

## § 1.959

(6) NS is the North-South distance in kilometers.

(7) EW is the East-West distance in kilometers.

(8) DIST is the distance between the two locations, in kilometers.

[70 FR 19306, Apr. 13, 2005]

### § 1.959 Computation of average terrain elevation.

Except as otherwise specified in § 90.309(a)(4) of this chapter, average terrain elevation must be calculated by computer using elevations from a 30 second point or better topographic data file. The file must be identified. If a 30 second point data file is used, the elevation data must be processed for intermediate points using interpolation techniques; otherwise, the nearest point may be used. In cases of dispute, average terrain elevation determinations can also be done manually, if the results differ significantly from the computer derived averages.

(a) Radial average terrain elevation is calculated as the average of the elevation along a straight line path from 3 to 16 kilometers (2 and 10 miles) extending radially from the antenna site. If a portion of the radial path extends over foreign territory or water, such portion must not be included in the computation of average elevation unless the radial path again passes over United States land between 16 and 134 kilometers (10 and 83 miles) away from the station. At least 50 evenly spaced data points for each radial should be used in the computation.

(b) Average terrain elevation is the average of the eight radial average terrain elevations (for the eight cardinal radials).

(c) For locations in Dade and Broward Counties, Florida, the method prescribed above may be used or average terrain elevation may be assumed to be 3 meters (10 feet).

[70 FR 19306, Apr. 13, 2005]

#### REPORTS TO BE FILED WITH THE COMMISSION

### § 1.981 Reports, annual and semi-annual.

Where required by the particular service rules, licensees who have entered into agreements with other per-

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sons for the cooperative use of radio station facilities must submit annually an audited financial statement reflecting the nonprofit cost-sharing nature of the arrangement to the Commission's offices in Washington, DC or alternatively may be sent to the Commission electronically via the ULS, no later than three months after the close of the licensee's fiscal year.

[78 FR 25160, Apr. 29, 2013]

#### FOREIGN OWNERSHIP OF COMMON CARRIER, AERONAUTICAL EN ROUTE, AND AERONAUTICAL FIXED RADIO STATION LICENSEES

SOURCE: 78 FR 41321, July 10, 2013, as amended at 78 FR 44028, July 23, 2013.

### § 1.990 Citizenship and filing requirements under the Communications Act of 1934.

These rules establish the requirements and conditions for obtaining the Commission's prior approval of foreign ownership in common carrier, aeronautical en route, and aeronautical fixed radio station licensees and common carrier spectrum lessees that would exceed the 25 percent benchmark in section 310(b)(4) of the Communications Act of 1934, as amended (47 U.S.C. 310(b)(4)). These rules also establish the requirements and conditions for obtaining the Commission's prior approval of foreign ownership in common carrier (but not aeronautical en route or aeronautical fixed) radio station licensees and spectrum lessees that would exceed the 20 percent limit in section 310(b)(3) of the Act (47 U.S.C. 310(b)(3)).

(a)(1) A common carrier, aeronautical en route or aeronautical fixed radio station licensee or common carrier spectrum lessee shall file a petition for declaratory ruling to obtain Commission approval under section 310(b)(4) of the Act, and obtain such approval, before the aggregate foreign ownership of any controlling, U.S.-organized parent company exceeds, directly and/or indirectly, 25 percent of the U.S. parent's equity interests and/or 25 percent of its voting interests. An applicant for a common carrier, aeronautical en route or aeronautical fixed

radio station license or common carrier spectrum leasing arrangement shall file the petition for declaratory ruling required by this paragraph at the same time that it files its application.

