

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

Federal Communications Commission

§ 1.991

§ 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.

(c)(1) For each named licensee, list the type(s) of radio service authorized (*e.g.*, cellular radio telephone service; microwave radio service; mobile satellite service; aeronautical fixed service).

(2) If the petition is filed in connection with an application for a radio station license or a spectrum leasing arrangement, or an application to acquire a license or spectrum leasing arrangement by assignment or transfer of control, specify for each named applicant:

(i) The File No(s). of the associated application(s), if available at the time the petition is filed; otherwise, specify the anticipated filing date for each application; and

(ii) The type(s) of radio services covered by each application (*e.g.*, cellular radio telephone service; microwave radio service; mobile satellite service; aeronautical fixed service).

(d) With respect to each petitioner, include a statement as to whether the petitioner is requesting a declaratory ruling under § 1.990(a)(1) and/or § 1.990(a)(2).

(e)(1) *Direct U.S. or foreign interests of ten percent or more or a controlling interest.* With respect to petitions filed under § 1.990(a)(1), provide the name of any individual or entity that holds, or would hold, directly 10 percent or more of the equity interests and/or voting interests, or a controlling interest, in the

controlling U.S. parent of the petitioning common carrier or aeronautical radio station applicant(s) or licensee(s) as specified in paragraphs (e)(1)(i) through (e)(4)(iv) of this section.

(2) *Direct U.S. or foreign interests of ten percent or more or a controlling interest.* With respect to petitions filed under § 1.990(a)(2), provide the name of any individual or entity that holds, or would hold, directly 10 percent or more of the equity interests and/or voting interests, or a controlling interest, in each petitioning common carrier applicant or licensee as specified in paragraphs (e)(1)(i) through (e)(4)(ii) of this section.

(3) Where no individual or entity holds, or would hold, directly 10 percent or more of the equity interests and/or voting interests, or a controlling interest, in the controlling U.S. parent (for petitions filed under § 1.990(a)(1)) or in the applicant or licensee (for petitions filed under § 1.990(a)(2)), the petition shall state that no individual or entity holds or would hold directly 10 percent or more of the equity interests and/or voting interests, or a controlling interest, in the U.S. parent, applicant or licensee.

(4)(i) Where a named U.S. parent, applicant, or licensee is organized as a corporation, provide the name of any individual or entity that holds, or would hold, 10 percent or more of the outstanding capital stock and/or voting stock, or a controlling interest.

(ii) Where a named U.S. parent, applicant, or licensee is organized as a general partnership, provide the names of the partnership's constituent general partners.

(iii) Where a named U.S. parent, applicant, or licensee is organized as a limited partnership or limited liability partnership, provide the name(s) of the general partner(s) (in the case of a limited partnership), any uninsulated partner(s), and any insulated partner(s) with an equity interest in the partnership of at least 10 percent (calculated according to the percentage of the partner's capital contribution). With respect to each named partner (other than a named general partner), the petitioner shall state whether the partnership interest is insulated or

§ 1.991

47 CFR Ch. I (10–1–14 Edition)

uninsulated, based on the insulation criteria specified in §1.993.

(iv) Where a named U.S. parent, applicant, or licensee is organized as a limited liability company, provide the name(s) of each uninsulated member, regardless of its equity interest, any insulated member with an equity interest of at least 10 percent (calculated according to the percentage of its capital contribution), and any non-equity manager(s). With respect to each named member, the petitioner shall state whether the interest is insulated or uninsulated, based on the insulation criteria specified in §1.993, and whether the member is a manager.

NOTE TO PARAGRAPH (e): The Commission presumes that a general partner of a general partnership or limited partnership has a controlling interest in the partnership. A general partner shall in all cases be deemed to hold an uninsulated interest in the partnership.

(f)(1) *Indirect U.S or foreign interests of ten percent or more or a controlling interest.* With respect to petitions filed under §1.990(a)(1), provide the name of any individual or entity that holds, or would hold, indirectly, through one or more intervening entities, 10 percent or more of the equity interests and/or voting interests, or a controlling interest, in the controlling U.S. parent of the petitioning common carrier or aeronautical radio station applicant(s) or licensee(s). Equity interests and voting interests held indirectly shall be calculated in accordance with the principles set forth in §1.992.

