

Title: Regulations Applicable to Broadcast, Common Carrier, and Aeronautical Radio Licensees Under Section 310(b) 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 three-year extension of OMB Control No. 3060-1163 titled, “Regulations Applicable to Broadcast, Common Carrier and Aeronautical Radio Licensees Under Section 310(b)(4) of the Communications Act of 1934, as amended” (OMB Control Number 3060-1163) from the Office of Management and Budget (OMB).

Summary of Current Information Collection Requirements

On September 29, 2016, the Commission adopted final rules in *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*, IB Docket No. 15-236, Report and Order, 31 FCC Rcd 11272 (2016) (2016 Foreign Ownership Report and Order).

Among other changes in the 2016 Foreign Ownership Order, the Commission:

- Modified its foreign ownership filing and review process for broadcast licensees by extending to such licensees the streamlined rules and procedures developed for foreign ownership reviews of common carrier and certain aeronautical licensees under Section 310(b)(4) of the Communications Act of 1934, as amended (the Act) with certain modifications to tailor them to the broadcast context; and
- Reformed the methodology used by both common carrier and broadcast licensees that are, or are controlled by, U.S. publicly traded companies to assess their compliance with the foreign ownership limits in Sections 310(b)(3) and 310(b)(4) of the Act, respectively.

This collection continues to reflect the incorporation of broadcast licensees into the foreign ownership filing and review process applicable to common carrier licensees. The Commission’s previous adoption of a standardized filing and review process for broadcast licensees’ requests to exceed the 25 percent foreign ownership benchmark in Section 310(b)(4), as the Commission has done for common carrier licensees, provided the broadcast sector with greater transparency and more predictability, and reduced regulatory burdens and costs. As is the case with common carrier licensees, this standardized filing and review process provides a clearer path for foreign investment in broadcast licensees that is more consistent with the U.S. domestic investment process,

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

while continuing to protect important interests related to national security, law enforcement, foreign policy, trade policy, and other public policy goals.

This collection also continues to reflect that broadcast or common carrier licensees may file a petition for declaratory ruling to remedy the licensee's inadvertent non-compliance with the statutory foreign ownership limits or the terms and conditions of the licensee's existing foreign ownership ruling with reasonable assurance that the Commission will not take enforcement action. This provision is codified in Section 1.5004(f)(3)-(4)), and it formalizes in the limited context of U.S. public company compliance with Section 310(b) what has been the equitable practice of the Commission in recognizing a licensee's good faith efforts to comply with the Section 310(b) statutory requirements, the terms and conditions of a licensee's foreign ownership ruling, and the Commission's rules.

The statutory authority for this information collection is contained 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.

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 (applicable to common carrier licensees only) requires that the Commission pass upon the propriety of foreign ownership of common carrier radio licensees before such ownership exceeds 20 percent. 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.

3. This collection will continue to require that common carrier 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. Broadcast entities file their information electronically in CDBS as an attachment to the underlying applications for a construction permit, assignment, or transfer of control. A broadcast petition filed in the absence of an underlying broadcast construction permit, assignment, or transfer of control application shall be initially submitted electronically with the Commission's Office of the Secretary via the Electronic Comment Filing System (ECFS) as a non-docketed filing. The petition will receive a docket number, and a public notice seeking comment will be released. A total of 100 percent of all documents are filed with the Commission electronically.

4. This information collection requirement is not duplicated elsewhere in the Commission's rules.

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

5. The collection of information is 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. broadcast, 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 published a 60-day notice in the *Federal Register* dated on November 1, 2019 (84 FR 58714) seeking comments from the public on the information collection requirements contained in this supporting statement. No comments were 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 Commission estimates the final burden estimates for this collection as set forth in the table below.

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

While there is for the most part a one-to-one correlation between the existing rules (1.990-1.994) and the new rules (1.5000-1.5004), in the course of preparing this statement we have identified an inadvertent error in earlier tables citing to current Section 1.994 (to be renumbered 1.5004). The Question 12 tables of estimated burden hours submitted for this collection in 2013 (final approval) and 2015 (three-year extension) cite to “Rule Section ... 1.994(d)....” (in the first column under the subheading “Explanation of Burden Estimate”). This citation should have read “Rule Section ... 1.994(c)-(d)....” Thus, the table below cites to Section 1.5004(c)-(d) (among other rule sections) in the first column under the subheading “Explanation of Burden Estimate.”

