

§ 1.992

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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. Parent Corporation B and thus be calculated as 30 percent ($30\% \times 100\% = 30\%$).

(ii) Voting interests that are held through one or more intervening partnerships shall be calculated depending upon whether the individual or entity

holds a general partnership interest, an uninsulated partnership interest, or an insulated partnership interest as specified in paragraphs (b)(2)(ii)(A) and (B) of this section.

(A) *General partnership and other uninsulated partnership interests.* A general partner and uninsulated partner shall be deemed to hold the same voting interest as the partnership holds in the company situated in the next lower tier of the vertical ownership chain. A partner shall be treated as uninsulated unless the limited partnership agreement, limited liability partnership agreement, or other operative agreement satisfies the insulation criteria specified in § 1.993.

NOTE TO PARAGRAPH (b)(2)(ii)(A): 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.

(B) *Insulated partnership interests.* A partner of a limited partnership (other than a general partner) or partner of a limited liability partnership that satisfies the insulation criteria specified in § 1.993 shall be treated as an insulated partner and shall be deemed to hold a voting interest in the partnership that is equal to the partner's equity interest.

(iii) Voting interests that are held through one or more intervening limited liability companies shall be calculated depending upon whether the individual or entity is a non-member manager, an uninsulated member or an insulated member as specified in paragraphs (b)(2)(iii)(A) and (B) of this section.

(A) *Non-member managers and uninsulated membership interests.* A non-member manager and an uninsulated member of a limited liability company shall be deemed to hold the same voting interest as the limited liability company holds in the company situated in the next lower tier of the vertical ownership chain. A member shall be treated as uninsulated unless the limited liability company agreement satisfies the insulation criteria specified in § 1.993.

(B) *Insulated membership interests.* A member of a limited liability company

that satisfies the insulation criteria specified in § 1.993 shall be treated as an insulated member and shall be deemed to hold a voting interest in the limited liability company that is equal to the member's equity interest.

§ 1.993 Insulation criteria for interests in limited partnerships, limited liability partnerships, and limited liability companies.

(a) A limited partner of a limited partnership and a partner of a limited liability partnership shall be treated as uninsulated within the meaning of § 1.992(b)(2)(ii)(A) unless the partner is prohibited by the limited partnership agreement, limited liability partnership agreement, or other operative agreement from, and in fact is not engaged in, active involvement in the management or operation of the partnership and only the usual and customary investor protections are contained in the partnership agreement or other operative agreement. These criteria apply to any relevant limited partnership or limited liability partnership, whether it is the licensee, a controlling U.S.-organized parent, or any partnership situated above them in the vertical chain of ownership.

(b) A member of a limited liability company shall be treated as uninsulated for purposes of § 1.992(b)(2)(iii)(A) unless the member is prohibited by the limited liability company agreement from, and in fact is not engaged in, active involvement in the management or operation of the company and only the usual and customary investor protections are contained in the agreement. These criteria apply to any relevant limited liability company, whether it is the licensee, a controlling U.S.-organized parent, or any limited liability company situated above them in the vertical chain of ownership.

(c) The usual and customary investor protections referred to in paragraphs (a) and (b) of this section shall consist of:

(1) The power to prevent the sale or pledge of all or substantially all of the assets of the limited partnership, limited liability partnership, or limited liability company or a voluntary filing for bankruptcy or liquidation;

(2) The power to prevent the limited partnership, limited liability partnership, or limited liability company from entering into contracts with majority investors or their affiliates;

(3) The power to prevent the limited partnership, limited liability partnership, or limited liability company from guaranteeing the obligations of majority investors or their affiliates;

(4) The power to purchase an additional interest in the limited partnership, limited liability partnership, or limited liability company to prevent the dilution of the partner's or member's *pro rata* interest in the event that the limited partnership, limited liability partnership, or limited liability company issues additional instruments conveying interests in the partnership or company;

(5) The power to prevent the change of existing legal rights or preferences of the partners, members, or managers as provided in the limited partnership agreement, limited liability partnership agreement, or limited liability company agreement, or other operative agreement;

(6) The power to vote on the removal of a general partner, managing partner, managing member, or other manager in situations where such individual or entity is subject to bankruptcy, insolvency, reorganization, or other proceedings relating to the relief of debtors; adjudicated insane or incompetent by a court of competent jurisdiction (in the case of a natural person); convicted of a felony; or otherwise removed for cause, as determined by an independent party;

(7) The power to prevent the amendment of the limited partnership agreement, limited liability partnership agreement, or limited liability company agreement, or other organizational documents of the partnership or limited liability company with respect to the matters described in paragraphs (c)(1) through (6) of this section.

(d) 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 (c) of this section shall be considered usual and customary investor protections in a particular case.