NOTE TO PARAGRAPH (a)(1): Paragraph (a)(1) of this section implements the Commission's foreign ownership policies under section 310(b)(4) of the Act (47 U.S.C. 310(b)(4)), for common carrier, aeronautical en route, and aeronautical fixed radio station licensees and common carrier spectrum lessees. It applies to foreign equity and/or voting interests that are held, or would be held, directly and/or indirectly in a U.S.-organized entity that itself directly or indirectly controls a common carrier, aeronautical en route, or aeronautical fixed radio station licensee or common carrier spectrum lessee. A foreign individual or entity that seeks to hold a controlling interest in such a licensee or spectrum lessee must hold its controlling interest indirectly, in a U.S.-organized entity that itself directly or indirectly controls the licensee or spectrum lessee. Such controlling interests are subject to section 310(b)(4) and the requirements of paragraph (a)(1) of this section. The Commission assesses foreign ownership interests subject to section 310(b)(4) separately from foreign ownership interests subject to section 310(b)(3).

(2) A common carrier radio station licensee or spectrum lessee shall file a petition for declaratory ruling to obtain approval under the Commission's section 310(b)(3) forbearance approach, and obtain such approval, before aggregate foreign ownership, held through one or more intervening U.S.-organized entities that hold non-controlling equity and/or voting interests in the licensee, along with any foreign interests held directly in the licensee or spectrum lessee, exceeds 20 percent of its equity interests and/or 20 percent of its voting interests. An applicant for a common carrier radio station license or spectrum leasing arrangement shall file the petition for declaratory ruling required by this paragraph at the same time that it files its application. Foreign interests held directly in a licensee or spectrum lessee, or other than through U.S.-organized entities that hold non-controlling equity and/or voting interests in the licensee or spectrum lessee, shall not be permitted to exceed 20 percent.

NOTE TO PARAGRAPH (a)(2): Paragraph (a)(2) of this section implements the Commission's

section 310(b)(3) forbearance approach adopted in the First Report and Order in IB Docket No. 11-133, FCC 12-93 (released August 17, 2012), 77 FR 50628 (Aug. 22, 2012). The section 310(b)(3) forbearance approach applies only to foreign equity and voting interests that are held, or would be held, in a common carrier licensee or spectrum lessee through one or more intervening U.S.-organized entities that do not control the licensee or spectrum lessee. Foreign equity and/or voting interests that are held, or would be held, directly in a licensee or spectrum lessee, or indirectly other than through an intervening U.S.-organized entity, are not subject to the Commission's section 310(b)(3) forbearance approach and shall not be permitted to exceed the 20 percent limit in section 310(b)(3) of the Act (47 U.S.C. 310(b)(3)).

*Example 1.* U.S.-organized Corporation A is preparing an application to acquire a common carrier radio license by assignment from another licensee. U.S.-organized Corporation A is wholly owned and controlled by U.S.-organized Corporation B. U.S.-organized Corporation B is 51 percent owned and controlled by U.S.-organized Corporation C, which is, in turn, wholly owned and controlled by foreign-organized Corporation D. The remaining non-controlling 49 percent equity and voting interests in U.S.-organized Corporation B are held by U.S.-organized Corporation X, which is, in turn, wholly owned and controlled by U.S. citizens. Paragraph (a)(1) of this section requires that U.S.-organized Corporation A file a petition for declaratory ruling to obtain Commission approval of the 51 percent foreign ownership of its controlling, U.S.-organized parent, Corporation B, by foreign-organized Corporation D, which exceeds the 25 percent benchmark in section 310(b)(4) of the Act for both equity interests and voting interests. Corporation A is also required to identify and request specific approval in its petition for any foreign individual or entity, or "group," as defined in paragraph (d) of this section, that holds directly and/or indirectly more than five percent of Corporation B's total outstanding capital stock (equity) and/or voting stock, or a controlling interest in Corporation B, unless the foreign investment is exempt under § 1.991(i)(3).