(2) *Indirect U.S or foreign interests of ten percent or more or a controlling interest.* With respect to petitions filed under §1.990(a)(2), provide the name of any individual or entity that holds, or would hold, indirectly, through one or more intervening entities, 10 percent or more of the equity interests and/or voting interests, or a controlling interest, in the petitioning common carrier radio station applicant(s) or licensee(s). Equity interests and voting interests held indirectly shall be calculated in accordance with the principles set forth in §1.992.

(3) Where no individual or entity holds, or would hold, indirectly 10 percent or more of the equity interests and/or voting interests, or a control-

ling interest, in the controlling U.S. parent (for petitions filed under §1.990(a)(1)) or in the petitioning applicant(s) or licensee(s) (for petitions filed under §1.990(a)(2)), the petition shall specify that no individual or entity holds indirectly 10 percent or more of the equity interests and/or voting interests, or a controlling interest, in the U.S. parent, applicant(s), or licensee(s).

NOTE TO PARAGRAPH (f): The Commission presumes that a general partner of a general partnership or limited partnership has a controlling interest in the partnership. A general partner shall in all cases be deemed to hold an uninsulated interest in the partnership.

(g) For each 10 percent interest holder named in response to paragraphs (e) and (f) of this section, specify the equity interest held and the voting interest held (each to the nearest one percent); in the case of an individual, his or her citizenship; and in the case of a business organization, its place of organization, type of business organization (*e.g.*, corporation, unincorporated association, trust, general partnership, limited partnership, limited liability company, trust, other (include description of legal entity)), and principal business(es).

(h)(1) *Estimate of aggregate foreign ownership.* For petitions filed under §1.990(a)(1), attach an exhibit that provides a percentage estimate of the controlling U.S. parent's aggregate direct and/or indirect foreign equity interests and its aggregate direct and/or indirect foreign voting interests. For petitions filed under §1.990(a)(2), attach an exhibit that provides a percentage estimate of the aggregate foreign equity interests and aggregate foreign voting interests held directly in the petitioning applicant(s) and/or licensee(s), if any, and the aggregate foreign equity interests and aggregate foreign voting interests held indirectly in the petitioning applicant(s) and/or licensee(s). The exhibit required by this paragraph must also provide a general description of the methods used to determine the percentages; and a statement addressing the circumstances that prompted the filing of the petition and demonstrating that the public interest would be served by grant of the petition.

(2) *Ownership and control structure.* Attach an exhibit that describes the ownership and control structure of the applicant(s) and/or licensee(s) that are the subject of the petition, including an ownership diagram and identification of the real party-in-interest disclosed in any companion applications. The ownership diagram should illustrate the petitioner's vertical ownership structure, including the controlling U.S. parent named in the petition (for petitions filed under § 1.990(a)(1)) and the direct and indirect ownership (equity and voting) interests held by the individual(s) and/or entity(ies) named in response to paragraphs (e) and (f) of this section. Each such individual or entity shall be depicted in the ownership diagram and all controlling interests labeled as such. Where the petition includes multiple petitioners, the ownership of all petitioners may be depicted in a single ownership diagram or in multiple diagrams.

(i) *Requests for specific approval.* Provide, as required or permitted by this paragraph, the name of each foreign individual and/or entity for which each petitioner requests specific approval, if any, and the respective percentages of equity and/or voting interests (to the nearest one percent) that each such foreign individual or entity holds, or would hold, directly and/or indirectly, in the controlling U.S. parent of the petitioning common carrier or aeronautical radio station applicant(s) or licensee(s) for petitions filed under § 1.990(a)(1), and in each petitioning common carrier applicant or licensee for petitions filed under § 1.990(a)(2).

(1) Each petitioning common carrier or aeronautical radio station applicant or licensee filing under § 1.990(a)(1) shall identify and request specific approval for any foreign individual, entity, or group of such individuals or entities that holds, or would hold, directly and/or indirectly, more than 5 percent of the equity and/or voting interests, or a controlling interest, in the petitioner's controlling U.S. parent unless the foreign investment is exempt under paragraph (i)(3) of this section. Equity and voting interests shall be calculated in accordance with the principles set forth in paragraphs (e) and (f) of this section and in § 1.992.

