

impose any additional regulatory requirements on sources beyond those imposed by state law. A redesignation to attainment does not in and of itself create any new requirements, but rather results in the applicability of requirements contained in the CAA for areas that have been redesignated to attainment. Moreover, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, these proposed actions merely approve state law as meeting federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, these proposed actions:

- Are not "significant regulatory action[s]" subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- Do not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Are certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Do not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4);
- Do not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Are not economically significant regulatory actions based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Are not significant regulatory actions subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Are not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- Do not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this proposed rule does not have Tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because

the SIP is not approved to apply in Indian country located in the Commonwealth, and EPA notes that it will not impose substantial direct costs on Tribal governments or preempt Tribal law.

#### List of Subjects

##### 40 CFR Part 52

Environmental protection, Air pollution control, Intergovernmental relations, Reporting and recordkeeping requirements, and Particulate matter.

##### 40 CFR Part 81

Environmental protection, Air pollution control.

**Authority:** 42 U.S.C. 7401 *et seq.*

Dated: October 6, 2011.

#### A. Stanley Meiburg,

*Acting Regional Administrator, Region 4.*

[FR Doc. 2011-26773 Filed 10-20-11; 8:45 am]

**BILLING CODE 6560-50-P**

## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Parts 1 and 25

[IB Docket No. 11-133; FCC 11-121]

#### Review of Foreign Ownership Policies for Common Carrier and Aeronautical Radio Licensees

**AGENCY:** Federal Communications Commission.

**ACTION:** Proposed rule.

**SUMMARY:** In this document, the Commission is initiating a review of its policies and procedures that apply to foreign ownership of common carrier, aeronautical en route and aeronautical fixed radio station licensees. The Commission seeks to reduce to the extent possible the regulatory costs and burdens imposed on common carrier, aeronautical en route and aeronautical fixed radio station 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.

**DATES:** Submit comments on or before December 5, 2011, and replies on or before January 4, 2012. Written comments on the Paperwork Reduction Act (PRA) proposed information collection requirements must be submitted by the public, Office of

Management and Budget (OMB) and other interested parties on or before December 20, 2011.

**ADDRESSES:** You may submit comments, identified by Docket No. 11-133, by any of the following methods:

- *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the instructions for submitting comments.
- *Federal Communications Commission's ECFS Web site:* <http://fjallfoss.fcc.gov/ecfs2/>. Follow the instructions for submitting comments.
- *People with Disabilities:* Contact the FCC to request reasonable accommodations (accessible format documents, sign language interpreters, CART, *etc.*) by e-mail to [FCC504@fcc.gov](mailto:FCC504@fcc.gov), phone: 202-418-0530 (voice), tty: 202-418-0432.

In addition to filing comments as described above, a copy of any comments on the PRA information collection requirements contained herein should be submitted to the FCC via email to [PRA@fcc.gov](mailto:PRA@fcc.gov) and to Nicholas A. Fraser, OMB, via e-mail to [Nicholas\\_A\\_Fraser@omb.eop.gov](mailto:Nicholas_A_Fraser@omb.eop.gov) or via fax at 202-395-5167.

For detailed instructions on submitting comments and additional information on the rulemaking process, see the **SUPPLEMENTARY INFORMATION** section of this document.

**FOR FURTHER INFORMATION CONTACT:** Susan O'Connell or James Ball, Policy Division, International Bureau, FCC, (202) 418-1460 or via e-mail to [Susan.OConnell@fcc.gov](mailto:Susan.OConnell@fcc.gov), [James.Ball@fcc.gov](mailto:James.Ball@fcc.gov). On PRA matters, contact Cathy Williams, Office of the Managing Director, FCC, (202) 418-2918 or via e-mail to [Cathy.Williams@fcc.gov](mailto:Cathy.Williams@fcc.gov).

**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission's Notice of Proposed Rulemaking in IB Docket No. 11-133, FCC 11-121, adopted and released on August 9, 2011. The full text of this document is available for inspection and copying during normal business hours in the FCC Reference Center, 445 12th Street, SW., Washington, DC 20554. The document also is available for download over the Internet at [http://transition.fcc.gov/Daily\\_Releases/Daily\\_Business/2011/db0809/FCC-11-121A1.pdf](http://transition.fcc.gov/Daily_Releases/Daily_Business/2011/db0809/FCC-11-121A1.pdf). The complete text also may be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc. (BCPI), located in Room CY-B402, 445 12th Street, SW., Washington, DC 20554. Customers may contact BCPI at its Web site, <http://www.bcpweb.com>, or call 1-800-378-3160.

#### Comment Filing Procedures

Pursuant to §§ 1.415, 1.419, interested parties may file comments and reply

comments on or before the dates indicated above. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS). See *Electronic Filing of Documents in Rulemaking Proceedings*, 63 FR 24121 (1998).

- *Electronic Filers*: Comments may be filed electronically using the Internet by accessing the Commission's ECFS Web site at <http://fjallfoss.fcc.gov/ecfs2/>.

- *Paper Filers*: Parties who choose to file by paper must file an original and one copy of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, filers must submit two additional copies for each additional docket or rulemaking number. Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

- All hand-delivered or messenger-delivered paper filings for the Commission's Secretary must be delivered to FCC Headquarters at 445 12th St., SW., Room TW-A325, Washington, DC 20554. The filing hours are 8 a.m. to 7 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes and boxes must be disposed of *before* entering the building.

- Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743.

- U.S. Postal Service first-class, Express, and Priority mail must be addressed to 445 12th Street, SW., Washington, DC 20554.

### Summary of Notice of Proposed Rulemaking

1. The Notice of Proposed Rulemaking (NPRM) initiates a review of the policies and procedures of the Federal Communications Commission (Commission) that apply to foreign ownership of common carrier radio station licensees—*e.g.*, companies using wireless licenses to provide phone service—and of aeronautical en route and aeronautical fixed radio station licensees (together, aeronautical licensees) pursuant to section 310(b)(4) of the Communications Act of 1934, as amended (the Act), 47 U.S.C. 310(b)(4). For ease of reference, the NPRM refers to applicants, licensees, and spectrum lessees collectively as “licensees” unless the context warrants otherwise. “Spectrum lessees” are defined in

section 1.9003 of the Commission's rules, 47 CFR 1.9003.

2. The Commission seeks to reduce to the extent possible the regulatory costs and burdens imposed on wireless common carrier and aeronautical applicants, licensees, and spectrum lessees; provide greater transparency and more predictability with respect to the Commission's filing requirements and review process; and facilitate investment from new sources of capital, while continuing to protect important interests related to national security, law enforcement, foreign policy, and trade policy. The NPRM does not address Commission policies with respect to the application of section 310(b)(4) to broadcast licensees.

3. The Commission seeks comment in the NPRM on measures to revise and simplify the agency's regulatory framework under section 310(b)(4) for authorizing foreign ownership of common carrier and aeronautical radio licensees. The Commission also proposes to codify whatever measures it ultimately adopts to provide more predictability and ensure transparency of the section 310(b)(4) filing requirements and review process. The Commission estimates that adopting the proposals and other options discussed in the NPRM would result in a more than 70 percent reduction in the number of section 310(b)(4) petitions for declaratory ruling filed with the Commission annually, as compared to the current regulatory framework. The Commission also anticipates a reduction in the time and expense associated with filing petitions under the proposed framework.

4. Section 310(b)(4) of the Act establishes a 25 percent benchmark for investment by foreign individuals, corporations, and governments in U.S.-organized entities that directly or indirectly control a U.S. broadcast, common carrier, or aeronautical radio station licensee. This section also grants the Commission discretion to allow higher levels of foreign ownership of a controlling U.S.-organized parent company—up to and including 100 percent of its equity and voting interests—unless the Commission finds that such ownership is inconsistent with the public interest. Licensees must request Commission approval of their U.S. parents' foreign ownership under section 310(b)(4), normally done by filing a petition for declaratory ruling with the agency. In order for the Commission to make the required public interest findings, licensees must file the petition and obtain Commission approval *before* direct or indirect

foreign ownership of their U.S. parent companies exceeds 25 percent.

5. In the 1997 *Foreign Participation Order*, the Commission concluded that the public interest would be served by permitting greater investment in U.S. common carrier and aeronautical radio licensees by foreign individuals and entities from countries that are Members of the World Trade Organization (WTO) pursuant to the discretionary authority in section 310(b)(4).<sup>1</sup> The Commission adopted a rebuttable presumption by which it presumes that foreign investment from WTO Member countries does not pose competitive concerns in the U.S. market. For purposes of determining whether foreign investors are based in WTO Member countries, the Commission uses the “principal place of business” test to determine the nationality or “home market” of foreign entities that seek to invest directly or indirectly in the U.S. parent of a common carrier or aeronautical radio licensee. The Commission's public interest analysis under section 310(b)(4) also considers any national security, law enforcement, foreign policy or trade policy concerns raised by the proposed foreign investment. In assessing the public interest, the Commission takes into account the record developed in each particular case and accords deference to the expertise of Executive Branch agencies in identifying and interpreting issues of concern related to national security, law enforcement, foreign policy and trade policy.

