

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

SUPPORTING STATEMENT

A. Justification:

1. The Federal Communications Commission (Commission) is requesting that the Office of Management and Budget (OMB) approve a new information collection, Regulations Applicable to Common Carrier and Aeronautical Radio Licensees Under Section 310(b)(4) of the Communications Act of 1934, as Amended (the Act). This information collection will replace the existing information collection for section 310(b)(4) of the Act.

On August 9, 2011, the Commission adopted a Notice of Proposed Rulemaking (FCC 11-121), *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*, in IB Docket No. 11-133 (rel. Aug. 9, 2011) (NPRM). The Commission seeks comment in the NPRM on measures to simplify, and reduce to the extent possible the regulatory costs and burdens associated with, the agency's current framework for authorizing foreign ownership of common carrier, aeronautical fixed, and aeronautical en route radio station licensees¹ pursuant to section 310(b)(4) of the Act, 47 U.S.C. 310(b)(4). 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.

Section 310(b)(4) states that no broadcast, common carrier, aeronautical en route, or aeronautical fixed radio station license shall be granted to or held by "any corporation directly or indirectly controlled by any other corporation of which more than one-fourth of the capital stock is owned of record or voted by aliens, their representatives, or by a foreign government or representative thereof, or by any corporation organized under the laws of a foreign country, if the Commission finds that the public interest will be served by the refusal or revocation of such license." A copy of the foreign ownership provisions in section 310 of the Act is attached to this supporting statement. The proposed rules are set forth in the Appendix to the NPRM, which is also attached to this supporting statement.

The proposed rules incorporate certain existing and revised policies and procedures. The proposed rules and other options discussed in the NPRM are summarized below. Under the proposed framework, the Commission would:

- Consistent with the requirements of section 310(b)(4), continue to require that common carrier and aeronautical radio station licensees and lessees obtain Commission approval *before* the aggregate direct or indirect foreign ownership of

¹ For ease of reference, we refer to aeronautical en route and aeronautical fixed radio station licenses as "aeronautical" radio station licenses.

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their controlling U.S. parent companies exceeds 25 percent, measured as a percentage of the equity and/or voting interests in the U.S. parent.² (**§ 1.990 Filing Requirements under section 310(b)(4) of the Communications Act of 1934, as amended; § 1.991 Contents of petitions for declaratory ruling under section 310(b)(4) of the Communications Act of 1934, as amended.**)

- Require that section 310(b)(4) petitions for declaratory ruling identify any individual or entity, regardless of citizenship, that holds or proposes to hold, directly or indirectly, 10 percent or more of the equity and/or voting interests in the U.S. parent of the licensee, or a controlling interest at any level. (**§ 1.991(e)-(h)**)
- Retain the current distinction between foreign investment from World Trade Organization (WTO) Member countries and non-WTO Member countries *or* modify the distinction to reduce associated regulatory burdens, *or* eliminate the distinction. (**§ 1.991, Note 2 to paragraph (i); § 1.994(a)**)
- No longer require U.S. parent companies to obtain 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. (**§ 1.991(i)**)
- With respect to each foreign individual and/or entity for which a U.S. parent requests specific approval, require the section 310(b)(4) petition for declaratory ruling to include the name, citizenship, principal businesses, and percentage of equity and/or voting interest held or to be held by the foreign investor (to the nearest one percent) and, where the foreign investor is a business entity, the name of each of the foreign investor's direct or indirect 10 percent interest holders, its citizenship, principal businesses, and percentage of equity and/or voting interest held or to be held in the foreign investor. (**§ 1.991(i); see also NPRM at para. 63**)
- Reduce the need for repeated filings by U.S. parent companies after they receive an initial section 310(b)(4) ruling by allowing the parent to request specific approval in the initial petition for a controlling foreign investor to increase its direct or indirect equity and/or voting interests in the U.S. parent at any time after issuance of the initial ruling, up to and including a 100 percent equity and/or voting interest. (**§ 1.991(j)(1)**)
- Similarly, reduce the need for repeated filings by U.S. parent companies after they receive an initial section 310(b)(4) ruling by allowing the parent to request specific approval in the initial petition for non-controlling foreign investors

² The prior approval requirement applies to common carrier and aeronautical radio station licensees, applicants for common carrier and aeronautical licenses, and lessees of common carrier and aeronautical radio spectrum (collectively, "licensees").