(2) Each petitioning common carrier radio station applicant or licensee filing under § 1.990(a)(2) shall identify and request specific approval for any foreign individual, entity, or group of such individuals or entities that holds, or would hold, directly, and/or indirectly through one or more intervening U.S.-organized entities that do not control the applicant or licensee, more than 5 percent of the equity and/or voting interests in the applicant or licensee unless the foreign investment is exempt under paragraph (i)(3) of this section. Equity and voting interests shall be calculated in accordance with the principles set forth in paragraphs (e) and (f) of this section and in § 1.992.

:NOTE TO PARAGRAPHS (i)(1) AND (2): Two or more individuals or entities will be treated as a "group" when they have agreed to act together for the purpose of acquiring, holding, voting, or disposing of their equity and/or voting interests in the licensee and/or controlling U.S. parent of the licensee or in any intermediate company(ies) through which any of the individuals or entities holds its interests in the licensee and/or controlling U.S. parent of the licensee.

(3) A foreign investment is exempt from the specific approval requirements of paragraphs (i)(1) and (2) of this section where:

(i) The foreign individual or entity holds, or would hold, directly and/or indirectly, no more than 10 percent of the equity and/or voting interests of the U.S. parent (for petitions filed under § 1.990(a)(1)) or the petitioning applicant or licensee (for petitions filed under § 1.990(a)(2)); and

(ii) The foreign individual or entity does not hold, and would not hold, a controlling interest in the petitioner or any controlling parent company, does not plan or intend to change or influence control of the petitioner or any controlling parent company, does not possess or develop any such purpose, and does not take any action having such purpose or effect. The Commission will presume, in the absence of evidence to the contrary, that the following interests satisfy this criterion for exemption from the specific approval requirements in paragraphs (i)(1) and (i)(2) of this section:

(A) Where the relevant licensee, controlling U.S. parent, or entity holding

a direct or indirect equity and/or voting interest in the licensee or U.S. parent is a “public company,” as defined in § 1.990(d)(9), *provided that* the foreign holder is an institutional investor that is eligible to report its beneficial ownership interests in the company’s voting, equity securities in excess of 5 percent (not to exceed 10 percent) pursuant to Exchange Act Rule 13d–1(b), 17 CFR 240.13d–1(b), or a substantially comparable foreign law or regulation. This presumption shall not apply if the foreign individual, entity or group holding such interests is obligated to report its holdings in the company pursuant to Exchange Act Rule 13d–1(a), 17 CFR 240.13d–1(a), or a substantially comparable foreign law or regulation.

Example. Common carrier applicant (“Applicant”) is preparing a petition for declaratory ruling to request Commission approval for foreign ownership of its controlling, U.S.-organized parent (“U.S. Parent”) to exceed the 25 percent benchmark in section 310(b)(4) of the Act. Applicant does not currently hold any FCC licenses. Shares of U.S. Parent trade publicly on the New York Stock Exchange. Based on a shareholder survey and a review of its shareholder records, U.S. Parent has determined that its aggregate foreign ownership on any given day may exceed an aggregate 25 percent, including a six percent common stock interest held by a foreign-organized mutual fund (“Foreign Fund”). U.S. Parent has confirmed that Foreign Fund is not currently required to report its interest pursuant to Exchange Act Rule 13d–1(a) and instead is eligible to report its interest pursuant to Exchange Act Rule 13d–1(b). U.S. Parent also has confirmed that Foreign Fund does not hold any other interests in U.S. Parent’s equity securities, whether of a class of voting or non-voting securities. Applicant may, but is not required to, request specific approval of Foreign Fund’s six percent interest in U.S. Parent.