6. With respect to foreign investment from countries that are not Members of the WTO, the Commission determined in the *Foreign Participation Order* to continue to apply the “effective competitive opportunities” (ECO) test, adopted in the 1995 *Foreign Carrier Entry Order*, as part of the Commission's public interest analysis under section 310(b)(4).<sup>2</sup> Thus, to the extent non-WTO Member investment in the controlling U.S. parent of a common carrier or aeronautical radio licensee would exceed 25 percent, the Commission requires the petitioner to submit an ECO showing for the relevant wireless service sector in each non-WTO Member country where an investor has its home market. The Commission

<sup>1</sup> See *Rules and Policies on Foreign Participation in the U.S. Telecommunications Market: Market Entry and Regulation of Foreign-Affiliated Entities*, IB Docket No. 97-142 and 95-22, Report and Order and Order on Reconsideration, 12 FCC Rcd 23891, 23893-97, paras. 1-12, 23935-42, paras. 97-118 (1997) (*Foreign Participation Order*).

<sup>2</sup> See *Market Entry and Regulation of Foreign-Affiliated Entities*, IB Docket No. 95-22, Report and Order, 11 FCC Rcd 3873, 3941-64, paras. 179-238 (1995) (*Foreign Carrier Entry Order*).

found in the *Foreign Participation Order* that the circumstances that existed when it adopted the *Foreign Carrier Entry Order* had not changed sufficiently with respect to countries that were not Members of the WTO, as the markets of non-WTO Members, in almost all cases, were not liberalized and presented legal and practical barriers to entry. Thus, the Commission determined that it would deny an application if it found that more than 25 percent of the ownership of an entity that controls a common carrier or aeronautical radio licensee is attributable to parties whose principal place(s) of business are in non-WTO Member countries that do not offer effective competitive opportunities to U.S. investors in the particular service sector in which the applicant seeks to compete in the U.S. market, unless other public interest considerations outweigh that finding. The Commission concluded that its goals of increasing competition in the U.S. telecommunications service market and opening foreign telecommunications service markets would continue to be served by opening the U.S. market to non-WTO investors only to the extent that the investors' home markets are open to U.S. investors.

#### **Proposals and Other Options To Modify Current Regulatory Framework**

7. *The Distinction Between WTO and non-WTO Investment.* The Commission requests comment whether there is a policy basis for retaining the distinction between WTO and non-WTO Member investment in its current form, modifying the Commission's application of the distinction, or eliminating the distinction. The Commission asks commenters to identify changes that have occurred in U.S. and foreign wireless telecommunications markets since 1997 that support their position. In particular, the Commission seeks comment on the extent of foreign ownership in the U.S. telecommunications market today and the trends over the last several years. The Commission also seeks comment on the relative costs and benefits of maintaining the current distinction between WTO and non-WTO Member investment. Specifically, the Commission asks commenters to provide for the record quantification of the costs and burdens currently associated with filing a section 310(b)(4) petition, complying with the limitations of the section 310(b)(4) declaratory ruling, and the extent to which a change in policy would result in cost savings to U.S. wireless carriers and consumers. The Commission also asks commenters

to address to what extent any costs and burdens have either deterred foreign investment or added significant transaction costs to the flow of such investments.

8. If the Commission were to eliminate the distinction between WTO and non-WTO Member investment, a U.S. wireless carrier would no longer be required to demonstrate in its section 310(b)(4) petition that non-WTO Member investment in its U.S.-organized parent company does not exceed 25 percent or, alternatively, that non-WTO Member investment is from countries that satisfy the ECO test. The Commission would presume, subject to rebuttal, that direct or indirect foreign ownership of a wireless carrier's U.S. parent company does not pose competitive concerns in the U.S. market regardless of the nationality (in the case of an individual) or principal place(s) of business (in the case of a business entity) of the U.S. parent's foreign investor(s). The Commission seeks comment on whether it is prudent to presume that non-WTO Member investment in U.S. parent companies does not raise competitive concerns in the U.S. market and the circumstances, if any, that would allow the leveraging of market power in foreign telecommunications services or facilities into U.S. wireless markets.

9. Commenters should also address whether maintaining the distinction between WTO and non-WTO Member investment, including the ECO test, focuses Commission resources on the most pressing international competitive concerns, and whether eliminating the distinction between WTO and non-WTO Member investment and the ECO test would produce net public interest benefits by reducing asymmetries in regulation of wireless and wireline carriers, which are not subject to the foreign ownership restrictions in section 310(b) except to the extent they hold a common carrier radio license.

10. The Commission does not propose to change its long-standing requirement that applies to a licensee's determination of basic compliance with the 25 percent statutory benchmark in section 310(b)(4). In making that determination, licensees and their U.S. parent companies are required to count all equity and voting interests held in the U.S. parent, including interests held indirectly in the parent through intermediate companies. The agency seeks comment, however, on whether there are ways to reduce the costs and burdens of ascertaining the level of non-WTO investment in U.S. parent companies while continuing to support the agency's objectives to promote

competition in the U.S. market and encourage market-opening in non-WTO Member countries. In particular, the Commission requests comment on allowing U.S. parent companies filing section 310(b)(4) petitions to exclude from their calculations of non-WTO investment those equity and voting interests that are held by a single non-WTO investor or "group" of non-WTO investors in an amount that constitutes 5 percent or less of the U.S. parent company's total capital stock (equity) and/or voting stock. Should the Commission continue to issue section 310(b)(4) rulings subject to the standard condition that prohibits the U.S. parent from accepting non-WTO investment that exceeds, in the aggregate, 25 percent of the U.S. parent's equity interests or 25 percent of its voting interests? If so, should the Commission allow the U.S. parent to exclude from the 25 percent amount those equity and voting interests that are held by a single non-WTO investor or "group" of non-WTO investors in an amount that constitutes 5 percent or less of the U.S. parent company's total capital stock (equity) and/or voting stock?

11. The Commission asks whether it should treat two or more non-WTO investors as a "group" when the investors have agreed to act together for the purpose of acquiring, holding, voting, or disposing of their equity and/or voting interests in the U.S. parent company or any intermediate company(ies) through which any of the investors holds its interests in the U.S. parent. As part of such an approach, should the Commission subject any individual or entity that, directly or indirectly, creates or uses a trust, proxy, power of attorney, or any other contract, arrangement, or device with the purpose of divesting itself, or preventing the vesting, of an equity interest or voting interest in the U.S. parent as part of a plan or scheme to evade the application of our policies that apply to non-WTO investment under section 310(b)(4) to enforcement action by the Commission, including an order requiring divestiture of the investor's direct or indirect interests in the U.S. parent? Should a 5 percent or less exclusion for non-WTO investments apply only when the U.S. parent or an entity that controls the U.S. parent is a publicly-traded company, or also when they are privately-held companies?

12. The Commission requests comment on whether a 5 percent or less exclusion would allow the Commission to adequately screen and potentially disallow non-WTO investment that may be contrary to the public interest; or would the exclusion amount be more

properly set at some other level? Are there ways to simplify the principal place of business test? Alternatively, should the agency eliminate the test in favor of a different approach? The Commission also seeks input on whether it is feasible and desirable to modify the ECO test to acknowledge and further encourage the efforts of non-WTO Member countries to open their markets to foreign investment and competition.

13. Regardless of whether the Commission retains the current distinction between WTO and non-WTO Member investment in a modified form or eliminates the distinction, it would continue to coordinate all section 310(b)(4) petitions with the appropriate Executive Branch agencies and accord deference to their views in matters related to national security, law enforcement, foreign policy, or trade policy that may be raised by a particular transaction. The Commission does not propose to adopt any change in policy that would affect the Commission's ability to condition or disallow foreign investment that may pose a risk of harm to important national policies.

14. *Issuing Section 310(b)(4) Rulings to the Licensee's U.S. Parent.* The Commission proposes to issue section 310(b)(4) rulings in the name of the controlling U.S. parent company of the licensee(s) that are the subject of the petition. Where there are successive, controlling U.S. parent companies in the vertical ownership chain of the licensee, it proposes to issue the ruling in the name of the lowest-tier, controlling U.S. parent. The Commission makes this proposal to ensure that it issues the foreign ownership ruling to the particular entity whose aggregate, direct and/or indirect foreign ownership would trigger the applicability of section 310(b)(4) to the extent it exceeds 25 percent, based on the company's ownership structure at the time the ruling is granted, and to accommodate other aspects of the proposed framework, such as allowing the U.S. parent's ruling to cover automatically any of its subsidiaries or affiliates.

15. *Approval of Named Foreign Investors.* The Commission proposes to continue to entertain petitions that request authority for foreign individual(s) and entity(ies) named in the petition to hold specified percentages of equity and/or voting interests in the U.S. parent whether directly or indirectly through intervening U.S.-organized entities. It proposes several key changes to the current framework for authorizing ownership of the U.S. parent by named foreign investors and by other potential

foreign investors, to reduce the need for U.S. parent companies to return to the Commission, *after* receiving an initial ruling, to obtain prior approval for subsequent changes in their foreign ownership (including increased interests by foreign investors that the Commission already has approved in the initial ruling and interests to be acquired by new foreign investors).