*Example 2.* U.S.-organized Corporation A is preparing an application to acquire a common carrier radio license by assignment from another licensee. U.S.-organized Corporation A is 51 percent owned and controlled by U.S.-organized Corporation B, which is, in turn, wholly owned and controlled by U.S. citizens. The remaining non-controlling 49 percent equity and voting interests in U.S.-organized Corporation A are held by U.S.-organized Corporation X, which is, in turn, wholly owned and controlled by foreign-organized Corporation Y. Paragraph

(a)(2) of this section requires that U.S.-organized Corporation A file a petition for declaratory ruling to obtain Commission approval of the non-controlling 49 percent foreign ownership of U.S.-organized Corporation A by foreign-organized Corporation Y through U.S.-organized Corporation X, which exceeds the 20 percent limit in section 310(b)(3) of the Act for both equity interests and voting interests. U.S.-organized Corporation A is also required to identify and request specific approval in its petition for any foreign individual or entity, or “group,” as defined in paragraph (d) of this section, that holds an equity and/or voting interest in foreign-organized Corporation Y that, when multiplied by 49 percent, would exceed five percent of U.S.-organized Corporation A’s equity and/or voting interests, unless the foreign investment is exempt under §1.991(i)(3).

*Example 3.* U.S.-organized Corporation A is preparing an application to acquire a common carrier radio license by assignment from another licensee. U.S.-organized Corporation A is 51 percent owned and controlled by U.S.-organized Corporation B, which is, in turn, wholly owned and controlled by foreign-organized Corporation C. The remaining non-controlling 49 percent equity and voting interests in U.S.-organized Corporation A are held by U.S.-organized Corporation X, which is, in turn, wholly owned and controlled by foreign-organized Corporation Y. Paragraphs (a)(1) and (2) of this section require that U.S.-organized Corporation A file a petition for declaratory ruling to obtain Commission approval of foreign-organized Corporation C’s 100 percent ownership interest in U.S.-organized parent, Corporation B, and of foreign-organized Corporation Y’s non-controlling, 49 percent foreign ownership interest in U.S.-organized Corporation A through U.S.-organized Corporation X, which exceed the 25 percent benchmark and 20 percent limit in sections 310(b)(4) and 310(b)(3) of the Act, respectively, for both equity interests and voting interests. U.S.-organized Corporation A’s petition also must identify and request specific approval for ownership interests held by any foreign individual, entity, or “group,” as defined in paragraph (d) of this section, to the extent required by §1.991(i).

(b) The petition for declaratory ruling required by paragraph (a) of this section shall be filed electronically on the Internet through the International Bureau Filing System (IBFS). For information on filing your petition through IBFS, see part 1, subpart Y and the IBFS homepage at <http://www.fcc.gov/ib>.

(c)(1) Each applicant, licensee, or spectrum lessee filing a petition for declaratory ruling required by paragraph

(a) of this section shall certify to the information contained in the petition in accordance with the provisions of §1.16 and the requirements of this paragraph. The certification shall include a statement that the applicant, licensee and/or spectrum lessee has calculated the ownership interests disclosed in its petition based upon its review of the Commission’s rules and that the interests disclosed satisfy each of the pertinent standards and criteria set forth in the rules.

(2) Multiple applicants and/or licensees shall file jointly the petition for declaratory ruling required by paragraph (a) of this section where the entities are under common control and contemporaneously hold, or are contemporaneously filing applications for, common carrier licenses, common carrier spectrum leasing arrangements, or aeronautical en route or aeronautical fixed radio station licenses. Where joint petitioners have different responses to the information required by §1.991, such information should be set out separately for each joint petitioner, except as otherwise permitted in §1.991(h)(2).

(i) Each joint petitioner shall certify to the information contained in the petition in accordance with the provisions of §1.16 of this part with respect to the information that is pertinent to that petitioner. Alternatively, the controlling parent of the joint petitioners may certify to the information contained in the petition.

(ii) Where the petition is being filed in connection with an application for consent to transfer control of licenses or spectrum leasing arrangements, the transferee or its ultimate controlling parent may file the petition on behalf of the licensees or spectrum lessees that would be acquired as a result of the proposed transfer of control and certify to the information contained in the petition.

