

NON-SUBSTANTIVE CHANGE REQUEST JUSTIFICATION
OMB CONTROL NUMBERS 3060-0027,¹ 3060-0016,² 3060-0932³

FCC Form 2100, Application for Media Bureau Audio and Video Service Authorization,
Schedule A, Schedule C, and Schedule E; FCC Form 301, Application for Construction Permit
for Commercial Broadcast Station

The Commission is submitting this non-substantive change request to the Office of Management and Budget (OMB) for approval of minor non-substantive changes made to FCC Form 2100, Application for Media Bureau Audio and Video Service Authorization, Schedules A, C, and E; and FCC Form 301, Application for Construction Permit for Commercial Broadcast Station. FCC Form 2100, Schedule A, is a Web-based electronic version of FCC Form 301, which shares the same OMB control number. Currently, however, Form 2100, Schedule A, is used only for applications for video service authorizations, with audio service applicants still filing Form 301.

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 FCC Form 2100, Instructions for FCC 2100 Main Form, Section D, Alien Ownership, first paragraph; and Instructions to FCC Form 301 for Section II: Legal Information, Section E, Item 7: Alien Ownership and Control, first paragraph, 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 Section D, Alien Ownership, Instructions for FCC 2100 Main Form; and to the end of the second paragraph of Section E, Item 7: Alien Ownership and Control, Instructions to FCC Form 301 for Section II: Legal Information. Furthermore, the modified Section D (Form 2100, Schedules A, C, and E) and Section E (Form 301), Alien Ownership, instructions 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. Next, the "Alien Ownership" questions of the FCC Form 2100 Main Form will be clarified and simplified to assist the applicant with compliance. Finally, language is added to direct the FCC Form 2100, Schedule A, C, or E applicant to Section D, Alien Ownership, for alien ownership information and compliance.

The substance, burden hours, and costs under OMB Control Numbers 3060-0027, 3060-0016, and 3060-0932 are not impacted by these minor non-substantive changes to the FCC Form 2100, Schedules A, C, and E, and FCC Form 301, instructions. Changes 1 - 4 below require no changes to Form 2100, Schedules A, C, and E, or to Form 301, only language in the instructions is modified to assist with compliance. The minor non-substantive changes are highlighted below:

Change #1 – FCC Form 2100, Instructions for FCC 2100 Main Form, Section D, Alien Ownership, first paragraph; and FCC Form 301, Instructions for Section II: Legal Information, Section E, Item 7: Alien Ownership and Control, first paragraph. The modified instructions state

¹ FCC Form 2100, Schedule A

² FCC Form 2100, Schedule C

³ FCC Form 2100, Schedule E

that an applicant may petition for a declaratory ruling covered by the Information Collection for Sections 1.5000 *et seq.* of the Commission's rules, OMB Control No. 3060-1163, when seeking Commission consent to exceed the 25 percent foreign ownership benchmark. There is no change in substance, cost, and burden hours to comply with FCC Form 2100, OMB Control Numbers 3060-0027, 3060-0016, and 3060-0932. There is also no change to FCC Form 2100, Schedule A, C, and E or to FCC Form 301. An applicant's petition for declaratory ruling is covered by a separate Information Collection for Sections 1.5000 *et seq.* of the Commission's rules, OMB Control No. 3060-1163. The former FCC Form 2100, Instructions for FCC 2100 Main Form, Section D, Alien Ownership, first paragraph [FCC Form 301, Instruction for Section II: Legal Information, Section E, Item 7: Alien Ownership and Control, first paragraph], read:

D[E – Form 301]. [Item 7: - Form 301] Alien Ownership [and Control – Form 301]. All applications must comply with Section 310 of the Communications Act, as amended. Specifically, Section 310 proscribes the [holding and transfer – *Form 2100*] [issuance – *Form 301*] of a broadcast 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 [broadcast – *Form 2100*] 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 2100, Instructions for FCC 2100 Main Form, Section D, Alien Ownership, first paragraph [FCC Form 301, Instruction for Section II: Legal Information, Section E, Item 7: Alien Ownership and Control], will read (new language in bold):