16. The proposed rules would require a U.S. parent company to include in its section 310(b)(4) petition a request for specific approval of any named foreign individual or entity that holds, or would hold upon closing of any transactions contemplated by the petition, a direct or indirect equity and/or voting interest in the U.S. parent in excess of 25 percent or a controlling interest at any level. The U.S. parent would be required to monitor and stay ahead of changes in ownership of its approved foreign investors to ensure that the parent has an opportunity to obtain Commission approval before a change in ownership of an approved investor results in an unapproved investor acquiring an indirect interest in the U.S. parent that exceeds 25 percent. As is the case under the current regulatory framework, the proposed framework may necessitate the placement of restrictions in the bylaws or other organic documents of the controlling U.S. parent and/or other entities situated above it in the vertical chain of ownership to ensure the parent is able to comply with the terms of its section 310(b)(4) ruling. The Commission seeks comment on this aspect of the proposed framework, including whether it would present any new issues for U.S. common carrier and aeronautical radio licensees. It also requests comment on whether the proposal would be consistent with the statute. To the extent this proposal raises concern regarding the Commission's ability to monitor foreign investment in regulated entities, the Commission seeks comment on how it should modify the proposed framework.

17. The Commission proposes to provide the petitioning U.S. parent with the option of requesting specific approval for any named foreign investor to increase its equity and/or voting interests in the U.S. parent from existing levels (or levels that would exist upon closing of any related transactions) up to a non-controlling, 49.99 percent equity and/or voting interest (the "49.99 percent approval option for named foreign investors"). It requests comment on this option and specifically seeks input whether, once it has reviewed and approved foreign ownership of a licensee's U.S. parent by a named foreign investor after coordination with

relevant Executive Branch agencies, there is any public interest reason for the Commission to scrutinize additional investments by the same foreign individual or entity where the investment would not effectuate a transfer of control of the licensee. Commenters who oppose this approach should specify the potential harms such an approach may pose. Would the 49.99 percent approval option encourage the filing of speculative requests to the extent that the resulting administrative costs and burdens on the Commission and relevant Executive Branch agencies would outweigh the potential benefits to U.S. carriers and consumers? Or, are there reasons why a U.S. parent should only request 49.99 percent approval for a particular named foreign investor where the carrier has a reasonable expectation of needing such approval? Would this option increase the likelihood of unauthorized transfers of control because *de facto* control may be implicated at ownership levels below 49.99 percent depending on the distribution of other shares? To the extent that foreign investment raises unique issues with regard to potential unauthorized transfers of control, what mechanisms, if any, could the Commission adopt or are already in place to minimize such transfers in the event it adopts the 49.99 percent approval option?

18. The Commission also seeks comment on its proposal to provide foreign transferees with the option of seeking approval at the outset, in the section 310(b)(4) petition that is filed in connection with a transfer of control application, to acquire 100 percent of the equity and/or voting interests in the licensee's U.S. parent company (the "100 percent approval option for controlling foreign investors").

19. *The Aggregate Allowance for Unnamed Foreign Investors.* The Commission seeks comment on whether, in addition to approving ownership interests held or to be held directly or indirectly in the U.S. parent by named foreign investors for which the petition requests specific approval, it should, as a general rule, authorize the U.S. parent to have, on a going-forward basis, 100 percent aggregate foreign ownership, including by foreign investors for which the parent did not request specific approval in its petition, *provided that* no single foreign investor or "group" of foreign investors acquires, directly or indirectly, an ownership interest that exceeds 25 percent of the parent's equity interests or 25 percent of its voting interests, or a controlling interests at any level, without the Commission's prior approval. In recent

rulings, the Commission and its International Bureau have permitted 100 percent aggregate foreign ownership of U.S. parent companies subject to a 25 percent ceiling on interests acquired by a single foreign investor and the aggregate 25 percent limit on non-WTO investment. The Commission is not aware of any problems that have resulted from this approach or objections raised in the context of any particular proceedings. If the Commission determines to retain the current distinction between WTO and non-WTO Member investment, the Commission would continue to condition the ruling to require that non-WTO investment not exceed, directly or indirectly, in the aggregate, 25 percent of the U.S. parent's equity interests or 25 percent of its voting interests without prior Commission approval.

20. The Commission recognizes that, if it were to adopt such a 100 percent aggregate allowance, the 25 percent aggregate allowance that it currently includes in section 310(b)(4) rulings would effectively increase to 100 percent. It seeks comment on any burdens the current 25 percent allowance may impose on U.S. wireless carriers and whether it can mitigate any such burdens by increasing the allowance in a manner that would not compromise its statutory obligations under the Act. For example, if the Commission were to adopt a 100 percent aggregate allowance, should it provide public notice and an opportunity for comment when a foreign investor's interest would increase from a minority to a majority interest? Or, is it sufficient to rely on the Commission review process that would take place pursuant to section 310(d) of the Act, 47 U.S.C. 310(d)? The Commission requests that commenters also address whether it should apply a 100 percent aggregate allowance only to publicly-traded companies or also to privately-held companies. In addition, the Commission seeks input on the feasibility of applying a 25 percent allowance to a U.S. parent that is wholly owned and controlled by a foreign public company that is traded only on foreign exchanges and that is owned substantially by foreign citizens and entities. Is it possible for such foreign public companies to comply with a 25 percent allowance? Other than including a 100 percent allowance in the U.S. parent's section 310(b)(4) ruling in these circumstances, is there another way to address the possibility that the foreign company may be wholly foreign owned on any given day? If there is no alternative to using a 100 percent

allowance in such a case, is there a policy basis for applying a more restrictive 25 percent allowance to U.S. parents that are owned in whole or in part by U.S. public companies? Would such an approach have the effect of treating foreign companies more favorably than U.S. companies? The Commission requests comment on each of these questions. It also seeks comment whether, if it were to adopt a 100 percent aggregate allowance, it should include it in the petitioning U.S. parent's section 310(b)(4) ruling regardless of whether, under the proposed rules, the U.S. parent is required to, or otherwise chooses to, request specific approval for any named foreign investors.

21. The Commission requests comment whether it should adopt a non-controlling, 25 percent standard for triggering prior approval of new or increased foreign investment by a foreign individual or entity, or by a "group" of foreign investors, that has not received specific approval in the U.S. parent's foreign ownership ruling. An investment greater than 25 percent may confer upon a foreign investor substantial influence over the core operations of a U.S. carrier and thus may warrant imposing additional conditions on the operations of the U.S. parent and licensee or disallowing the investment in whole or in part. At the same time, it would appear that the potential for harm from a non-controlling interest at an equity and/or voting level of 25 percent or less can be addressed sufficiently at the time of the initial grant of the parent's ruling through the negotiation of a security agreement or similar arrangement between the U.S. parent and relevant Executive Branch agencies and pursuant to the Commission's authority to impose conditions on a ruling where the Commission deems it is warranted in the public interest.

22. *Expanding Beyond Carrier-Specific Rulings.* The Commission currently issues foreign ownership rulings to cover only the licensee(s) named in the underlying petition. An affiliated entity must submit its own petition for declaratory ruling pursuant to section 310(b)(4). Similarly, where a licensee is the subject of a transfer of control application under section 310(d) of the Act, the fact that the Commission previously has approved the transferee's foreign ownership does not relieve the transferee of the obligation to obtain section 310(b)(4) approval in the name of licensees in which it proposes to acquire a controlling interest.

23. The Commission proposes to issue section 310(b)(4) rulings in the name of

the U.S. parent of the licensee(s) that are the subject of the petition, but also to provide for automatic extension of the U.S. parent's ruling to cover any subsidiary or affiliate of the U.S. parent, whether existing at the time of the ruling or formed or acquired subsequently. It would define "subsidiary or affiliate" as an entity that is wholly owned and controlled by, or is under 100 percent common ownership and control with, the U.S. parent. Any subsidiary or affiliate of the U.S. parent, as so defined, would be covered by the parent's ruling, *provided that* the U.S. parent remains in compliance with the terms of its ruling(s). The Commission proposes to require that a subsidiary or affiliate attach to any common carrier or aeronautical wireless application a certification, signed by the U.S. parent, stating that the U.S. parent is in compliance with the terms and conditions of its section 310(b)(4) ruling(s) and providing citations to the ruling(s). The Commission also proposes to extend automatically the U.S. parent's section 310(b)(4) ruling to cover successors-in-interest to the parent, *provided that* foreign ownership of any such successors-in-interest complies with the terms of the ruling. The Commission proposes to require that successors-in-interest notify it within 30 days of the reorganization. The Commission requests comment on these two automatic extension proposals. In particular, are they likely to achieve the intended purpose of reducing the number of section 310(b)(4) petitions that wireless carriers must file under current procedures?

24. *Introducing New Foreign-Organized Entities into the Vertical Ownership Chain.* A controlling U.S. parent of a licensee may itself have one or more controlling foreign-organized companies situated above it in the vertical chain of ownership, and new foreign-organized parent companies may be added to the vertical chain of ownership over time as a result of internal reorganizations. The Commission seeks input on whether it should permit the insertion of new, controlling foreign-organized companies at any level in the vertical ownership chain above the U.S. parent that has received a foreign ownership ruling without prior Commission approval, *provided that* any new foreign-organized company(ies), either alone or together, are under 100 percent common ownership and control with the controlling foreign parent for which the U.S. parent has received prior Commission approval. The Commission

also requests comment on whether it should permit a U.S. parent company's approved, non-controlling foreign investors to insert new, foreign-organized companies into their vertical chains of ownership without the U.S. parent having to return to the Commission for prior approval, provided that the new foreign company is under 100 percent common ownership and control with the approved foreign investor. It requests comment on the costs and benefits of allowing foreign-organized companies to be introduced into the vertical ownership chains of the U.S. parent company and its approved, non-controlling foreign investors without prior approval once the Commission has issued the U.S. parent a section 310(b)(4) ruling. If the Commission determines to allow such post-ruling changes in foreign ownership, should it require the U.S. parent company to notify the Commission about the changes in ownership and, if so, would 30 days be a reasonable timeframe within which to require the U.S. parent to notify the Commission?

