

**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) updates the above-referenced 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) which the Office of Management and Budget (OMB) pre-approved on December 6, 2011 (OMB Control Number 3060-1163).

On April 18, 2013, the Commission adopted final rules 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, Second Report and Order, FCC 13-50 (rel. Apr. 18, 2013) (Second Report and Order). The Commission did not adopt all of the requirements that were pre-approved, but the requirements that were adopted in the Second Report and Order were adopted as proposed in the Notice of Proposed Rulemaking (NPRM) with some minor non-substantive changes. These changes and the agency's revised hour burden and cost estimates are explained below and in response to Questions 12-14. Therefore, the Commission is simply seeking OMB final approval for this collection.

The purpose of this proceeding has been to reduce the information collection and other compliance burdens associated with the filing of petitions to obtain Commission approval for foreign ownership in common carrier and certain aeronautical radio station licensees. At the NPRM stage of this proceeding, the Commission estimated the hour burdens and costs likely to be associated with the proposals and other options raised in the NPRM, but based the estimates on the assumption that certain of the proposed streamlining steps might not be adopted. The Commission undertook in its submission to request further OMB approval for any changes that further reduced those hour burdens and costs once the agency promulgated the final rules.

The final rules adopt a number of these additional streamlining proposals, and adopt others in slightly modified form. The anticipated effects of the final rules on the information collection submitted to OMB are as follows:

- The proposed rules addressed the streamlining of requirements for petitions for Commission approval of foreign ownership in a licensee's *controlling* U.S.-organized parent. The final rules extend these same streamlined policies and procedures to permit licensees to seek Commission approval of foreign ownership held in a licensee's *non-controlling* U.S.-organized investors as well. This change is not likely to alter the number of petitions that are anticipated to be filed, or the burden associated with them.

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- The final rules eliminate the current need for licensees that have received a foreign ownership ruling to return to the Commission for approval of increased interests by previously approved foreign investors, of foreign ownership in subsidiaries or affiliates, or of new services or new geographic service areas. In addition, the final rules eliminate the current need for approval of certain corporate reorganizations, subject only to a post-closing notification. Based on our revised predictions about the annual number of, and burden associated with, filings to modify foreign ownership rulings issued under the final rules, we anticipate that the annual number and burden of these filings will be minimally reduced from the estimates included in our previous OMB submission.
- The prior OMB submission included a proposed requirement for licensees to recertify to compliance with the terms of any foreign ownership ruling issued under the final rules every four years. The final rules eliminate this proposed requirement. Existing application forms already require applicants to identify any such foreign ownership rulings (which require on-going compliance by the licensee) and to certify to the information contained in the application. The Commission is currently evaluating whether it is necessary to update such forms to reflect the new rules, and whether, if so, a new Paperwork Reduction Act approval will be required for any such update to these forms.
- The prior OMB submission included a proposed requirement that licensees notify the Commission of a successor-in-interest to the licensee's controlling U.S.-organized parent, if any. The final rules eliminate this proposed requirement. Under the final rules, the Commission will continue to issue foreign ownership rulings in the name of the licensee, rather than its controlling U.S. parent, thus eliminating the need for the proposed notification. This change minimally reduces the burden estimate included in our previous OMB submission

This information collection will not replace the existing information collection for section 310(b) of the Act (OMB Control Number 3060-0686). Licensees that received foreign ownership rulings prior to the effective date of the new rules will continue to be subject to the Commission's foreign ownership policies and procedures within the parameters of their rulings, until they seek and obtain a new ruling under the new rules. The Commission determined in the Second Report and Order that it would permit such licensees to file a new petition for declaratory ruling under the new rules, but would not require them to do so. The burdens associated with new petitions filed by licensees that received a ruling prior to the effective date of the final rules were included in our previous OMB submission.

**Authority for the proposed information collection requirements:**

The Commission has authority for this information collection under Sections 1, 2, 4(i), 4(j), 10, 303(r), 309, 310 and 403 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 152, 154(i), 154(j), 160, 303(r), 309, 310, 403.