(3) Multiple applicants and licensees shall not be permitted to file a petition for declaratory ruling jointly unless they are under common control.

(d) The following definitions shall apply to this section and §§1.991 through 1.994.

(1) *Aeronautical radio* licenses refers to aeronautical en route and aeronautical fixed radio station licenses only. It does not refer to other types of aeronautical radio station licenses.

(2) *Affiliate* refers to any entity that is under common control with a licensee, defined by reference to the holder, directly and/or indirectly, of more than 50 percent of total voting power, where no other individual or entity has *de facto* control.

(3) *Control* includes actual working control in whatever manner exercised and is not limited to majority stock ownership. *Control* also includes direct or indirect control, such as through intervening subsidiaries.

(4) *Entity* includes a partnership, association, estate, trust, corporation, limited liability company, governmental authority or other organization.

(5) *Group* refers to two or more individuals or entities that have agreed to act together for the purpose of acquiring, holding, voting, or disposing of their equity and/or voting interests in the relevant licensee, controlling U.S. parent, or entity holding a direct and/or indirect equity and/or voting interest in the licensee or U.S. parent.

(6) *Individual* refers to a natural person as distinguished from a partnership, association, corporation, or other organization.

(7) *Licensee* as used in §§ 1.990 through 1.994 of this part includes a *spectrum lessee* as defined in § 1.9003.

(8) *Privately held* company refers to a U.S.- or foreign-organized company that has not issued a class of equity securities for which beneficial ownership reporting is required by security holders and other beneficial owners under section 13(d) or 13(g) of the Securities Exchange Act of 1934, as amended, 15 U.S.C. 78a *et seq.* (Exchange Act), and corresponding Exchange Act Rule 13d-1, 17 CFR 240.13d-1, or a substantially comparable foreign law or regulation.

(9) *Public company* refers to a U.S.- or foreign-organized company that has issued a class of equity securities for which beneficial ownership reporting is required by security holders and other beneficial owners under section 13(d) or 13(g) of the Securities Exchange Act of 1934, as amended, 15 U.S.C. 78a *et seq.*

(Exchange Act) and corresponding Exchange Act Rule 13d-1, 17 CFR 240.13d-1, or a substantially comparable foreign law or regulation.

(10) *Subsidiary* refers to any entity in which a licensee owns or controls, directly and/or indirectly, more than 50 percent of the total voting power of the outstanding voting stock of the entity, where no other individual or entity has *de facto* control.

(11) *Voting stock* refers to an entity's corporate stock, partnership or membership interests, or other equivalents of corporate stock that, under ordinary circumstances, entitles the holders thereof to elect the entity's board of directors, management committee, or other equivalent of a corporate board of directors.

(12) *Would hold* as used in §§ 1.990 through 1.994 includes equity and/or voting interests that an individual or entity proposes to hold in an applicant, licensee, or spectrum lessee, or their controlling U.S. parent, upon consummation of any transactions described in the petition for declaratory ruling filed under § 1.990(a)(1) or (2) of this part.

**§ 1.991 Contents of petitions for declaratory ruling under the Communications Act of 1934.**

The petition for declaratory ruling required by § 1.990(a)(1) and/or § 1.990(a)(2) shall contain the following information:

(a) With respect to each petitioning applicant or licensee, provide its name; FCC Registration Number (FRN); mailing address; place of organization; telephone number; facsimile number (if available); electronic mail address (if available); type of business organization (*e.g.*, corporation, unincorporated association, trust, general partnership, limited partnership, limited liability company, trust, other (include description of legal entity)); name and title of officer certifying to the information contained in the petition.

(b) If the petitioning applicant or licensee is represented by a third party (*e.g.*, legal counsel), specify that individual's name, the name of the firm or company, mailing address and telephone number/electronic mail address.