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named in the petition to increase their direct or indirect equity and/or voting interests in the U.S. parent at any time after issuance of the initial ruling, up to and including a non-controlling 49.99 percent equity and/or voting interest. (**§ 1.991(j)(2)**)

- 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. (**§ 1.994(b)**)
- Issue section 310(b)(4) rulings to cover any successor-in-interest to the U.S. parent that takes its place in the vertical chain of ownership *provided* that foreign ownership of the successor U.S. parent complies with the terms of the ruling and the successor-in-interest notifies the Commission within 30 days of the internal reorganization. (**§ 1.994(c)**)

The NPRM also seeks comment on the following questions:

- Whether, once the agency has issued a ruling to a U.S. parent company, it should as a general rule authorize the U.S. parent to have up to and including 100 percent aggregate foreign ownership from foreign investors that are not named in the petition, *provided* that no single foreign investor or "group" of foreign investors acquires 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, without prior Commission approval. (The NPRM raises this option as a possible alternative to the 25 percent aggregate foreign ownership allowance that is proposed in § 1.994(a)(1).)
- Whether to permit internal reorganizations of the controlling U.S. parent without prior Commission approval under section 310(b)(4) in circumstances where a new, foreign-organized controlling parent is inserted into the vertical ownership chain above the U.S. parent, *provided* that the new foreign company is under 100 percent common ownership and control with the controlling foreign parent for which the U.S. parent has received prior Commission approval. (**§ 1.994(d).**)
- Whether to permit internal reorganizations of the controlling U.S. parent's approved, non-controlling foreign investors without prior Commission approval under section 310(b)(4) in circumstances where a new foreign company is inserted into the approved foreign investor's vertical ownership chain, *provided* that the new foreign company is under 100 percent common ownership and control with the approved foreign investor. (**§ 1.994(e).**)
- Whether to retain the agency's practice of issuing rulings on a service-specific basis and on a geographic-specific basis. (**See NPRM at paras. 59-61.**)

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- Whether to require the U.S. parent to file periodically with the agency a certification to demonstrate that the parent is in compliance with its foreign ownership ruling (§ 1.994(g)(1)) and notify the Commission within 30 days if the U.S. parent knows, or has reason to know, that it is no longer in compliance with its ruling. (§ 1.994(g)(2).)
- Whether to require in all cases that a U.S. parent with an existing foreign ownership ruling return to the Commission for a new ruling to obtain the benefits of the rules adopted in this proceeding or whether to adopt an alternative approach (e.g., adopt a rule that modifies all existing rulings to incorporate the new rules and policies adopted in this proceeding). (See NPRM at para. 78.)

Authority for the proposed information collection requirements:

The Commission has authority for this information collection under Sections 1, 2, 4(i), 4(j), 211, 303(r), 309, 310 and 403 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 152, 154(i), 154(j), 211, 303(r), 309, 310, 403.

This information collection does not raise any issues under the Privacy Act.

2. Section 310(b)(4) of the Act requires that the Commission pass upon the propriety of foreign ownership of U.S. parent companies that control common carrier and aeronautical radio licensees before such ownership exceeds 25 percent. The Commission will use the information collected under the proposed rules to make the public interest finding required by section 310(b)(4). The information collection will preserve the Commission's ability to disallow foreign investment that may pose a risk of harm to competition or national security, law enforcement, foreign policy, or trade policy. The collection would replace the existing approved information collection for section 310(b)(4) [OMB Control No. 3060-0686] with a set of requirements that are intended to reduce the current burdens and costs associated with filing and processing section 310(b)(4) petitions for declaratory ruling and on-going carrier compliance with their section 310(b)(4) rulings.