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

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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's section 310(b)(3) forbearance approach, adopted in the First Report and Order in this proceeding, requires that the Commission pass upon the propriety of foreign ownership of common carrier radio licensees before such ownership exceeds 20 percent. The Commission will use the information collected under the final rules to make the required public interest findings. 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. As explained in response to Question 1, the collection would not replace the existing approved information collection for section 310(b) (OMB Control No. 3060-0686). The final rules will apply to licensees that seek and obtain a foreign ownership ruling under the new rules, which are intended to reduce the current burdens and costs associated with filing and processing section 310(b) petitions for declaratory ruling and on-going carrier compliance with their foreign ownership rulings.
3. The final rules require that filing entities file their information electronically via the internet using the International Bureau Filing System (IBFS). The International Bureau assigns an IBFS File No. to the petition, and the petition is publicly available via the internet in IBFS.
4. This information collection requirement is not duplicated elsewhere in the Commission's rules.
5. The final rules are intended to 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) of the Act, and its section 310(b)(3) forbearance policy, 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. No comments were received from the public.

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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.

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**12. Estimate of Burden Hours for Information Collection:**

The Commission estimates the final burden estimates for this collection as follows:<sup>1</sup>

<b>Estimate of Burden Hours:</b>				
<b>Explanation of Burden Estimate</b>	<b>Number Of Responses</b>	<b>Frequency of Responses</b>	<b>Time Per Response</b>	<b>Annual Burden Hours</b>
<b>Rule Sections 1.990, 1.991(a)-(k), 1.994(a), 1.994(d), 1.994(e)<sup>2</sup></b>	7 “Initial Petitions”	On occasion	46 Hours	<b>322 Hours</b>
	18 “Petitions to Extend Existing Ruling”	On occasion	12 Hours	<b>216 Hours</b>
<b>Rule Section 1.994 (f)(1)<sup>3</sup></b>	2	On occasion	1 Hour	<b>2 Hours</b>
<b>Transition Filings</b>	20	One-time filing	6 Hours	<b>120 Hours</b>
<b>Totals</b>	<b>47</b>			<b>660 Hours</b>

<sup>1</sup> The amended burden for this collection takes into account the requirements that were eliminated from this information collection from the NPRM stage to the final rulemaking stage (final approval). The Commission is now seeking OMB final approval for the collection.

<sup>2</sup> Sections 1.991(a)-(k) were numbered 1.991(a)-(i) in the proposed rules. Section 1.994(d) covers post-closing notifications of certain corporate reorganizations (see response to question 1). The final rules will permit a licensee to file a post-closing notification letter rather than filing a petition for pre-approval of the reorganization.

<sup>3</sup> Section 1.994(f)(1) was numbered 1.994(g)(2) in the proposed rules.



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are as follows:<sup>5</sup>

Government Staff	Annual Burden Hours	Costs
<b>Sections 1.990, 1.991(a)-(k), 1.994(a), 1.994(d), 1.994(e)</b> <sup>6</sup>		
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	<b>\$27,556.10</b>  <b>\$9,678.24</b>
<p><b>Section 1.994(f)(1)</b><sup>7</sup></p> <p>GS-15/Step 5 Hourly Rate: \$67.21</p> <p><b>Transition Filings</b></p> <p>GS-15/Step 5 Hourly Rate: \$67.21</p>	<p>Review and Process 100% of the filings = 2 filings (@ 1 hr./filing) = 2 hours for staff</p> <p>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</p>	<b>\$134.42</b>  <b>\$13,845.26</b>
<b>Total Costs to the Federal Government:</b>		<b>\$51,214.02</b>

15. This is a new information collection.

<sup>5</sup> The amended cost for this collection takes into account the requirements that were eliminated from this information collection from the NPRM stage to the final rulemaking stage (final approval). The Commission is now seeking OMB final approval for the collection.

<sup>6</sup> Sections 1.991(a)-(k) were numbered 1.991(a)-(i) in the proposed rules. Section 1.994(d) covers post-closing notifications of certain corporate reorganizations (see response to question 1). The final rules will permit a licensee to file a post-closing notification letter rather than filing a petition for pre-approval of the reorganization.

<sup>7</sup> Section 1.994(f)(1) was numbered 1.994(g)(2) in the proposed rules.

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16. The FCC has not proposed to publish the information that will be collected.
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. Due to the Commission updating this collection in order to receive OMB final approval, the following figures were amended in the collection since the Commission sought public comments on the information collection requirements: the number of responses is 47, the annual burden hours are 660 and the total annual cost burden is \$198,000. There are no other exceptions to the Certification Statement.