25. *Service- and Geographic-Specific Rulings.* The Commission requests comment on whether to retain its general practice of issuing rulings on a service-specific and geographic-specific basis. Section 310(b)(4) rulings typically cover only the particular wireless service(s) referenced in the petition for declaratory ruling, and the scope of the ruling may also be limited to the geographic service area of the licenses or spectrum leasing arrangements referenced in the petition. The Commission has previously recognized, in the *Secondary Markets Second Report and Order*, that service-specific and geographic-specific rulings might require carriers to make multiple filings for section 310(b)(4) approval, resulting in increased transaction costs and regulatory delay.<sup>3</sup> The Commission found that a policy of entertaining petitions that seek "blanket" approval, under section 310(b)(4), to cover future spectrum leasing arrangements and license assignments/transfers for services and geographic coverage areas specified in the petition would eliminate unnecessary regulatory hurdles for carriers seeking maximum flexibility to expand the scope of their

service offerings, while continuing to ensure that the Commission and the Executive Branch have a meaningful opportunity to review applications and petitions for potential harms to national security, law enforcement, foreign policy and trade policy. The Commission seeks input on the public interest costs and benefits of issuing section 310(b)(4) rulings on a service-specific basis; and, similarly, on the costs and benefits of issuing section 310(b)(4) rulings on a geographic-specific basis. It requests that comments that advocate a change in policy include specific proposals as to the appropriate service and geographic limitations of section 310(b)(4) rulings, if any.

26. *Contents of Section 310(b)(4) Petitions for Declaratory Rulings.* The Commission proposes to require that all section 310(b)(4) petitions contain the name, address, citizenship, and principal places of business 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 company or a controlling interest at any level. Petitioners also would be required to provide the percentage of equity and/or voting interests held or to be held by each such "disclosable interest holder" (to the nearest one percent). The Commission proposes a 10 percent ownership threshold for its disclosure requirement because it essentially mirrors the ownership disclosure requirements that currently apply to most common carrier wireless applicants under the Commission's licensing rules. A foreign investor holding a non-controlling equity and/or voting interest of less than 10 percent in the U.S. parent would not need to be identified in the petition, unless the parent seeks specific approval for that investor (as a "named foreign investor"). The Commission seeks comment on the proposed ownership disclosure requirement. It also seeks comment on whether a lower ownership percentage disclosure threshold, such as an interest that exceeds 5 percent, may be appropriate. Additionally, it seeks input on whether to require a description of the control structure of the U.S. parent, including an ownership diagram and/or identification of the real party-in-interest disclosed in any companion licensing or spectrum leasing applications.

27. The Commission also proposes that section 310(b)(4) petitions include ownership information for each foreign individual or entity for which the

petition seeks specific approval: Its name, citizenship, principal business(es), and the percentage of equity and/or voting interest held or to be held by the foreign investor (to the nearest one percent). It proposes that, where the named foreign investor is a corporation or other business entity, the petitioner shall identify each of the named foreign investor's direct or indirect 10 percent interest holders, specifying each by name, citizenship, principal business(es), and percentage of equity and/or voting interest held in the named foreign investor. The Commission believes that this ownership information is necessary for it to verify the identity and ultimate control of the foreign investor for which the petitioner seeks specific approval. It seeks comment on these proposed information collection requirements, including whether to set the proposed disclosure threshold at interests of more than 5 percent. The Commission believes that it will be particularly critical to obtain ownership information with respect to foreign investors for which a U.S. parent seeks specific approval to the extent the agency adopts its proposal to entertain a U.S. parent's request for approval to allow one or more named foreign investors to increase its interest in the U.S. parent up to and including a non-controlling 49.99 percent equity and/or voting interest.

28. The Commission proposes to adopt rules that set forth the methodology for calculating a petitioner's disclosable interest holders. It also proposes that petitioners requesting specific approval for named foreign investors use the same methodology to calculate the foreign investors' equity and voting interests in the U.S. parent. The proposed rules largely track the methodology articulated in the *Foreign Ownership Guidelines* for determining the level of foreign equity and voting interests that are held directly and/or indirectly in the U.S. parent of a common carrier or aeronautical licensee that is the subject of a section 310(b)(4) petition.<sup>4</sup>

29. That is, in calculating foreign equity interests in a parent company, the Commission uses a multiplier to dilute the percentage of each investor's equity interest in the parent when those interests are held through intervening companies, regardless of whether any particular link in the chain represents a controlling interest in the company positioned in the next lower tier. By

<sup>3</sup> See *Promoting Efficient Use of Spectrum Through Elimination of Barriers to the Development of Secondary Markets, Second Report and Order, Order on Reconsideration, and Second Further Notice of Proposed Rulemaking*, FCC 04-167, 19 FCC Rcd 17503, 17515, para. 22 (2004) (*Secondary Markets Second Report and Order*), Second Order on Reconsideration, FCC 08-243, 23 FCC Rcd 15081 (2008).

<sup>4</sup> See *Foreign Ownership Guidelines for FCC Common Carrier and Aeronautical Radio Licenses*, 19 FCC Rcd 22612, 22627-31 (Int'l Bur. 2004), erratum, 21 FCC Rcd 6484 (*Foreign Ownership Guidelines*), pet. for recon. pending.

contrast, in calculating foreign voting interests in a parent company, the multiplier is not applied to any link in the vertical ownership chain that constitutes a controlling interest in the company positioned in the next lower tier.

30. In circumstances where voting interests in the U.S. parent are held through one or more intervening partnerships, the multiplier is not applied to dilute a general partnership interest or uninsulated limited partnership interest held by a foreign individual or entity. A general partner, and a limited partner that does not specifically demonstrate it is insulated from active involvement in partnership affairs, are considered to hold the same voting interest as the partnership holds in the company situated in the next lower tier of the vertical ownership chain. Where a foreign investor holds an ownership interest indirectly in the U.S. parent through an intervening limited partnership, and the investor is effectively insulated from active involvement in partnership affairs, the U.S. parent may apply the multiplier in calculating the foreign investor's voting interest in the U.S. parent under section 310(b)(4), and its voting interest will be calculated as equal to its equity interest in the U.S. parent. Similarly, where the U.S. parent is itself organized as a limited partnership, an insulated limited partner's voting interest in the U.S. parent will be calculated as equal to the limited partner's equity interest in the parent. A limited partnership interest will be treated as insulated where the section 310(b)(4) petition contains a showing that the foreign limited partner is prohibited by the relevant partnership agreement from participating in the day-to-day management of the partnership, and that only the usual and customary investor protections are contained in the limited partnership agreement.

31. The Commission requests comment on the proposed rules for calculating the equity and voting interests held, or to be held, in a petitioner by its disclosable interest holders and by foreign investors for which the petitioner requests specific approval. In particular, it requests comment on whether to revise its current methodology for calculating voting interests held in U.S. parent companies of common carrier or aeronautical licensees through intervening limited partnerships. It also requests comment on the appropriate methodology for calculating voting interests held in U.S. parent companies of common carrier or aeronautical licensees through intervening limited

liability companies, an issue not addressed in the *Foreign Ownership Guidelines*.

32. The Commission additionally requests comment on whether the insulation standard that applies to foreign limited partners investing in U.S. parents of common carrier and aeronautical licensees is sufficient to support a presumption that an insulated limited partner will not be materially involved in managing partnership affairs. To the extent such a presumption holds true, would it justify treating the limited partner as having no voting interest in the limited partnership under section 310(b)(4), effectively treating the limited partner like a non-voting stockholder of a corporation? Is there a need to relax or clarify the insulation standard: *e.g.*, to require insulation only with respect to the telecommunications-related businesses of the partnership? Alternatively, is there a perceived legal or policy reason to tighten the insulation standard, particularly if the agency determines to treat insulated limited partnership interests like non-voting stock interests? For example, should the Commission codify in its rules a list of investor protections which would not, in themselves, result in a limited partner being deemed uninsulated? Are the matters listed in proposed rule 47 CFR 1.993(c) underinclusive or overinclusive of matters properly considered to be usual and customary investor protections? Regardless of its determination on this issue, the Commission would continue to calculate the *pro rata* equity holdings of insulated limited partners investing in a U.S. parent directly, where the parent is itself organized as a limited partnership, or indirectly through intervening limited partnerships, as required by section 310(b)(4).

33. The Commission also requests comment as to how it should calculate the voting interests held in U.S. parent companies of common carrier or aeronautical licensees through intervening limited liability companies (and, to the extent they may be used, registered limited liability partnerships). The Commission has previously determined, in the context of its broadcast attribution rules, to treat limited liability companies in the same manner as limited partnerships and has declined to differentiate its treatment of limited liability companies based on whether their management form is centralized or decentralized. It also concluded that it would treat registered limited liability partnerships in the same manner as limited partnerships and limited liability companies. The

Commission asks that commenters address whether the Commission should apply to limited liability companies and registered limited liability partnerships the same principles that it ultimately adopts for calculating voting interests in limited partnerships.