3. The NPRM did not address the method by which filing entities would file their information. Section 310(b)(4) petitions for declaratory ruling currently are submitted to the Commission by one of the following methods: (1) by paper filed with the Commission, Office of the Secretary; (2) electronically via the internet using the International Bureau Filing System (IBFS); (3) where the petition is filed in connection with an application to obtain a terrestrial wireless license or lease of spectrum, or for consent to transfer or assign such authorization, electronically via the internet using the Commission's Universal Licensing System (ULS); or, where the petition is filed as part of a larger, docketed transaction, such as a transfer of control of multiples licenses, electronically via the internet using the Commission's Electronic Filing System (ECFS). In all cases, the International Bureau assigns an IBFS File No. to the petition, and the petition is publicly available via the internet in IBFS.

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4. This information collection requirement is not duplicated elsewhere in the Commission's rules.
5. The proposals and other options discussed in the NPRM would minimize the economic impact on small entities to the greatest extent possible, while ensuring that the Commission gets the complete information it needs to discharge its regulatory obligations.
6. If the information collection were not conducted or were conducted less frequently than proposed, the Commission would not be able to carry out its statutory mandate under section 310(b)(4) of the Act to disallow foreign investment that the Commission finds would be contrary to the U.S. public interest. In particular, the Commission would lack the information it needs to determine whether proposed foreign investment in U.S. common carrier and aeronautical radio licensees may pose a risk of harm to competition or national security, law enforcement, foreign policy, or trade policy.
7. There are no special circumstances that would prevent the Commission from following all guidelines regarding the information collection.
8. The Commission placed a 60 day notice in the *Federal Register* pursuant to 5 CFR § 1320.8(d). See 76 FR 65472, dated **October 21, 2011**, seeking comments from the public on the information collection requirements contained in this supporting statement. To date, no comments have been received from the public.
9. The Commission will not provide any payment or gift to respondents.
10. The Commission has not proposed to grant assurances of confidentiality to those parties submitting the information. Petitioners that seek to protect the confidentiality of particular information may request such treatment under section 0.459 of the Commission's rules, 47 C.F.R. § 0.459. Under section 0.459, the petitioner would be required to justify fully its request for confidentiality by providing enough information for the Commission to determine the need for confidential treatment. The rule requires a party requesting confidentiality to submit an unredacted version of its information, as well as a redacted version to be made publicly available. Should the Commission decide to grant a request for confidential treatment of information that does not fall within a specific exemption pursuant to the Freedom of Information Act (FOIA), that Act requires the Commission to disclose publicly the information upon an appropriate request. The Commission may grant requests for confidential treatment either conditionally or unconditionally. The Commission has the discretion to release on public interest grounds information that falls within the scope of a FOIA exemption.
11. This collection does not include any questions of a sensitive nature.
12. **Estimate of Burden Hours for Information Collection:**

The following represents the estimated hour burden of the various information collections on which the Commission seeks comment in the NPRM. The burden hour estimates are our

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best estimate based on our overall experience with the information collections covered by the current approved collection for section 310(b)(4) (OMB Control No. 3060-0686).

The NPRM provides various proposed and alternatives approaches to the filing requirements and review process under section 310(b)(4). The agency estimates that some of the approaches discussed in the NPRM would, if adopted, involve a higher hour burden than other approaches. Because the agency does not know at this time which combination of proposals and/or other options discussed in the NPRM may ultimately be adopted, we have based the estimates below on the proposed rule changes and other options that we anticipate would produce the highest hour burden.

The hour burden estimate assumes that the Commission adopts proposed rule §§ 1.990, 1.991(a)-(i), 1.994(a), 1.994(c), 1.994 (f)-(g). It also assumes that the Commission adopts a rule that requires the controlling U.S. parent of a licensee with an existing ruling to file a new petition under the rules adopted in this rulemaking proceeding to obtain the benefits of the new rules (*see* NPRM at para. 78). In addition, the hour burden estimate assumes that the Commission does not adopt §§ 1.991(j), 1.994(b), (d), (e).³ It also assumes that the Commission does not change its current practice of issuing rulings on a service- and geographic-specific basis. As explained above, we make these assumptions only to estimate the highest hour burden that may result from the proposals and/or other options in the NPRM. The agency does not know at this time which combination of proposals and/or other options discussed in the NPRM may ultimately be adopted.

