

NON-SUBSTANTIVE CHANGE REQUEST JUSTIFICATION

OMB CONTROL NUMBER 3060-0405

Application for Authority to Construct or Make Changes in an FM Translator or FM Booster Station, FCC Form 349

The Commission submits this non-substantive change request to the Office of Management and Budget (OMB) for approval of minor non-substantive changes to the instructions of FCC Form 349, Application for Authority to Construct or Make Changes in an FM Translator or FM Booster Station. There are no modifications to FCC Form 349 itself; there are only modifications to the instructions.

On September 30, 2016, the Commission adopted *Review of Foreign Ownership Policies for Broadcast, Common Carrier and Aeronautical Radio Licensees Under Section 310(b)(4) of the Communications Act of 1934, as Amended*, Report and Order, FCC 16-128 (*2016 Foreign Ownership Order*). Pursuant to the *2016 Foreign Ownership Order*, the Commission plans to modify the instructions to Section II.G., Item 8: Alien Ownership and Control, FCC Form 349, to state that an applicant may seek a declaratory ruling pursuant to Section 1.5000 *et seq.* of the Commission's rules (47 CFR § 1.5000 *et seq.*), under a separate Information Collection, OMB Control No. 3060-1163, when seeking Commission consent to exceed the 25 percent foreign ownership benchmark. Next, to assist and direct the applicant in understanding the Commission's foreign ownership requirements, a citation to the *2016 Foreign Ownership Order* is added to the end of the second paragraph of the instructions to Section II.G., Item 8: Alien Ownership and Control, FCC Form 349. Finally, the modified instructions to FCC Form 349 will clarify and simplify an applicant's compliance with Section 310 of the Communications Act of 1934, as amended, in particular the methodology used to identify and calculate foreign interests in corporate applicants and licensees whose stock is publicly traded. The substance, burden hours, and costs under OMB Control No. 3060-0405 are not impacted by these minor non-substantive changes to the FCC Form 349 instructions. The minor non-substantive changes are highlighted below:

Change #1 – FCC Form 349, Instruction Section II.G, Item 8: Alien Ownership and Control, first paragraph. The modified instructions state that an applicant may petition for a declaratory ruling covered by the Information Collection for Section 1.5000 *et seq.* of the Commission's rules, OMB Control No. 3060-1163, when seeking Commission consent to exceed the 25% foreign ownership benchmark. There is no change in substance, cost, and burden hours to comply with FCC Form 349, under OMB Control Number 3060-0405. There is also no change to FCC Form 349 itself. An applicant's petition for declaratory ruling is covered by a separate Information Collection for Section 1.5000 *et seq.* of the Commission's rules, OMB Control No. 3060-1163. The former FCC Form 349, Instructions Section II.G., Item 8: Alien Ownership and Control, first paragraph, read:

Item 8: Alien Ownership and Control. All applications must comply with Section 310 of the Communications Act, as amended. Specifically, Section 310 proscribes issuance of a construction permit or station license to an alien, a representative of an alien, a foreign government or the representative thereof, or a corporation organized under the laws of a foreign government. This proscription also applies with respect to any entity of which more than 20% of the capital stock is owned or voted by aliens, their representatives, a foreign government or its representative, or an entity organized under the laws of a foreign country. The Commission may also deny a construction permit or station license to a licensee directly or indirectly controlled by another entity of which more than 25% of the capital stock is owned or voted by aliens, their representatives, a foreign government or its representative, or another entity organized under the laws of a foreign country.

The modified FCC Form 349, Instructions Section II.G., Item 8: Alien Ownership and Control, first paragraph, will read (new language in bold):

Item 8: Alien Ownership and Control. All applications must comply with Section 310 of the Communications Act, as amended. Specifically, Section 310 proscribes issuance of a construction permit or station license to an alien, a representative of an alien, a foreign government or the representative thereof, or a corporation organized under the laws of a foreign government. This proscription also applies with respect to any entity of which more than 20% of the capital stock is owned or voted by aliens, their representatives, a foreign government or its representative, or an entity organized under the laws of a foreign country. The Commission may also deny a construction permit or station license to a licensee directly or indirectly controlled by another entity of which more than 25% of the capital stock is owned or voted by aliens, their representatives, a foreign government or its representative, or another entity organized under the laws of a foreign country. **Any such applicant seeking Commission consent to exceed this 25% benchmark in Section 310(b)(4) of the Act must do so by filing a petition for declaratory ruling pursuant to Section 1.5000 et seq. of the Commission's rules.**

Change #2 – FCC Form 349, Instruction Section II.G., Item 8: Alien Ownership and Control, second paragraph. To assist and direct the applicant in understanding the Commission's foreign ownership requirements, a citation to the *2016 Foreign Ownership Order* is added to the end of the second paragraph. There is no change in substance, cost, and burden hours to comply with FCC Form 349, OMB Control Number 3060-0405. There is also no change to FCC Form 349 itself. The former FCC Form 349, Instructions Section II.G., Item 8: Alien Ownership and Control, second paragraph, read:

Compliance with Section 310 is determined by means of a two-prong analysis, one pertaining to voting interests and the second to ownership interests. See, e.g., BBC License Subsidiary L.P., 10 FCC Rcd 10968 (1995). The voting interests held by aliens in a licensee through intervening domestically organized entities are determined in accordance with the multiplier guidelines for calculating indirect ownership interests in an applicant as set forth in the "Corporate Applicant" Instructions above. For example, if an alien held a 30-percent voting interest in Corporation A which, in turn, held a non-controlling 40-percent voting interest in Licensee Corporation B, the alien interest in Licensee Corporation B would be calculated by multiplying the alien's interest in Corporation A by that entity's voting interest in Licensee Corporation B. The resulting voting interest (30% x 40% = 12%) would not exceed the 25% statutory benchmark. However, if Corporation A held a controlling 60% voting interest in Corporation B, the multiplier would not be utilized and the full 30 percent alien voting interest in Corporation A would be treated as a 30 percent interest in Licensee Corporation B, i.e., an impermissible 30% indirect alien voting interest in the licensee. If Partnership A held a 40% voting interest in Licensee Corporation B, that voting interest would be similarly impermissible if any general partner or any non-insulated limited partner of partnership A was an alien, regardless of his or her partnership interest.

The modified FCC Form 349, Instructions Section II.G., Item 8: Alien Ownership and Control, second paragraph, will read (new language in bold):

Compliance with Section 310 is determined by means of a two-prong analysis, one pertaining to voting interests and the second to ownership interests. See, e.g., BBC License Subsidiary L.P., 10 FCC Rcd 10968 (1995). The voting interests held by aliens in a licensee through intervening domestically organized entities are determined in accordance with the multiplier guidelines for calculating indirect ownership interests in an applicant as set forth in the "Corporate Applicant" Instructions above. For example, if an alien held a 30-percent voting

interest in Corporation A which, in turn, held a non-controlling 40-percent voting interest in Licensee Corporation B, the alien interest in Licensee Corporation B would be calculated by multiplying the alien's interest in Corporation A by that entity's voting interest in Licensee Corporation B. The resulting voting interest (30% x 40% = 12%) would not exceed the 25% statutory benchmark. However, if Corporation A held a controlling 60% voting interest in Corporation B, the multiplier would not be utilized and the full 30 percent alien voting interest in Corporation A would be treated as a 30 percent interest in Licensee Corporation B, *i.e.*, an impermissible 30% indirect alien voting interest in the licensee. If Partnership A held a 40% voting interest in Licensee Corporation B, that voting interest would be similarly impermissible if any general partner or any non-insulated limited partner of partnership A was an alien, regardless of his or her partnership interest. ***See also Review of Foreign Ownership Policies for Broadcast, Common Carrier and Aeronautical Radio Licensees Under Section 310(b) (4) of the Communications Act of 1934, as Amended, Report and Order, FCC 16-128, paras. 67-72 (rel. Sept. 30, 2016) (2016 Foreign Ownership Order).***

Change #3 – FCC Form 349, Instruction Section II.G., Item 8: Alien Ownership and Control, fourth paragraph. The Commission seeks to clarify and simplify the methodology, in compliance with Section 310 of the Communications Act of 1934, as amended, used to identify and calculate foreign interests in corporate applicants and licensees whose stock is publicly traded. Substantive compliance determination, cost, and burden hours are not impacted by this modification to FCC Form 349. There are no changes to FCC Form 349 itself. The former FCC Form 349, Instructions Section II.G., Item 8: Alien Ownership and Control, fourth paragraph, read:

In order to complete this two-prong analysis, an applicant must determine the citizenship of each entity holding either a voting or equity interest or explain how it determined the relevant percentages. Corporate applicants and licensees whose stock is publicly traded have employed a variety of practices, including sample surveys using a recognized statistical methodology, a separate restrictive class of stock for alien owners, and the compiling of citizenship information on each stockholder by the corporation's stock transfer agent, to ensure the accuracy and completeness of their citizenship disclosures and their continuing compliance with Section 310.

The modified FCC Form 349, Instructions Section II.G., Item 8: Alien Ownership and Control, fourth and new fifth paragraphs, will read (new language in bold):

In order to complete this two-prong analysis, an applicant must determine the citizenship of each entity holding either a voting or equity interest or explain how it determined the relevant percentages. Corporate applicants and licensees whose stock is publicly traded **must determine the citizenship of interest holders who are known or should be known to the company in its ordinary course of business, including: (1) registered shareholders; (2) officers, directors, and employees; (3) interest holders reported to the Securities and Exchange Commission; (4) beneficial owners identified in annual or quarterly reports and proxy statements; and (5) any other interest holders that are actually known to the company, such as through transactions, litigation, proxies, or any other source. Statistical sampling surveys are no longer necessary. Although direct inquiry and publicly available resources may be used to determine citizenship of known or should-be-known interest holders, street addresses are not sufficient for this purpose. For more detailed information on identifying and calculating foreign interests, see 2016 Foreign Ownership Order, paras. 44-72.**

If the combined total foreign ownership (foreign voting interests and foreign equity interests) identified under this methodology does not exceed 25%, a declaratory ruling

is not necessary to grant the application. A subsidiary or affiliate of a licensee already named in a foreign ownership declaratory ruling may rely on that ruling, and by certifying compliance with the provisions of Section 310 of the Communications Act of 1934, as amended, relating to interests of aliens and foreign governments, certifies that it and the licensee named in the declaratory ruling are in compliance with the terms and conditions of the original foreign ownership declaratory ruling. See 47 CFR § 1.5004(b).