34. The Commission additionally requests comment whether it is reasonable for it to rely on a petitioner's certification that it has calculated the ownership interests disclosed in its petition based upon its review of the Commission's rules and that the interests disclosed satisfy each of the pertinent standards and criteria required by the rules. The Commission preliminarily finds that it is reasonable to adopt a certification approach in the context of its section 310(b)(4) ownership disclosure rules, and it seeks comment on the draft certification that is included in the proposed rules. Finally, the Commission requests comment regarding the nature of any other information which the Commission should require to be submitted in support of section 310(b)(4) petitions.

35. *Filing and Processing of Section 310(b)(4) Petitions for Declaratory Rulings.* The Commission proposes to continue to: place section 310(b)(4) petitions on public notice as accepted for filing after International Bureau staff has reviewed each petition for completeness; ensure that the appropriate Executive Branch agencies receive a copy of each petition; act on each petition after the Executive Branch agencies have completed their review and in light of any comments or objections that the agencies or other interested parties file for the record; and, unless it otherwise specifies in the ruling, issue the ruling subject to the standard terms and conditions that it adopts in this proceeding and codifies in the Commission's rules. The Commission asks whether it should retain its current approach to streamlining section 310(b)(4) petitions. In particular, it seeks input on whether extending the streamlined processing procedures is likely to result in more efficient and timely Commission processing of section 310(b)(4) petitions while continuing to ensure that Executive Branch agencies have sufficient opportunity to engage in a meaningful review. Finally, it seeks comment on whether there may be additional ways to accelerate the section 310(b)(4) review process. It asks commenters addressing ideas for modernizing the current process to discuss how any new approach would

affect the Commission's public interest review.

36. *Continued Compliance with Section 310(b)(4) Declaratory Rulings.* The Commission requests comment on whether to require the U.S. parent to file a periodic certification with the Commission to demonstrate the parent is in compliance with its foreign ownership ruling. The agency asks whether to require a certification every 4 years after the anniversary of the effective date of the ruling or, alternatively, with a licensee's renewal applications.

37. *Transition Issues.* The Commission does not propose to change retroactively the terms and conditions of any section 310(b)(4) ruling issued prior to the effective date of the rules adopted in this proceeding. It proposes to permit the controlling U.S. parent company of a wireless carrier with an existing ruling to file a new petition under the rules adopted in this proceeding. It seeks comment on this approach and on alternative approaches that would extend the benefits of the rules in a way that minimizes the need for U.S. parent companies to return to the Commission for a new ruling. For example, if the Commission modifies or eliminates current policy with respect to non-WTO Member investment, should it adopt a rule that modifies all existing section 310(b)(4) rulings to incorporate the new policy? If the Commission adopts a 100 percent aggregate allowance, should it adopt a rule that would incorporate this provision in all rulings in place of the current, standard 25 percent aggregate allowance? Are there public policy reasons to require in all cases that a U.S. parent company return to the Commission for a new ruling to obtain the benefits of the rules adopted in this proceeding?

#### **Paperwork Reduction Act of 1995 Analysis**

38. This document contains proposed new or modified information collection requirements. The Commission, as part of its continuing effort to reduce paperwork burdens, invites the general public and the Office of Management and Budget (OMB) to comment on the information collection requirements contained in this document, as required by the Paperwork Reduction Act of 1995, Public Law 104-13. Public and agency comments are due on or before December 20, 2011. Comments should address: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the

Commission's burden estimates; (c) ways to enhance the quality, utility, and clarity of the information collected; (d) ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology; and (e) ways to further reduce the information collection burden on small business concerns with fewer than 25 employees. In addition, pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107-198, see 44 U.S.C. 3506(c)(4), we seek specific comment on how we might further reduce the information collection burden for small business concerns with fewer than 25 employees.

39. To view a copy of this information collection request (ICR) submitted to OMB: (1) Go to the web page <http://www.reginfo.gov/public/do/PRAMain>, (2) look for the section of the Web page called "Currently Under Review," (3) click on the downward-pointing arrow in the "Select Agency" box below the "Currently Under Review" heading, (4) select "Federal Communications Commission" (FCC) from the list of agencies presented in the "Select Agency" box, (5) click the "Submit" button to the right of the "Select Agency" box, and (6) when the list of FCC ICRs currently under review appears, look for the title of this ICR and then click on the ICR Reference Number. A copy of the FCC submission to OMB will be displayed.

40. The proposed information collection requirements are as follows:

*OMB Control Number:* 3060-xxxx.

*Title:* Regulations Applicable to Common Carrier and Aeronautical Radio Licensees Under Section 310(b)(4) of the Communications Act of 1934, as Amended.

*Form No.:* N/A.

*Type of Review:* New Collection.

*Respondents:* Businesses or other profit entities.

*Number of Respondents and*

*Responses:* 79 respondents and 79 responses.

*Estimated Time per Response:* 1 hour to 46 hours.

*Frequency of Response:* On occasion and one-time reporting requirements.

*Obligation to Respond:* Required to obtain or retain benefits. The statutory authority for these proposed information collections is found in Sections 1, 4(i)-(j), 211, 309, 310, and 403 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i)-(j), 211, 309, 310, and 403.

*Total Annual Burden Hours:* 942 hours.

*Total Annual Costs:* \$282,600.

*Nature and Extent of Confidentiality:* An assurance of confidentiality is not offered. This information collection does not require the collection of personally identifiable information (PII) from individuals.

*Privacy Act Impact Assessment:* No impacts.

*Needs and Uses:* On August 9, 2011, the Commission adopted a Notice of Proposed Rulemaking in (FCC 11-121) in Review of Foreign Ownership Policies for Common Carrier and Aeronautical Radio Licensees under Section 310(b)(4) of the Communications Act of 1934, as Amended, IB Docket No. 11-133 (rel. Aug. 9, 2011) (Section 310(b)(4) NPRM). The Section 310(b)(4) NPRM initiates a review of the Commission's policies and procedures that apply to foreign ownership of common carrier and aeronautical en route and aeronautical fixed radio station licensees pursuant to section 310(b)(4) of the Communications Act of 1934, as amended. It seeks comment on measures to revise and simplify the Commission's regulatory framework under section 310(b)(4) for authorizing foreign ownership in the U.S. parents of common carrier and aeronautical radio licensees. It also proposes to codify whatever measures the Commission ultimately adopts in this proceeding to provide more predictability and ensure transparency of its section 310(b)(4) filing requirements and review process.

#### **Initial Regulatory Flexibility Analysis**

41. The Regulatory Flexibility Act of 1980, as amended (RFA),<sup>5</sup> requires that an initial regulatory flexibility analysis be prepared for notice-and-comment rule making proceedings, unless the agency certifies that "the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities."<sup>6</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>7</sup> In addition, the term "small business" has the same meaning as the term "small business concern" under the Small Business Act.<sup>8</sup> A

<sup>5</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), Public Law 104-121, Title II, 110 Stat. 857 (1996).

<sup>6</sup> 5 U.S.C. 605(b).

<sup>7</sup> 5 U.S.C. 601(6).

<sup>8</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



“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).

42. In this NPRM, the Commission seeks comment on proposed changes and other options to revise and simplify its policies and procedures implementing section 310(b)(4) of the Act, 47 U.S.C. 310(b)(4), for common carrier and aeronautical radio station licensees while continuing to ensure that the agency has the information it needs to carry out its statutory duties. The proposals in this NPRM are designed to reduce to the extent possible the regulatory costs and burdens imposed on wireless common carrier and aeronautical applicants, licensees, and spectrum lessees; provide greater transparency and more predictability with respect to the Commission’s filing requirements and review process; and facilitate investment from new sources of capital, while continuing to protect important interests related to national security, law enforcement, foreign policy, and trade policy.

43. We estimate that the rule changes discussed in this NPRM, if adopted, would result in a more than 70 percent reduction in the number of section 310(b)(4) petitions for declaratory ruling filed with the Commission annually, as compared to the current regulatory framework.<sup>9</sup> We also anticipate a reduction in the time and expense associated with filing petitions under the proposed framework. For example, we propose that U.S. parent companies of common carrier and aeronautical licensees that seek Commission approval to exceed the 25 percent benchmark in section 310(b)(4) no longer be required to request, in their section 310(b)(4) petitions, specific approval of named foreign investors unless a foreign investor proposes to acquire a direct or indirect equity and/or voting interest in the U.S. parent that exceeds 25 percent, or a controlling interest at any level. Another proposal would, if adopted, allow the U.S. parent to request specific approval for foreign investors named in the section 310(b)(4) petition to increase their direct or

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 definitions(s) in the *Federal Register*.”

<sup>9</sup> This estimate is based on the International Bureau staff’s review of the 21 section 310(b)(4) petitions filed with the Commission during a randomly-selected period (September 1, 2007 through August 31, 2008).