³ If the Commission ultimately were to adopt §§ 1.991(j), 1.994(b), (d), (e), we anticipate that the type of response referred to in the chart below as “petitions to modify or extend existing ruling,” would be eliminated. We would then request, at the Report and Order stage of the proceeding, OMB approval for a corresponding reduction in the estimated total annual burden hours, total annual costs, and total annual costs to the federal government associated with the “petitions to modify or extend existing ruling.” As noted in the preceding paragraph, we have based the estimates below on the proposed rule changes and other options that we anticipate would produce the highest burden hours. We take this approach for purposes of requesting OMB approval at this stage of the proceeding because it is not possible for the agency to predict which combination of proposals and/or other options discussed in the NPRM may ultimately be adopted.

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Estimate of Burden Hours:				
Explanation of Burden Estimate	Number Of Responses	Frequency of Responses	Time Per Response	Annual Burden Hours
Proposed Sections 1.990, 1.991(a)-(i), 1.994(a), 1.994(c), 1.994(f)	7 “Initial Petitions”*	On occasion	46 Hours	322 Hours
	18 “Petitions to Extend Existing Ruling”**	On occasion	12 Hours	216 Hours
Proposed Section 1.994(c)	7	On occasion	1 Hour	7 Hours
Proposed Section 1.994(g)(1)***	25	On occasion	11 Hours	275 Hours
Proposed Section 1.994 (g)(2)	2	On occasion	1 Hour	2 Hours
Transition Filings (Para. 78 of NPRM)	20****	One-time filing	6 Hours	120 Hours
Totals	79*****			942 Hours

* An “initial petition” refers to petitions for declaratory ruling filed under section 310(b)(4) by an applicant, licensee or spectrum lessee (collectively, “licensee”) where neither the licensee nor any entity that is under 100% common ownership and control with the licensee has previously received a section 310(b)(4) ruling. We estimate that, of the 7 initial petitions, 3 petitions will each require 1.5 hours to respond and 4 petitions will each require 80 hours to respond, for an average of 46 hours per response.

** A “petition to modify or extend existing ruling” refers to a petition for declaratory ruling filed by an applicant, licensee or spectrum lessee (collectively, “licensee”) where the petitioner requests approval to extend a licensee’s existing ruling to cover: (i) an

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entity that is under 100% common ownership and control with the licensee; (2) a license in a different wireless or satellite radio service or in a new geographic service area; (3) the acquisition of an increased interest in the U.S. parent of a licensee by a named foreign investor that was previously approved by the Commission in the licensee's initial ruling. This last category does not include any acquisition of additional interests that would result in a substantial change in ownership or control of the licensee. We estimate that, of the 18 petitions to modify or extend an existing ruling, 7 petitions will each require 1.5 hours to respond and 11 petitions will each require 18 hours to respond, for an average of 12 hours per response.

*** We estimate 25 filings under proposed section 1.994(g)(1) (requiring licensee's U.S.-organized parent company to certify to compliance with its section 310(b)(4) ruling every 4 years). Of the 25 filings, we estimate that 10 filings will each require 1.5 hours to respond and 15 filings will each require 18 hours to respond, for an average of 11 hours per response.

**** We estimate a total of 60 one-time "transition" filings. We have itemized the 60 one-time filings over a three-year period (60 filings/3 years = 20 filings/year). See para. 78 of the NPRM and page 6 of this Supporting Statement. Further, we estimate that, of the 20 transition filings, 14 filings will each require 1.5 hours to respond and 6 filings will each require 18 hours to respond, for an average of 6 hours per response.