Like Section 1.994(c)-(d), Section 1.5004(c)-(d) permits licensees to file a post-closing letter notification, rather than a petition for declaratory ruling for pre-approval of certain internal corporate reorganizations involving the introduction of new, foreign-organized entities into a previously-approved foreign investor’s vertical chain of ownership. The rule also provides that the licensee need not file a letter notification (or a petition for declaratory ruling) if the reorganization is instead the subject of a *pro forma* application or *pro forma* notification already filed with the Commission pursuant to the relevant broadcast or common carrier service rules applicable to the licensee. Because the broadcast service rules always require the filing of a *pro forma* application and Commission consent to the application before a broadcast licensee undertakes a restructuring in the circumstances covered by Section 1.5004(c), broadcast licensees will not need to make any additional filings with the Commission under this rule. Therefore, we have not included any estimated burdens for broadcasters under Section 1.5004(c).

The table below does not include burden hours associated with the “transition filings” that currently are included in the inventory for this collection. The “transition filings” were shown in the 2013 and 2015 tables as a separate category of petitions for declaratory ruling. We are eliminating the separate category for transition filings and the estimated burden hours for common carrier licensees. This category was intended to account for petitions for declaratory ruling filed by common carrier licensees that had received a foreign ownership ruling prior to the August 9, 2013, effective date of the current rules and that sought to obtain a new ruling under the 2013 rules. (Rulings issued under the 2013 rules (and that will be issued under the 2016 rules) provide broader authority to accommodate post-ruling changes in a licensee’s foreign ownership than the rulings issued prior to August 9, 2013).

Since the effective date of the 2013 rules, we have not received any petitions for declaratory ruling filed by a licensee with a “pre-August 9, 2013 ruling” for the sole purpose of obtaining a “new” ruling under the 2013 rules. Instead, these licensees have been filing petitions under the 2013 rules when consummation of a particular planned transaction would render the licensee out of compliance with the terms and conditions of its pre-August 9, 2013 ruling (e.g., the planned acquisition of an equity and/or voting interest greater than five percent in the controlling U.S. parent of the licensee by a new foreign investor). Given these circumstances, and the fact that the 2013 rules have been in effect for more than three years, we believe a more appropriate approach for this

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

collection going-forward is to eliminate the separate category and burden hours for common carrier licensees' "transition filings."

The current inventory for common carrier licensees' "Petitions to Extend Existing Ruling" (as we refer to this category of petitions in the 2013 and 2015 tables) consists of 216 estimated burden hours. Based on our experience, we anticipate that the existing 216 burden hour estimate for these petitions is sufficient to accommodate all petitions filed by common carrier licensees to modify the terms of their existing rulings, regardless of whether the licensee received its initial ruling before or after August 9, 2013. We note that we have re-named this category of petitions in the table below as "Petitions to Modify Existing Ruling."

Similarly, in the table below, broadcast licensees that have obtained a foreign ownership ruling before the effective date of the 2016 rules and that seek to obtain a modified ruling under the 2016 rules are included in the category "Petitions to Modify Existing Ruling." Because very few broadcast petitions will have been granted by the time the 2016 rules take effect (as compared to the number of common carrier rulings that had been granted before August 9, 2013), we believe it is not necessary or helpful to monitor any broadcast "transition" filings by creating a separate category in this collection as did for common carrier licensees in 2013.

As reflected in the table below, we estimate the same time per response for broadcast as for common carrier responses. We do not expect any difference in burden hours per response, but we do estimate a different number of responses for broadcast respondents as compared to common carrier respondents.

In addition, we do not estimate a change in the time per response for "Initial Petitions," "Petitions to Modify Existing Ruling," or notifications filed under rule section 1.5004(f)(1) (currently, 1.994(f)(1)). We have no basis to estimate a higher or lower number of burden hours for these responses. As noted in response to Question 1, Section 1.5000(e) of the 2016 rules codifies a revised methodology to be used by both common carrier and broadcast licensees that are, or are controlled by, U.S. publicly traded companies to assess their compliance with the foreign ownership limits in Sections 310(b)(3) and 310(b)(4) of the Act, respectively. The Commission found, based on the record in the 2016 Foreign Ownership Report and Order, that this methodology would rationalize the process for such companies' determinations of compliance with the statutory foreign ownership limits, with concomitant reductions in the costs and burdens associated with determinations of compliance. Although the comments supported this finding, commenters did not attempt to quantify such reductions. We decline to estimate a particular reduction in burden hours at this time. However, the Commission will evaluate whether an inventory reduction is warranted to the extent we receive comments on the information collection requirements contained in this supporting statement and as the new rules are implemented.

We also make no change in the number of responses for common carrier licensees'

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

“Initial Petitions,” “Petitions to Modify Existing Ruling,” or notifications filed under rule section 1.5004(f)(1) (currently, 1.994(f)(1)). While we have not received as many “Initial Petitions” or “Petitions to Modify Existing Ruling,” as we have allowed for in the current inventory, we do not seek to reduce the inventory at this time out of an abundance of caution.