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. Under another proposal, if adopted, the Commission would issue section 310(b)(4) rulings in the name of the U.S. parent of the licensee, and allow for automatic extension of the U.S. parent’s ruling to cover any of the U.S. parent’s subsidiaries or affiliates, whether existing at the time of the ruling or formed or acquired subsequently, *provided that* the U.S. parent remains in compliance with the terms of its ruling.

44. The Commission believes that the streamlining proposals and other options in the Section 310(b)(4) NPRM will reduce costs and burdens currently imposed on licensees, including those licensees that are small entities, and accelerate the foreign ownership review process, while continuing to ensure that the agency has the information it needs to carry out its statutory duties. Therefore, the Commission certifies that the proposals in the Section 310(b)(4) NPRM, if adopted, will not have a significant economic impact on a substantial number of small entities. The Commission will send a copy of the NPRM, including a copy of this Initial Regulatory Flexibility Certification, to the Chief Counsel for Advocacy of the SBA.<sup>10</sup> This initial certification will also be published in the *Federal Register*.<sup>11</sup>

#### Ordering Clauses

45. *It is ordered* that, pursuant to the authority contained in 47 U.S.C. 151, 152, 154(i), 154(j), 211, 303(r), 309, 310 and 403, this *Notice of Proposed Rulemaking is adopted*.

46. *It is further ordered that notice is hereby given* of the proposed regulatory changes to Commission policy and rules described in this Notice of Proposed Rulemaking and that comment is sought on these proposals.

47. *It is further ordered* that the Commission’s Consumer and Governmental Affairs Bureau, Reference Information Center, *shall send* a copy of this Notice of Proposed Rulemaking, including the Initial Regulatory Flexibility Certification, to the Chief Counsel for Advocacy of the Small Business Administration.

#### List of Subjects in 47 CFR Parts 1 and 25

Communications common carriers, Radio, Reporting and recordkeeping

<sup>10</sup> 5 U.S.C. 605(b).

<sup>11</sup> *Id.*

requirements, Satellites, Telecommunications.

Federal Communications Commission.

**Marlene H. Dortch,**

*Secretary.*

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR parts 1 and 25 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, 225, 227, 303(r), 309, and 310.

2. Section 1.907 is amended by adding definitions for *Spectrum leasing arrangement* and *Spectrum lessee* to read as follows:

#### § 1.907 Definitions.

\* \* \* \* \*

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

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

\* \* \* \* \*

3. Subpart F is amended by adding §§ 1.990 through 1.994 and an undesignated center heading to read as follows:

Sec.

#### Foreign Ownership of U.S.-Organized Entities That Control Common Carrier, Aeronautical en Route, and Aeronautical Fixed Radio Station Licensees

- 1.990 Filing requirements.
- 1.991 Contents of petitions for declaratory ruling.
- 1.992 How to calculate indirect equity and voting interests.
- 1.993 Insulation Criteria for Interests in Limited Partnerships and Limited Liability Companies.
- 1.994 Routine terms and conditions.

#### Foreign Ownership of U.S.-Organized Entities That Control Common Carrier, Aeronautical en Route, and Aeronautical Fixed Radio Station Licensees

#### § 1.990 Filing requirements.

(a)(1) The controlling U.S.-organized parent company of a common carrier,

aeronautical en route or aeronautical fixed radio station applicant, licensee, or spectrum lessee shall file a petition for declaratory ruling pursuant to section 310(b)(4) of the Communications Act to obtain Commission approval *before* the parent company's aggregate foreign ownership exceeds, directly or indirectly, 25 percent of its equity interests and/or 25 percent of its voting interests.

(2) Where there are successive, controlling U.S.-organized parent companies in the vertical ownership chain of the applicant, licensee or spectrum lessee, the petition for declaratory ruling required by paragraph (a)(1) of this section shall be filed by, or on behalf of, the lowest-tier, controlling U.S.-organized parent company.

*Example 1.* U.S.-organized Licensee A is wholly owned and controlled by U.S.-organized Corporation B, that is, in turn, wholly owned and controlled by U.S.-organized Corporation C. Foreign-organized Corporation D plans to acquire a non-controlling 30% equity and voting interest in U.S.-organized Corporation C. The petition for declaratory ruling required by paragraph (a)(1) of this section should be filed by or on behalf of U.S.-organized Corporation B.

*Example 2.* U.S.-organized Licensee A is wholly owned and controlled by U.S.-organized Corporation B, that is, in turn, wholly owned and controlled by U.S.-organized Corporation C. U.S.-organized Corporation C is 51% owned and controlled by U.S.-organized Corporation D, which is, in turn, wholly owned and controlled by Foreign-organized Corporation E. The remaining 49% equity and voting interests in U.S.-organized Corporation C are owned by U.S.-organized Corporation F, which is, in turn, wholly owned and controlled by Foreign-organized Corporation G. The petition for declaratory ruling required by paragraph (a)(1) of this section should be filed by or on behalf of U.S.-organized Corporation B.

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

(c) The U.S. parent filing the petition for declaratory ruling required by paragraph (a)(1) of this section shall certify to the information contained in the petition in accordance with the provisions of § 1.16.

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

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

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

(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.

#### **§ 1.991 Contents of petitions for declaratory ruling.**

The petition for declaratory required by § 1.990(a)(1) shall contain the following information:

(a) The name(s) and FCC Registration Number(s) (FRN) of the applicant(s), licensee(s), or spectrum lessee for which a ruling is requested.

(b)(1) For each named licensee or spectrum lessee, specify:

(i) The Call Sign(s) or, in the case of a spectrum leasing arrangement, the File No(s), under which the licensee or spectrum lessee is authorized to provide common carrier, aeronautical fixed or aeronautical en route service; and

(ii) The type(s) of radio service authorized (*e.g.*, cellular radio telephone service; microwave radio service; mobile satellite service; aeronautical fixed service).

(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.*, cellular radio telephone service; microwave radio service; mobile satellite service; aeronautical fixed service).

(c) With respect to the petitioning U.S.-organized parent company, 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.

(d) If the petitioning U.S.-organized parent company is represented by a third party (*e.g.*, legal counsel), that

person's name, the name of the firm or company, mailing address and telephone number/electronic mail address may be specified.

(e) With respect to the petitioning U.S.-organized parent company, the name of any individual or entity that holds *directly* 10 percent or more of the U.S. parent's equity interests and/or voting interests, or a controlling interest at any level as follows:

(1) In the case of a U.S. parent that is organized as a corporation, the name of any individual or entity that holds 10 percent or more of the U.S. parent company's total capital stock and/or voting stock, or a controlling interest at any level.

(2) In the case of a U.S. parent that is organized as a general partnership, the names of its constituent general partners.

(3) In the case of a U.S. parent that is organized as a limited partnership, the name(s) of the general partner(s), any unincorporated limited partner(s), and any insulated limited partner(s) with an equity interest in the U.S. parent of at least 10 percent (calculated according to the percentage of the limited partner's capital contribution). With respect to each named limited partner, state whether its partnership interest is insulated or uninsulated, based on the insulation criteria specified in § 1.993.

(4)(i) Except as otherwise provided in paragraph (e)(4)(ii) of this section, in the case of a U.S. parent that is organized as a limited liability company, the name(s) of each unincorporated member, regardless of its equity interest in the U.S. parent, any insulated member with an equity interest in the U.S. parent of at least 10 percent (calculated according to the percentage of the member's capital contribution), and any non-member manager(s). With respect to each named member, state whether its membership interest is insulated or uninsulated, based on the insulation criteria specified in § 1.993, and whether the member is a managing member.

(ii) Where a U.S. parent is organized as a limited liability company and demonstrates in its section 310(b)(4) petition that the company is governed in a manner similar to a corporation, the name of any individual or entity that holds 10 percent or more of the U.S. parent company's total equity interests and/or voting interests, or a controlling interest at any level. For purposes of this paragraph, equity interests shall be calculated according to the percentage of the member's capital contribution, and voting interests shall be calculated based on the governance provisions of the particular limited liability company

agreement and other operative documents. The demonstration required by this paragraph shall include a description of the members' respective voting rights and roles in managing the affairs of the company.

(f) With respect to the petitioning U.S.-organized parent company, the name of any individual or entity that holds *indirectly*, through one or more intervening entities, 10 percent or more of the U.S. parent's equity interests and/or voting interests, or a controlling interest at any level. Equity interests and voting interests held indirectly shall be calculated in accordance with the principles set forth in § 1.992.

(g)(1) 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; 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) For purposes of this paragraph (g), where the petitioning U.S. parent is organized as a limited partnership or limited liability company, any limited partner or member that is insulated as specified in § 1.993 shall be deemed to hold no voting interest in the U.S. parent. Thus, the U.S. parent is not required to calculate any voting interest for its insulated limited partners or insulated members.

(h) Attach an ownership diagram illustrating the vertical ownership structure of the applicant(s), licensee(s), or spectrum lessee(s) that are the subject of the petition, including the direct and indirect ownership (equity and voting) interests held in the petitioning U.S. parent by the person(s) and/or entity(ies) named in response to paragraphs (e) and (f) of this section, each of which should be depicted in the ownership diagram. All controlling interests should be labeled as such.

(i)(1) Provide the name of each foreign individual and/or entity for which the petitioning U.S. parent company requests specific approval, if any, and the respective percentages of equity and/or voting interests that each holds, or would hold, upon consummation of any transactions described in the petition, directly or indirectly in the U.S. parent company. Equity and voting interests shall be calculated in accordance with the principles set forth

in paragraphs (e) and (f) of this section and in § 1.992.