D[E – Form 301]. [Item 7: - Form 301] Alien Ownership [and Control – Form 301]. All applications must comply with Section 310 of the Communications Act, as amended. Specifically, Section 310 proscribes the [holding and transfer – *Form 2100*] [issuance – *Form 301*] of a broadcast 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 [broadcast – *Form 2100*] 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 2100, Instructions for FCC 2100 Main Form, Section D, Alien Ownership, second paragraph; and FCC Form 301, Instructions for Section II: Legal Information, Section E, Item 7: 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 of Section D [Section E to the Form 301 Instructions]. There is no change in substance, cost, and burden hours to comply with FCC Form 2100, Schedule A, C, and E, or FCC Form 301, OMB Control Numbers 3060-0027, 3060-0016, and 3060-0932. There is also no change to FCC Form 2100, Schedules A, C, and E, or to FCC Form 301. The former FCC Form 2100, Instructions for FCC 2100 Main Form, Section D, Alien Ownership, second paragraph [FCC Form 301, Instructions for Section II: Legal Information, Section E, Item 7: 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 [for Section II, Item 2 – *Form 301*]. For example, if an alien held a 30% voting interest in Corporation A which, in turn, held a non- controlling 40 % 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 % 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 2100, Instructions for FCC 2100 Main Form, Section D, Alien Ownership, second paragraph [FCC Form 301, Instruction for Section II: Legal Information, Section E, Item 7: 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 [for Section II, Item 2 – *Form 301*]. For

example, if an alien held a 30% voting interest in Corporation A which, in turn, held a non- controlling 40 % 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 % 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 2100, Instructions for FCC 2100 Main Form, Section D, Alien Ownership, fourth and fifth paragraphs; and FCC Form 301, Instructions for Section II: Legal Information, Section E, Item 7: 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 the Instructions to FCC Form 2100 or the Instructions to FCC Form 301. There are no changes to FCC Form 2100, Schedule A, C, and E, or to FCC Form 301. The former FCC Form 2100, Instructions for FCC 2100 Main Form, Section D, Alien Ownership, fourth and fifth paragraphs [FCC Form 301, Instructions for Section II: Legal Information, Section E, Item 7: 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.

[Finally, Applicants are directed to review the policies and clarifications set forth in *Commission Policies and Procedures Under Section 310(b)(4) of the Communications Act, Foreign Investment in Broadcast Licensees*, Declaratory Ruling, MB Docket No. 13-50, 28 FCC Rcd. 16244 (2013). – *Form 2100*]

The modified FCC Form 2100, Instructions for FCC 2100 Main Form, Section D, Alien Ownership, fourth and fifth paragraphs [FCC Form 301, Instructions for Section II: Legal Information, Section E, Item 7: 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, provided that it and the licensee named in the declaratory ruling certify in the application that it is in compliance with the terms and conditions of the original foreign ownership declaratory ruling. See 47 CFR § 1.5004(b).

~~Change #4-~~ FCC Form 2100, General Instructions, Section E., Schedules, (1) Schedule A, (3) Schedule C, and (5) Schedule E. Language is added to direct the FCC Form 2100, Schedule A, C, or E applicant to Instructions for FCC 2100 Main Form, Section D, Alien Ownership, for alien ownership information and compliance. The substance, burden hours, and costs under OMB Control Nos. 3060-0027, 3060-0016, and 3060-0932 are not impacted by these minor non-substantive changes to the FCC Form 2100, Schedules A, C, and E. There are no changes to Form 2100, Schedules A, C, and E, only language in the instructions is modified to assist with compliance. The former FCC Form 2100, General Instructions, Section E. Schedules, (1) Schedule A, (3) Schedule C, and (5) Schedule E read (unaffected Schedules are not listed):

(1) **Schedule A**

The Schedule to apply for authority to construct a new commercial TV broadcast station or to make changes in the existing facilities of such a station. In the case of new station and major modification proposals, this Schedule is filed by either the successful bidder at a broadcast frequency auction or by an applicant proposing facilities that are not mutually exclusive with any other application filed during the same window and thus not subject to the Commission's comparative bidding procedures. All proposals for minor changes to authorized commercial stations are also to be filed using this Schedule. Approved by OMB control number: 3060-0027.

(3) **Schedule C**

The Schedule to apply for authority to construct a new low power or television Translator station or make changes in the existing facilities of such stations. All Proposals for

minor changes to authorized LPTV or TV translator stations are also to be filed using this Schedule. Approved by OMB control number: 3060-0016.

(5) Schedule E

The Schedule to apply for authority to make changes in in the existing facilities of Class A stations. Approved by OMB control number: 3060-0932.

The modified FCC Form 2100, General Instructions, E. Schedules A, C, and E will read (new language in bold) (unaffected Schedules are not listed):

(1) Schedule A

The Schedule to apply for authority to construct a new commercial TV broadcast station or to make changes in the existing facilities of such a station. In the case of new station and major modification proposals, this Schedule is filed by either the successful bidder at a broadcast frequency auction or by an applicant proposing facilities that are not mutually exclusive with any other application filed during the same window and thus not subject to the Commission's comparative bidding procedures. All proposals for minor changes to authorized commercial stations are also to be filed using this Schedule. **For alien ownership information and compliance, see Instructions for FCC 2100 Main Form, Section D below.** Approved by OMB control number: 3060-0027.