NOTE TO PARAGRAPH (i)(3)(ii)(A): Where an institutional investor holds voting, equity securities that are subject to reporting under Exchange Act Rule 13d–1, 17 CFR 240.13d–1, or a substantially comparable foreign law or regulation, and equity securities that are not subject to such reporting the investor’s total capital stock interests may be aggregated and treated as exempt from the 5 percent specific approval requirement in paragraphs (i)(1) and (2) of this section so long as the aggregate amount of the institutional investor’s holdings does not exceed ten percent of the company’s total capital stock or voting rights and the investor is eligible to certify under Exchange Act Rule 13d–1(b), 17 CFR 240.13d–1(b), or a substantially comparable foreign law or regulation that it has acquired its capital stock interests in the ordinary course of business and not with the purpose nor with the effect of changing or influencing the control of the company. In calculating foreign equity and voting interests, the Commission does not consider convertible interests such as options, warrants and convertible debentures until converted, unless specifically requested by the petitioner, *i.e.*, where the petitioner is requesting approval so those rights can be exercised in a particular case without further Commission approval.

(B) Where 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 is a “privately held” corporation, as defined in § 1.990(d)(8), *provided that* a shareholders’ agreement, or similar voting agreement, prohibits the foreign holder from becoming actively involved in the management or operation of the corporation and limits the foreign holder’s voting and consent rights, if any, to the minority shareholder protections listed in paragraph (i)(5) of this section.

(C) Where 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 is “privately held,” as defined in § 1.990(d)(8), and is organized as a limited partnership, limited liability company (“LLC”), or limited liability partnership (“LLP”), *provided that* the foreign holder is “insulated” in accordance with the criteria specified in § 1.993.

(4) A petitioner may, but is not required to, request specific approval for any other foreign individual or entity that holds, or would hold, a direct and/or indirect equity and/or voting interest in the controlling U.S. parent (for petitions filed under § 1.990(a)(1)) or in the petitioning applicant or licensee (for petitions filed under § 1.990(a)(2)).

(5) The minority shareholder protections referenced in paragraph

(i)(3)(ii)(B) of this section consist of the following rights:

(i) The power to prevent the sale or pledge of all or substantially all of the assets of the corporation or a voluntary filing for bankruptcy or liquidation;

(ii) The power to prevent the corporation from entering into contracts with majority shareholders or their affiliates;

(iii) The power to prevent the corporation from guaranteeing the obligations of majority shareholders or their affiliates;

(iv) The power to purchase an additional interest in the corporation to prevent the dilution of the shareholder's *pro rata* interest in the event that the corporation issues additional instruments conveying shares in the company;

(v) The power to prevent the change of existing legal rights or preferences of the shareholders, as provided in the charter, by-laws or other operative governance documents;

(vi) The power to prevent the amendment of the charter, by-laws or other operative governance documents of the company with respect to the matters described in paragraphs (i)(5)(i) through (v) of this section.

(6) The Commission reserves the right to consider, on a case-by-case basis, whether voting or consent rights over matters other than those listed in paragraph (i)(5) of this section shall be considered permissible minority shareholder protections in a particular case.

(j) For each foreign individual or entity named in response to paragraph (i) of this section, provide the following information:

(1) In the case of an individual, his or her citizenship and principal business(es);

(2) In the case of a business organization:

(i) Its place of organization, type of business organization (*e.g.*, corporation, unincorporated association, trust, general partnership, limited partnership, limited liability company, trust, other (include description of legal entity)), and principal business(es);

(ii) The name of any individual or entity that holds, or would hold, directly and/or indirectly, through one or more

intervening entities, 10 percent or more of the equity interests and/or voting interests, or a controlling interest, in the foreign entity for which the petitioner requests specific approval. Specify for each such interest holder, his or her citizenship (for individuals) or place of legal organization (for entities). Equity interests and voting interests held indirectly shall be calculated in accordance with the principles set forth in § 1.992.

(iii) Where no individual or entity holds, or would hold, directly and/or indirectly, 10 percent or more of the equity interests and/or voting interests, or a controlling interest, the petition shall specify that no individual or entity holds, or would hold, directly and/or indirectly, 10 percent or more of the equity interests and/or voting interests, or a controlling interest, in the foreign entity for which the petitioner requests specific approval.

