

NON-SUBSTANTIVE CHANGE REQUEST JUSTIFICATION

OMB CONTROL NUMBER 3060-0029

Application for Construction Permit for Reserved Channel Noncommercial Educational Broadcast Station, FCC Form 340

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 340, Application for Construction Permit for Reserved Channel Noncommercial Educational Broadcast Station. There are no modifications to FCC Form 340 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, Question 10: Alien Ownership and Control, FCC Form 340, 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 first paragraph of the instructions to Section II, Question 10: Alien Ownership and Control, FCC Form 340. Finally, the modified instructions to FCC Form 345 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 applicants and licensees with members, shareholders, or other interest holders. The substance, burden hours, and costs under OMB Control No. 3060-0029 are not impacted by these minor non-substantive changes to the FCC Form 340 instructions. The minor non-substantive changes are highlighted below:

Change #1 – FCC Form 340, Instruction Section II, Question 10: 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 340, under OMB Control Number 3060-0029. There is also no change to FCC Form 340 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. Additionally, 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 first paragraph. Again, there is no change in substance, cost, and burden hours to comply with FCC Form 340, OMB Control Number 3060-0029. There is also no change to FCC Form 340 itself.

The former FCC Form 340, Instructions Section II, Question 10: Alien Ownership and Control, first paragraph, read:

Question 10: Alien Ownership and Control. All applicants must comply with Section 310 of the Communications Act, as amended. Specifically, Section 310 proscribes issuance of a construction permit to an alien, the 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 corporation of which more than 20% of the capital stock is owned or voted by aliens, their representatives, a foreign government or its representative, or by a corporation organized under the laws of a foreign country. This

proscription could likewise apply to any corporation directly or indirectly controlled by another corporation of which (a) any officer is, (b) more than 25% of the directors are, or (c) more than 25% of the capital stock is owned or voted by aliens, their representatives, a foreign government or its representative. The Commission may also deny a construction permit to a corporation controlled by another corporation organized under the laws of a foreign country.

The modified FCC Form 340, Instructions Section II, Question 10: Alien Ownership and Control, first paragraph, will read (new language in bold):

Question 10: Alien Ownership and Control. All applicants must comply with Section 310 of the Communications Act, as amended. Specifically, Section 310 proscribes issuance of a construction permit to an alien, the 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 corporation of which more than 20% of the capital stock is owned or voted by aliens, their representatives, a foreign government or its representative, or by a corporation organized under the laws of a foreign country. This proscription could likewise apply to any corporation directly or indirectly controlled by another corporation of which (a) any officer is, (b) more than 25% of the directors are, or (c) more than 25% of the capital stock is owned or voted by aliens, their representatives, a foreign government or its representative. The Commission may also deny a construction permit to a corporation controlled by another corporation 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. See generally 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 #2 – FCC Form 340, Instructions Section II, Question 10: Alien Ownership and Control, second 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 applicants and licensees with members, shareholders, or other interest holders. Substantive compliance determination, cost, and burden hours are not impacted by this modification to FCC Form 340. There are no changes to FCC Form 340 itself. The former FCC Form 340, Instructions Section II, Question 10: Alien Ownership and Control, second paragraph, read:

The applicant must determine the citizenship of each officer and director. It must also determine the citizenship of each shareholder or else explain how it determined the relevant percentages. For large corporations, a sample survey using a recognized statistical method is acceptable for this purpose.

The modified FCC Form 340, Instructions Section II, Question 10: Alien Ownership and Control, second and new third paragraphs, will read (new language in bold):

The applicant must determine the citizenship of each officer and director. It must also determine the citizenship of each shareholder or else explain how it determined the relevant percentages. **Applicants and licensees that have many members, shareholders, or other interest holders 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 or other government agencies; (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).