(3) Schedule C

The Schedule to apply for authority to construct a new low power or television Translator station or make changes in the existing facilities of such stations. All Proposals for minor changes to authorized LPTV or TV translator stations are also to be filed using this Schedule. **For alien ownership information and compliance, see Instructions for FCC 2100 Main Form, Section D.** Approved by OMB control number: 3060-0016.

(5) Schedule E

The Schedule to apply for authority to make changes in in the existing facilities of Class A stations. **For alien ownership information and compliance, see Instructions for FCC 2100 Main Form, Section D.** Approved by OMB control number: 3060-0932.

Change #5 – Form 2100, Schedule A, C, and E Alien Ownership Certifications. The Commission seeks to clarify and simplify the Certifications to ensure applicant compliance with Section 310 of the Communications Act of 1934, as amended. Substantive compliance determination, cost, and burden hours are not impacted by this modification to FCC Form 2100, Schedule A, C, and E. (Form 301 is not being modified.) The former Alien Ownership Certifications read:

- 1) Is the applicant a foreign government or the representative of any foreign government as specified in Section 310(a) of the Communications Act?
- 2) Is this application, as provided for under Section 310(b) of the Communications Act, for a broadcast, common carrier, aeronautical en route, or aeronautical fixed radio station Authorization?
- 3) Is the applicant an alien or the representative of an alien? (Section 310(b)(1))

4) Is the applicant a corporation, or non-corporate entity, that is organized under the laws of any foreign government? (Section 310(b)(2))

5) Is the applicant an entity of which more than one-fifth of the capital stock, or other equity or voting interest, is owned of record or voted by aliens or their representatives or by a foreign government or representative thereof or by any entity organized under the laws of a foreign country? (Section 310(b)(3))

6) Is the applicant directly or indirectly controlled by any other entity of which more than one-fourth of the capital stock, or other equity or voting interest, is owned of record or voted by aliens, their representatives, or by a foreign government or representative thereof, or by any entity organized under the laws of a foreign country? (Section 310(b)(4))

7) Has the applicant received a ruling(s) under Section 310(b)(4) of the Communications Act with respect to the same radio service involved in this application?

8) Has there been any change in the applicant's foreign ownership since issuance of the declaratory ruling(s) cited in response to Question 7?

8a) Enter the File or Docket Number of the Petition for Declaratory Ruling that the applicant has filed for its foreign ownership in connection with this application pursuant to Section 310(b)(4) of the Communications Act. It is not necessary to file a request for a foreign ownership declaratory ruling if the applicant attaches a showing that the requested authorization(s) is exempt from the provisions of Section 310(b)(4).

9) Does the applicant's foreign ownership comply with the declaratory ruling(s) cited in response to Question 7?

The clarified and simplified Form 2100, Alien Ownership Certifications, will read (new language in bold):

1) Is the applicant a foreign government or the representative of any foreign government as specified in Section 310(a) of the Communications Act?

2) Is the applicant an alien or the representative of an alien? (Section 310(b)(1))

3) Is the applicant a corporation, or non-corporate entity, that is organized under the laws of any foreign government? (Section 310(b)(2))

4) Is the applicant an entity of which more than one-fifth of the capital stock, or other equity or voting interest, is owned of record or voted by aliens or their representatives or by a foreign government or representative thereof or by any entity organized under the laws of a foreign country? (Section 310(b)(3))

5) Is the applicant directly or indirectly controlled by any other entity of which more than one-fourth of the capital stock, or other equity or voting interest, is owned of record or voted by aliens, their representatives, or by a foreign

government or representative thereof, or by any entity organized under the laws of a foreign country? (Section 310(b)(4))

6) Has the applicant received a declaratory ruling(s) under Section 310(b)(4) of the Communications Act?

6a) Enter the citation(s) of the applicable declaratory ruling(s) by DA/FCC number, FCC Record citation, release date, or any other identifying information.

7) Has there been any change in the applicant's foreign ownership since issuance of the declaratory ruling(s) cited in response to Question 6?

8) Does the applicant certify that it is in compliance with the terms and conditions of the foreign ownership declaratory ruling(s) cited in response to Question 6?

9) In connection with this application, is the applicant filing a foreign ownership Petition for Declaratory Ruling pursuant to Section 310(b)(4) of the Communications Act?