTE Sylvania, Inc.*, 447 U.S. 102, 108 (1980). *See American Tobacco Co. v. Patterson*, 456 U.S. 63, 68 (1982).

[27] *See, e.g., Warren v. King*, 108 U.S. 389 (1882).

> The [preferred] shares are shares of the capital stock of the company, though shares with different privileges from shares of common stock.
>
> . . . .
>
> [T]he preferred stock . . . is stock, and part of the capital stock, with the characteristics of capital stock.

108 U.S. at 396.

See also 11 W. Fletcher Cyclopedia of the Law of Private Corporations, §§ 5079 (capital stock), 5081 (stock), 5086 (classes of stock-common stock), and 5087 (preferred stock) (rev. perm. ed. 1986).

[28] *Delcaratory Ruling, supra* n.1 at n.42.

[29] TA Associates Petition at 12.

[30] While it is possible, as a theoretical matter, for the Commission to monitor every aspect of the financial relationship between the partners and the partnership to determine a "true" partnership share, this approach entails significant administrative burdens.

[31] *Declaratory Ruling, supra* n.1 at n.42.

[32] *Id.*

[33] As noted above, partnership share permits a greater amount of alien investment than a contribution based standard. If we were to adopt partnership share as a measure of ownership interest and subsequently determine that contribution is a more accurate measure, the licenses of those who relied upon the more liberal means of computing alien investment could be placed in jeopardy. In light of our stated willingness to reconsider this issue in light of experience, we believe it appropriate to adopt the more conservative alternative in order to prevent the potential for substantial business disruption.

[34] *See Declaratory Ruling*, 103 FCC 2d at 513-19.

[35] Id. at 520 n.43.

[36] "Petition for Reconsideration" filed by Wiley & Rein at 7 (emphasis omitted) [hereinafter referred to as Wiley & Rein Petition]. *See Attribution Order*, 97 FCC 2d at 1022.

[37] *E.g., Parks v. Riverside Insurance Company of America*, 308 F.2d 157 (10th Cir. 1962) [hereinafter referred to as *Parks]; Bernstein, Bernstein, Wile & Gorden v. Ross*, 22 Mich. App. 117, 177 N.W.2d 193 (1970) [hereinafter referred to as *Bernstein]*.

[38] *See Declaratory Ruling*, 103 FCC 2d at 520 n.43.

[39] The petitioner states that non-limited partners who meet the insulation criteria contained in the *Attribution Reconsideration Order* should be presumptively exempt from the scope of the alien officer and director proscriptions.

[40] *See Attribution Order*, 97 FCC 2d at 1025-26; 47 C.F.R. § 73.3555, Note 2(h) (1985).

[41] "A corporation . . . can only act through its directors chosen by the stockholders and its officers chosen by the directors. And the board of directors is the central power which authorizes the executive agents of the corporation to enter into contracts and embark upon new business ventures." Fletcher, *supra* note 27, Ch. 11 at § 505 (footnotes omitted).

[42] Unless they otherwise agree, under state law, partners in a partnership without limited partners jointly manage the business of the partnership. Unless the partnership agreement or state law provides otherwise, Section 18 of the Uniform Partnership Act states that all partners "have equal rights in the management and conduct of the partnership business." Uniform Partnership Act, § 18 (1914). Similarly, unless the partners otherwise agree, the Uniform Limited Partnership Act provides that "a general partner of a limited partnership has the rights and powers . . . of a partner in a partnership without limited partners." Uniform Limited Partnership Act, § 403 (1976). Therefore, as a general rule, it is the non-limited partners in a partnership who occupy positions analagous to those of corporate officers and directors.

[43] *See Elle v. Babbitt*, 259 Ore. 590, 488 P.2d 440 (1971); *Parks*, *supra* note 37; *Bernstein*, *supra* note 37.

[44] The petitioner states that:

> Because general partners are subject to unlimited liability for the debts and obligations thereof in any event, there generally is nothing to be gained by expressly limiting their managerial rights even if, in fact, they play no role in management. However, if such limitations on managerial authority will avoid application of the "officer or director" prohibitions of Section 310(b)(3), a general partner might consider accepting such limitations.

Wiley & Rein Petition *supra* note 36 at 7 n.6.

[45] The petitioner also requested the Commission to extend the "multiplier" to encompass "insulated" non-limited partnership interests. Because this request is apparently premised upon the exclusion of "insulated" non-limited partnership interests from the scope of the officer and director proscription, we believe that it is unnecessary to address this request.

[46] *A fortiori*, we decline to grant a statutory "exemption" to non-limited partners who contract to relinquish managerial power over matters relating to the licensee but who retain the power to actively participate in other aspects of the partnership's business.

[47] 47 C.F.R. § 73.3555, Note 2(h) (1985).

[48] Federal Paperwork Reduction Act, 44 U.S.C. § 3501-3520 (1984 Supp.).

[49] 47 U.S.C. §§ 154(i), 154(j), 405 (1982).