(2) The petitioning U.S. parent must request specific approval for any foreign individual and/or entity that holds, or would hold, upon consummation of any transactions described in the petition, a direct and/or indirect equity and/or voting interest in the U.S. parent in excess of 25 percent, or a controlling interest at any level. The U.S. parent 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 U.S. parent.

(3) The Commission will not authorize a U.S. parent to have aggregate, direct or indirect investment exceeding 25 percent of the parent's equity interests or 25 percent of its voting interests from individuals or entities that have their "home markets" in countries that are not Members of the World Trade Organization (WTO), *unless* the petitioning U.S. parent demonstrates in its petition that the non-WTO Member country(ies) offer effective competitive opportunities to U.S. investors in the particular service sector in which the parent competes, or seeks to compete, in the U.S. market, or that countervailing public interest considerations weigh in favor of authorizing the non-WTO investment.

(4) For purposes of calculating its non-WTO Member investment, the U.S. parent may exclude those equity and/or voting interests that are held by a single non-WTO investor or "group" of non-WTO investors in an amount that constitutes 5 percent or less of the U.S. parent's total capital stock (equity) and/or voting stock. For this purpose, two or more non-WTO investors will be treated as a "group" when the investors have agreed to act together for the purpose of acquiring, holding, voting, or disposing of their equity and/or voting interests in the U.S. parent company or any intermediate company(ies) through which any of the investors holds its interests in the U.S. parent.

(5) The Commission generally considers a foreign individual's "home market" to be his or her country of citizenship. Where the interest would be held by a foreign corporation, partnership, or other business organization, the petition must establish the investing entity's principal place of business by specifying the following information: the country of a foreign entity's incorporation, organization, or charter; the nationality of all investment principals, officers, and directors; the country in which the world headquarters is located; the country in which the majority of the tangible

property, including production, transmission, billing, information, and control facilities is located; and the country from which the foreign entity derives the greatest sales and revenues from its operations.

(6) In applying the effective competitive opportunities (ECO) test, the Commission will consider the legal and practical limitations on U.S. investment in the foreign investor's home market for the particular wireless service (or analogous service) in which the investor seeks to participate in the U.S. market. The ECO analysis compares restrictions on U.S. participation in the home market for the particular wireless service in which the foreign investor seeks to participate in the U.S. market. If the services in the U.S. and home markets are not precisely matched, we will use the most closely substitutable wireless service in the home market, as determined from the consumers' perspective. The petition should demonstrate the existence and extent of any legal restrictions on U.S. investment in the relevant market(s) and the absence of practical limitations on U.S. participation, including the price, terms and conditions of interconnection, competitive safeguards, and the regulatory framework of the relevant market(s).

(j) The petitioning U.S. parent company 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 petitioning U.S. parent above the percentages specified in response to paragraph (i) of this section. Requests for advance approval shall be made as follows:

(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 U.S. parent, the U.S. parent may request advance approval in its petition for the foreign individual or entity to increase its interests up to any amount, including 100 percent of the direct and/or indirect equity and/or voting interests in the U.S. parent. Specify for the named controlling foreign person(s) 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 person 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) 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 U.S. parent, the U.S. parent may request advance approval in its petition for the foreign individual or entity to increase its interests up to any non-controlling amount. Specify for the named foreign person(s) 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 foreign person(s) to increase their interests up to and including a non-controlling 49.99 percent direct and/or indirect equity and/or voting interest in the U.S. parent. See § 1.990(i)(3).

**§ 1.992 How to calculate indirect equity and voting interests.**

(a) The criteria specified in this section shall be used for purposes of calculating equity and voting interests held indirectly in a petitioning U.S. parent under § 1.991.

(b)(1) *Equity interests held indirectly in the petitioning U.S. parent.* Equity interests that are held by any individual or entity indirectly in a petitioning U.S.-organized parent company 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.* Assume that a foreign individual holds a 30 percent equity and voting interest in Corporation A which, turn, holds a non-controlling 40 percent equity and voting interest in U.S. Parent Corporation B. The foreign individual's equity interest in U.S. Parent Corporation B would be calculated by multiplying the foreign individual's equity interest in Corporation A by that entity's equity interest in U.S. Parent Corporation B. The foreign individual's equity interest would be 12 percent ( $30\% \times 40\% = 12\%$ ). Even if Corporation A's 40% voting interest in U.S. Parent Corporation B constituted a *controlling* interest, the foreign individual's equity interest would still be calculated as 12 percent ( $30\% \times 40\% = 12\%$ ).

(2) *Voting interests held indirectly in the petitioning U.S. parent.* Voting interests that are held by any individual or entity indirectly in a petitioning U.S.-organized parent company through one or more intervening entities will be determined depending upon the type of business organization(s) through which

the person 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.* Assume that a foreign individual holds a 30 percent equity and voting interest in Corporation A which, turn, holds a *controlling* 40 percent equity and voting interest in U.S. Parent Corporation B. Because Corporation A's 40 percent voting interest in U.S. 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. Parent Corporation B 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 uninsulated limited partnership interest, or an insulated limited partnership interest as specified in paragraphs (b)(2)(ii)(A) and (B) of this section.

(A) *General partnership and uninsulated limited partnership interests.* A general partner and uninsulated limited 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 limited partner shall be treated as uninsulated unless the limited partnership agreement or other operative agreement satisfies the insulation criteria specified in § 1.993.

(B) *Insulated limited partnership interests.* A limited partner that satisfies the insulation criteria specified in § 1.993 shall be treated as an insulated limited partner that has no voting interest in the limited partnership. Thus, the petitioning U.S. parent is not required to calculate any voting interest for the insulated limited partners of any limited partnership situated above the petitioning U.S. parent in its vertical chain of ownership.

(iii) Voting interests that are held through one or more intervening limited liability companies shall be calculated depending upon whether the individual or entity is a non-member manager, an uninsulated member or an insulated

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

(A) *Non-member managers and unisulated membership interests.* A non-member manager and an unisulated 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 unisulated unless the limited liability company agreement satisfies the insulation criteria specified in § 1.993.

(B) *Insulated membership interests.* A member of a limited liability company that satisfies the insulation criteria specified in § 1.993 shall be treated as an insulated member that has no voting interest in the limited liability company. Thus, the petitioning U.S. parent is not required to calculate any voting interest for the insulated members of any limited liability company situated above the petitioning U.S. parent in its vertical chain of ownership.

**§ 1.993 Insulation Criteria for Interests in Limited Partnerships and Limited Liability Companies.**

(a)(1) Where the petitioning U.S. parent is organized as a limited partnership, the U.S. parent's limited partners shall be treated as unisulated within the meaning of § 1.992(b)(2)(ii)(A) unless the petitioning U.S. parent's limited partners are prohibited by the limited partnership agreement or other operative agreement from participating in the day-to-day management of the partnership and only the usual and customary investor protections are contained in the limited partnership agreement or other operative agreement.

(2) Where there is one or more limited partnerships situated above the U.S. parent in its vertical chain of ownership, the limited partners of each such partnership shall be treated as unisulated within the meaning of § 1.992(b)(2)(ii)(A) unless the petitioning U.S. parent's limited partners are prohibited by the limited partnership agreement or other operative agreement from participating, and in fact do not participate, in the day-to-day management of the partnership and only the usual and customary investor protections are contained in the limited partnership agreement or other operative agreement.

(b)(1) Where the petitioning U.S. parent is organized as a limited liability company, members of the limited liability company shall be treated as unisulated for purposes of § 1.992(b)(2)(iii)(A) unless a member is

prohibited by the limited liability company agreement from participating, and in fact does not participate, in the day-to-day management of the company and only the usual and customary investor protections are contained in the agreement.

(2) Where there is one or more limited liability companies situated above the U.S. parent in its vertical chain of ownership, the members of each such company shall be treated as uninsulated for purposes of § 1.992(b)(2)(iii)(A) unless a member is prohibited by the limited liability company agreement from participating, and in fact does not participate, in the day-to-day management of the company and only the usual and customary investor protections are contained in the agreement.

(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 or limited liability company or a voluntary filing for bankruptcy or liquidation;

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

(3) The power to prevent the limited 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 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 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 limited partners or members, as provided in the limited partnership or limited liability company agreement or other operative agreement;

(6) The power to vote on the removal of a general partner or managing member in situations where the general partner or managing member 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 (where the general partner or managing member is a natural person); convicted of a felony; or otherwise removed for cause, as determined by an independent party;

(7) The power to prevent the amendment of the limited partnership agreement or limited liability company agreement, or other organizational

documents of the partnership or limited liability company with respect to the matters described in paragraph (c)(1) through (6) of this section.