Finally, Section 1.5004(f)(3) sets forth new compliance provisions for both common carrier and broadcast licensees that are, or are controlled by, U.S. publicly traded companies. Section 1.5004(f)(3) provides such companies a 30-day period, subject to certain conditions, to file a petition for declaratory ruling seeking post-hoc approval of foreign ownership in excess of the statutory limits or approval of any particular foreign interests that require specific approval under the licensee’s existing foreign ownership ruling, where the after-the-fact filing is due solely to circumstances beyond the licensee’s control that were not reasonably foreseeable to or known by the licensee with the exercise of the required due diligence.

Estimate of Burden Hours:					
Explanation of Burden Estimate	Number Of Responses		Frequency of Responses	Time Per Response	Annual Burden Hours
	Common Carrier	Broadcast			
Rule Sections 1.5000, 1.5001(a)-(k), 1.5004(a), 1.5004(e)	7 “Initial Petitions” ¹	25 “Initial Petitions” ²	On occasion	46 Hours	1,472 Hours
	18 “Petitions to Modify Existing Ruling” ²	5 “Petitions to Modify Existing Rulings” ³	On occasion	12 Hours	276 Hours
Rule Section 1.5004(c)-(d)³	4	10	On occasion	2 Hours	28 Hours
Rule Section 1.5004(f)(1)⁴	2	5	On occasion	2 Hours	14 Hours

¹ These include remedial petitions for declaratory ruling where the licensee exceeded the foreign ownership rules (without prior Commission approval) and had not previously received a foreign ownership ruling.

² These include remedial petitions for declaratory ruling where the licensee is no longer in compliance with its foreign ownership ruling or the Commission’s rules relating to foreign ownership.

³ Consisting of “notification(s) of insertion of new, foreign-organized entity in ownership chain” via letter filing.

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

Rule Section 1.5004(f)(3)⁵	2	3	On occasion	8 Hours	40 Hours
Totals	81 Respondents/Responses				1,830 Hours

In-House Costs: We estimate that in-house staff equivalent to a GS-11/Step 5 (\$37.79/hour) will fulfill a portion of the hourly requirements and that in-house staff equivalent to a GS-15/Step 5 (\$74.86/hour) will fulfill the remaining hourly requirements. Therefore, the in-house costs total **\$82,723.32** as follows:

$$\begin{array}{rcl}
 1,464 \text{ hours} \times \$37.79/\text{hour} & = & \$55,324.56 \\
 366 \text{ hours} \times \$74.86 & = & \$27,398.76 \\
 & & \underline{\$82,723.32}
 \end{array}$$

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: **\$524,400**

Compliance with 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 1,748 burden hours to fulfill the requirements on behalf of the respondents for all 81 responses.⁶ Therefore, the total annual cost burden to the respondents is as follows:

⁴ Consisting of “notification(s) of non-compliance” via letter filing.

⁵ Consisting of “notification(s) of non-compliance by U.S. public companies” via letter filing.

⁶ See question 12 for the respondent’s burden.

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

Description	Costs per Hour	Total Annual Hours for Outside Consultants	Total Costs
Outside Legal Counsel	\$300 per Hour	1,748 Hours	\$524,400 (O&M)

(c) Total Annual Costs: \$524,400

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

Government Staff	Annual Burden Hours	Costs
Sections 1.5000, 1.5001(a)-(k), 1.5004(a), 1.5004(e) GS-15/Step 5 Hourly Rate: \$77.49	Common Carrier 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	\$31,770.90
	Common Carrier Review and Process 100 % of the "Petitions to Modify Existing Ruling" = 18 petitions (@ 8 hrs./petition) = 144 hours for staff	\$11,158.56
	Broadcast Review and Process 100% of the "Initial Petitions" = 25 petitions (@ 30 hrs. for 10 of the petitions; 80 hrs. for 15 of the petitions) = 1,500 hours for staff	\$116,235
	Broadcast Review and Process 100 % of the "Petitions to Modify Existing Ruling" = 5 petitions (@ 8 hrs./petition) = 40 hours for staff	\$3,099.60

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

Section 1.5004(c)-(d) GS-12/Step 5 Hourly Rate: \$46.88	Common Carrier and Broadcast Review and Process 100% of the filings = 14 filings (@ 2 hr./filing) = 28 hours for staff	\$1,312.64
Section 1.5004(f)(1) GS-15/Step 5 Hourly Rate: \$77.49	Common Carrier and Broadcast Review and Process 100% of the filings = 7 filings (@ 2 hr./filing) = 14 hours for staff	\$1,084.86
Section 1.5004(f)(3) GS-15/Step 5 Hourly Rate: \$74.86	Common Carrier and Broadcast Review and Process 100% of the filings = 5 filings (@ 8 hr./filing) = 40 hours for staff	\$2,994.40
Total Costs to the Federal Government:		\$167,655.96

15. There are no program changes or adjustments to this information collection.

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. There are no exceptions to the certification statement.

B. Collections of Information Employing Statistical Methods:

This information collection does not use any statistical methods.