(k) *Requests for advance approval.* The petitioner may, but is not required to, request advance approval in its petition for any foreign individual or entity named in response to paragraph (i) of this section to increase its direct and/or indirect equity and/or voting interests in the controlling U.S. parent of the common carrier or aeronautical radio station licensee, for petitions filed under § 1.990(a)(1), and/or in the common carrier licensee, for petitions filed under § 1.990(a)(2), above the percentages specified in response to paragraph (i) of this section. Requests for advance approval shall be made as follows:

(1) *Petitions filed under § 1.990(a)(1).* Where a foreign individual or entity named in response to paragraph (i) of this section holds, or would hold upon consummation of any transactions described in the petition, a *de jure* or *de facto* controlling interest in the controlling U.S. parent, the petitioner may request advance approval in its petition for the foreign individual or entity to increase its interests, at some future time, up to any amount, including 100 percent of the direct and/or indirect equity and/or voting interests in the U.S. parent. The petitioner shall specify for the named controlling foreign individual(s) or entity(ies) the maximum percentages of equity and/or

voting interests for which advance approval is sought or, in lieu of a specific amount, state that the petitioner requests advance approval for the named controlling foreign individual or entity to increase its interests up to and including 100 percent of the U.S. parent's direct and/or indirect equity and/or voting interests.

(2) *Petitions filed under § 1.990(a)(1) and/or § 1.990(a)(2).* Where a foreign individual or entity named in response to paragraph (i) of this section holds, or would hold upon consummation of any transactions described in the petition, a non-controlling interest in the controlling U.S. parent of the licensee, for petitions filed under § 1.990(a)(1), or in the licensee, for petitions filed under § 1.990(a)(2), the petitioner may request advance approval in its petition for the foreign individual or entity to increase its interests, at some future time, up to any non-controlling amount not to exceed 49.99 percent. The petitioner shall specify for the named foreign individual(s) or entity(ies) the maximum percentages of equity and/or voting interests for which advance approval is sought or, in lieu of a specific amount, shall state that the petitioner requests advance approval for the named foreign individual(s) or entity(ies) to increase their interests up to and including a non-controlling 49.99 percent equity and/or voting interest in the licensee, for petitions filed under § 1.990(a)(2), or in the controlling U.S. parent of the licensee, for petitions filed under § 1.990(a)(1).

§ 1.992 How to calculate indirect equity and voting interests.

(a) The criteria specified in this section shall be used for purposes of calculating indirect equity and voting interests under § 1.991.

(b)(1) *Equity interests held indirectly in the licensee and/or controlling U.S. parent.* Equity interests that are held by an individual or entity indirectly through one or more intervening entities shall be calculated by successive multiplication of the equity percentages for each link in the vertical ownership chain, regardless of whether any particular link in the chain represents a controlling interest in the company positioned in the next lower tier.

Example. Assume that a foreign individual holds a non-controlling 30 percent equity and voting interest in U.S.-organized Corporation A which, in turn, holds a non-controlling 40 percent equity and voting interest in U.S.-organized Parent Corporation B. The foreign individual's equity interest in U.S.-organized Parent Corporation B would be calculated by multiplying the foreign individual's equity interest in U.S.-organized Corporation A by that entity's equity interest in U.S.-organized Parent Corporation B. The foreign individual's equity interest in U.S.-organized Parent Corporation B would be calculated as 12 percent ($30\% \times 40\% = 12\%$). The result would be the same even if U.S.-organized Corporation A held a *de facto* controlling interest in U.S.-organized Parent Corporation B.

(2) *Voting interests held indirectly in the licensee and/or controlling U.S. parent.* Voting interests that are held by any individual or entity indirectly through one or more intervening entities will be determined depending upon the type of business organization(s) in which the individual or entity holds a voting interest as follows:

(i) Voting interests that are held through one or more intervening corporations shall be calculated by successive multiplication of the voting percentages for each link in the vertical ownership chain, except that wherever the voting interest for any link in the chain is equal to or exceeds 50 percent or represents actual control, it shall be treated as if it were a 100 percent interest.

Example. Assume that a foreign individual holds a non-controlling 30 percent equity and voting interest in U.S.-organized Corporation A which, in turn, holds a controlling 70 percent equity and voting interest in U.S.-organized Parent Corporation B. Because U.S.-organized Corporation A's 70 percent voting interest in U.S.-organized Parent Corporation B constitutes a *controlling* interest, it is treated as a 100 percent interest. The foreign individual's 30 percent voting interest in U.S.-organized Corporation A would flow through in its entirety to U.S.