#### § 1.994 Routine terms and conditions.

Section 310(b)(4) rulings issued pursuant to §§ 1.990 through 1.994 shall be subject to the following terms and conditions, except as otherwise specified in the U.S. parent's particular ruling:

(a)(1) In addition to the foreign ownership interests approved specifically in the section 310(b)(4) ruling, the U.S.-organized parent company named in the ruling (or a U.S.-organized successor-in-interest formed as part of a *pro forma* reorganization) may have up to and including an additional, aggregate 25 percent direct or indirect equity and/or voting interests from other foreign individuals or foreign-organized entities without prior Commission approval, *provided that* no foreign person or foreign-organized entity acquires a direct or indirect equity and/or voting interest in excess of 25 percent, or a controlling interest at any level, unless approved specifically in the ruling *and provided that* aggregate investment from individuals or entities that have their "home markets" in countries that are not Members of the World Trade Organization (WTO) does not exceed, directly or indirectly, 25 percent of the U.S.-organized parent company's equity and/or voting interests.

**Note to paragraph (a)(1):** For purposes of calculating compliance with the 25 percent aggregate ceiling on foreign investment from non-WTO Member countries, the U.S.-organized parent may exclude those equity and/or voting interests that are held by a single non-WTO investor or "group" of non-WTO investors in an amount that constitutes 5 percent or less of the U.S. parent's total capital stock (equity) and/or voting stock. For this purpose, two or more non-WTO investors will be treated as a "group" when the investors have agreed to act together for the purpose of acquiring, holding, voting, or disposing of their equity and/or voting interests in the U.S. parent company or any intermediate company(ies) through which any of the investors holds its interests in the U.S. parent.

(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 of divesting itself, or preventing the vesting, of an equity interest or voting interest in the U.S. parent as part of a plan or scheme to evade the application of the Commission's rules or policies that apply to non-WTO investment under section 310(b)(4) shall be subject to enforcement action by the Commission, including an order requiring divestiture of the investor's direct or indirect interests in the U.S. parent.

(b) The section 310(b)(4) ruling issued to the U.S. parent named in the ruling shall cover the applicant(s), licensee(s), and spectrum lessee(s) that are the subject of the ruling *and* any other subsidiary or affiliate of the named U.S. parent, whether existing at the time the ruling is issued or formed or acquired subsequently, *provided that* the U.S. parent remains in compliance with the terms and conditions of its ruling.

(1) For purposes of this paragraph (b), "subsidiary or affiliate" is defined as any entity that is wholly owned and controlled by, or is under 100 percent common ownership and control with, the U.S. parent.

(2) A subsidiary or affiliate filing an application for an initial common carrier, aeronautical en route, or aeronautical fixed radio station license or spectrum leasing arrangement, or an application to acquire such license or spectrum leasing arrangement by assignment or transfer of control, shall attach to its application a certification, signed by the U.S. parent, stating that the U.S. parent is in compliance with the terms and conditions of its section 310(b)(4) ruling(s). The certification shall also provide the citation(s) of the U.S. parent's section 310(b)(4) ruling(s) (*i.e.*, the DA or FCC Number, FCC Record citation when available, and release date).

(c) The section 310(b)(4) ruling issued to the U.S. parent named in the ruling shall cover any successor-in-interest to the U.S. parent that takes the place of the U.S. parent in the vertical ownership chain of the applicant(s), licensee(s), or spectrum lessee(s) covered by the U.S. parent's section 310(b)(4) ruling, *provided that* the foreign ownership of the successor-in-interest complies with the terms of the ruling. The successor-in-interest shall notify the Commission within 30 days of the reorganization. The notification shall include a certification, signed by the successor-in-interest, stating that it is in compliance with the terms and conditions of the section 310(b)(4) ruling(s) issued to the former U.S. parent, which shall be named in the certification. The certification shall also provide the citation(s) of the section 310(b)(4) ruling(s) (*i.e.*, the DA or FCC Number, FCC Record citation when available, and release date). The notification shall be filed electronically on the Internet through the International Bureau Filing System (IBFS). For information on filing the notification through IBFS, *see* part 1, subpart Y and the IBFS homepage at <http://www.fcc.gov/ib>.

(d) The section 310(b)(4) ruling issued to the U.S. parent named in the ruling

shall permit the insertion of new, foreign-organized companies at any level in the vertical ownership chain above the U.S. parent *provided that* any new foreign-organized company(ies), either alone or together, are under 100 percent common ownership and control with the controlling foreign parent for which the U.S. parent has received prior Commission approval.

*Example.* U.S. parent company (“U.S. Parent A”) receives a section 310(b)(4) ruling that approves its 100% foreign ownership by a foreign-organized company (“Foreign Company”). Foreign Company is minority owned (20%) by U.S.-organized Corporation B, with the remaining 80% controlling interest held by Foreign Citizen C. After issuance of the section 310(b)(4) ruling to U.S. Parent A, 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 of U.S. Parent A would not require prior Commission approval.

(e) The section 310(b)(4) ruling issued to the U.S. parent named in the ruling shall permit the insertion of new, foreign-organized companies into the vertical ownership chains of non-controlling foreign investors for which the U.S. parent has received specific approval under § 1.991(i) *provided that* any new foreign company is under 100 percent common ownership and control with the approved foreign investor.

*Example.* U.S. parent company (“U.S. Parent A”) receives a section 310(b)(4) ruling that specifically approves Foreign Citizen B’s planned acquisition of a non-controlling, 30% common stock interest in U.S. Parent A. Two years after issuance of the section 310(b)(4) ruling to U.S. Parent A, Foreign Citizen B organizes a wholly-owned foreign corporation to hold Foreign Citizen B’s common stock interest in U.S. Parent A. U.S. Parent A would not be required to seek Commission approval for this change.

(f) The U.S.-organized parent company named in the section 310(b)(4) ruling (or a U.S.-organized successor-in-interest formed as part of a *pro forma* reorganization) shall file a new petition for declaratory under § 1.990 to obtain Commission approval *before* its direct or indirect foreign ownership exceeds the routine terms and conditions of this section and any specific terms or conditions of its ruling.

(g)(1) A U.S.-organized parent company that has received a section 310(b)(4) ruling from the Commission shall file with the Commission a certification of compliance with the section 310(b)(4) ruling every four (4) years after the anniversary of the

effective date of the ruling. The U.S. parent shall base its certification of compliance on information that is current at least as of 8 months prior to the date the certification must be filed with the Commission. Its certification of compliance with respect to the calculation of ownership interests disclosed in its petition shall be based upon its review of the Commission’s rules, such that it is able to certify that the interests disclosed satisfy each of the pertinent standards and criteria required by the rules.

(2) If at any time the U.S. parent knows, or has reason to know, that it is no longer in compliance with its ruling, the U.S. parent shall file a statement with the Commission explaining the circumstances within 30 days of the date the U.S. parent knew, or had reason to know, that it was no longer in compliance with its ruling. Subsequent actions taken by or on behalf of the U.S. parent to remedy its non-compliance shall not relieve the U.S. parent of the obligation to notify the Commission of the circumstances (including duration) of non-compliance. The U.S. parent, any affiliated licensees or spectrum lessees covered by the section 310(b)(4) ruling, and any controlling companies, whether U.S.- or foreign-organized, shall be subject to enforcement action by the Commission for non-compliance with the section 310(b)(4) ruling.

## PART 25—SATELLITE COMMUNICATIONS

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

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

5. Subpart A is amended by adding § 25.105 to read as follows:

### § 25.105 Citizenship.

The Commission will not grant an authorization governed by this part to any individual or entity that is precluded from holding such authorization by section 310(a)–(b) of the Communications Act of 1934, as amended (47 U.S.C. 310(a)–(b)). 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 25 percent benchmark in section 310(b)(4) are set forth in §§ 1.990 through 1.994 of this chapter.

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## DEPARTMENT OF TRANSPORTATION

### National Highway Traffic Safety Administration

#### 49 CFR Part 580

[Docket No. NHTSA–2011–0152; Notice 1]

### Petition for Approval of Alternate Odometer Disclosure Requirements

**AGENCY:** National Highway Traffic Safety Administration (NHTSA), DOT.

**ACTION:** Notice of initial determination.

**SUMMARY:** The State of New York has petitioned for approval of alternate odometer requirements to certain requirements under Federal odometer law. New York’s proposed program would apply to vehicles that have been transferred to New York motor vehicle dealers. Ultimately, the proposed program would generate the issuance of a non-secure paper odometer disclosure receipt when a vehicle is transferred from a licensed New York dealer to a person other than a licensed New York dealer, such as an out-of-state person. In view of the nature of this receipt as an odometer disclosure for vehicle titling, NHTSA preliminarily denies New York’s petition. This notice is not a final agency action.

**DATES:** Comments are due no later than November 21, 2011.

**ADDRESSES:** You may submit comments [identified by DOT Docket ID Number NHTSA–2011–0152] by any of the following methods:

- *Federal eRulemaking Portal:* Go to <http://www.regulations.gov>. Follow the online instructions for submitting comments.

- *Mail:* Docket Management Facility: U.S. Department of Transportation, 1200 New Jersey Avenue, SE., West Building Ground Floor, Room W12–140, Washington, DC 20590–0001.

- *Hand Delivery or Courier:* West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., between 9 a.m. and 5 p.m. ET, Monday through Friday, except Federal holidays.

- *Fax:* 202–493–2251

*Instructions:* For instructions on submitting comments and additional information on the rulemaking process, see the heading of How Do I Prepare and Submit Comments in this document. Note that all comments received will be posted without change to <http://www.regulations.gov>, including any personal information provided. Please see the Privacy Act heading below.

*Privacy Act:* Anyone is able to search the electronic form of all comments received into any of our dockets by the