***** We assume for purposes of this Supporting Statement that each of the 79 responses will be filed by a different respondent. However, it is likely that the estimated 79 responses will be filed by less than 79 respondents (*i.e.*, with some respondents accounting for more than one response annually). All of the filings are "on occasion" or "one-time filings."

In-House Costs: We estimate that in-house staff equivalent to a GS-11/Step 5 (\$33.92/hour) will fulfill 4/5 of the hourly requirements and that in-house staff equivalent to a GS-15/Step 5 (\$67.21/hour) will fulfill the remaining hourly requirements. Therefore, the in-house costs total **\$38,914.30** as follows:

753.60 hours x \$33.92/hour = \$25,562.11

188.40 hours x \$67.21 = \$12,662.36

\$25,562.11 + \$12,662.36 = \$38,224.47

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13. Estimated Annual Cost Burden to Respondents to Comply with Information Collection is as follows:

(a) Total Capital and Start-up Costs: **Zero**

(b) Total Operation and Maintenance and Purchase of Services: **\$282,600**

Compliance with the proposed section 310(b)(4) rules will not require respondents to maintain any special equipment. Compliance may require respondents to hire outside attorneys and/or consultants. The estimate below assumes that respondents will also contract with outside counsel/consultants and it will also take these consultants a total of 942 burden hours to fulfill the requirements on behalf of the respondents for all 79 responses.⁴ Therefore, the total annual cost burden to the respondents is as follows:

Description	Costs per Hour	Total Annual Hours for Outside Consultants	Total Costs
Outside Legal Counsel	\$300 per Hour	942 Hours	\$282,600 (O&M)

(c) **Total Annual Costs: \$282,600**

14. Estimated Annual Costs to the Federal Government for the information collection requirements are as follows:

Government Staff	Annual Burden Hours	Costs
Proposed Sections 1.990, 1.991(a)-(i), 1.994(a), 1.994(c), 1.994(f)		
GS-15/Step 5 Hourly Rate: \$67.21	Review and Process 100% of the “Initial Petitions” = 7 petitions (@ 30 hrs. for 3 of the petitions; 80 hrs. for 4 of the petitions) = 410 hours for staff Review and Process 100 % of the “Petitions to Extend Existing Ruling” = 18 petitions (@ 8 hrs./petition) = 144 hours for staff	\$27,556.10 \$9,678.24
Section 1.994(c)		

⁴ See question 12 for the respondent’s burden.

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GS-15/Step 5 Hourly Rate: \$67.21	Review and Process 100% of filings = 7 filings x 1.5 hours/filing = 10.5 hrs. for staff	\$705.71
GS-13/Step 5 Hourly Rate: \$48.35	Review and Process 100% of filings = 7 filings x 4 hours/filing = 28 hours for staff	\$1,353.80
Section 1.994(g)(1)		
GS-13/Step 5 Hourly Rate: \$48.35	Review and Process 100% of filings = 25 filings x 4 hours/filing = 100 hours for staff	\$4,835.00
GS-15/Step 5 Hourly Rate: \$67.21	Review and Process 100% of filings = 25 filings x 1.5 hours/filing = 37.5 hrs. for staff	\$2,520.38
Section 1.994(g)(2)		
GS-15/Step 5 Hourly Rate: \$67.21	Review and Process 100% of filings = 2 filings x 1 hours/filing = 2 hrs. for staff	\$134.42
Transition Filings (Para. 78 of NPRM)		
GS-15/Step 5 Hourly Rate: \$67.21	Review and Process 100% of the “Transition Filings” = 20 filings (@ 4 hrs. for 14 of the filings; 25 hrs. for 6 of the filings) = 206 hours for staff	\$13,845.26
Total Costs to the Federal Government:		\$60,628.91

15. This is a new information collection.

16. The FCC has not proposed to publish the information that will be collected.

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17. All OMB-approved information collections (including this one) will be published in 47 CFR 0.408, which “displays” the title, OMB control number and OMB expiration date. The FCC has not proposed to issue an FCC Form specifically for the purpose of this collection.

18. There are exceptions to the Certification Statement.