

FCC FACT SHEET*

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
Notice of Proposed Rulemaking – GN Docket No. 25-149

Background: The Commission’s foreign ownership rules set out the requirements for investment in broadcast, common carrier wireless, and common carrier aeronautical licensees. While the Commission encourages foreign investment in licensees subject to section 310(b) of the Communications Act of 1934, as amended (the Act), certain foreign investment may raise national security risks and other concerns. To account for increasingly complex foreign ownership structures over the past decade, the Commission has adopted certain practices but has never codified these legal requirements into the rules. That only makes it harder for entities to understand and navigate our rules, risks inconsistent outcomes, and can needlessly raise costs. In this *NPRM*, we propose to codify definitions and concepts underlying the foreign ownership rules and practice and to streamline our review processes. As we do so, we also welcome comment on other opportunities to alleviate unnecessary regulatory burdens in the Commission’s foreign ownership review.

What the Notice of Proposed Rulemaking Would Do:

As applied to both broadcast and common carrier licensees:

- Propose to codify existing policy regarding which entity is the controlling U.S. parent;
- Propose to codify the Commission’s advance approval policy regarding certain deemed voting interests;
- Propose to require identification of trusts and trustees;
- Propose to extend the remedial procedures and methodology to privately held companies;
- Propose to add requirements regarding the contents of remedial petitions;
- Seek comment on requiring the filing of amendments as a complete restatement to petitions for declaratory ruling;
- Propose to clarify U.S. residency requirements; and
- Seek comment on other potential opportunities to alleviate unnecessary regulatory burdens in the context of our foreign ownership review under section 310(b) of the Act.

With regard to broadcast licensees only:

- Seek comment on how the Commission should process applications filed by a broadcast licensee during the pendency of a remedial petition for declaratory ruling under section 310(b); and
- Seek comment on other foreign ownership considerations related to processing of Noncommercial Educational (NCE) and Low Power FM (LPFM) Station.

*This document is being released as part of a “permit-but-disclose” proceeding. Any presentations or views on the subject expressed to the Commission or its staff, including by email, must be filed in GN Docket Nos. 25-149, which may be accessed via the Electronic Comment Filing System (<https://www.fcc.gov/ecfs>). Before filing, participants should familiarize themselves with the Commission’s *ex parte* rules, including the general prohibition on presentations (written and oral) on matters listed on the Sunshine Agenda, which is typically released a week prior to the Commission’s meeting. See 47 CFR § 1.1200 *et seq.*

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
Review of Foreign Ownership Policies for)	GN Docket No. 25-149
Broadcast, Common Carrier and Aeronautical)	
Radio Licensees under Section 310(b)(4) of the)	
Communications Act of 1934, as Amended)	

NOTICE OF PROPOSED RULEMAKING*

Adopted: []

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* This document has been circulated for tentative consideration by the Commission at its April 28, 2025 open meeting. The issues referenced in this document and the Commission's ultimate resolution of those issues remain under consideration and subject to change. This document does not constitute any official action by the Commission. However, the Chairman has determined that, in the interest of promoting the public's ability to understand the nature and scope of issues under consideration, the public interest would be served by making this document publicly available. The Commission's ex parte rules apply and presentations are subject to "permit-but-disclose" ex parte rules. *See, e.g.*, 47 CFR §§ 1.1206, 1.1200(a). Participants in this proceeding should familiarize themselves with the Commission's ex parte rules, including the general prohibition on presentations (written and oral) on matters listed on the Sunshine Agenda, which is typically released a week prior to the Commission's meeting. *See* 47 CFR §§ 1.1200(a), 1.1203.

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I. INTRODUCTION

1. The Commission supports robust foreign investment in U.S. companies and networks. Importantly, foreign investment in our common carrier and broadcast licensees fosters technical innovation, creates jobs, and ultimately increases U.S. economic growth. At the same time, we recognize that certain foreign investment, particularly from foreign adversary countries, may raise national security risks and other concerns. Accordingly, our public interest analysis under Section 310(b) of the Communications Act of 1934, as amended (the Act),¹ and our implementing rules reflect our consideration of foreign investment in our licensees. As discussed below, over the past decade, the Commission has developed policies and precedent for implementing our Section 310(b) rules to assess foreign ownership investments with complex ownership structures.² But in at least some cases, the Commission has never codified these legal requirements into our rules. That only makes it harder for entities to understand and navigate our rules, risks inconsistent outcomes, and can needlessly raise costs. We therefore initiate this *Notice of Proposed Rulemaking (NPRM)*. Specifically, in this *NPRM*, we propose to codify definitions and concepts underlying the foreign ownership rules and practice and to streamline our review processes. We believe that these proposals will assist petitioners in providing the relevant information in their initial filings, minimize the need for supplemental filings, and promote efficient and shorter processing times of Section 310(b) petitions. As we do so, we also welcome comment on other opportunities to alleviate unnecessary regulatory burdens in our foreign ownership review under Section 310(b) of the Act.³

II. BACKGROUND**A. Section 310(b) of the Communications Act**

2. Section 310(b) of the Act imposes certain restrictions on who may hold various types of radio licenses⁴ and requires the Commission to review foreign investment in broadcast, common carrier,

¹ 47 U.S.C. § 310(b); see 47 CFR § 1.5000 *et seq.*

² See Section II.

³ *In Re: Delete, Delete, Delete*, Public Notice, GN Docket No. 25-133, DA 25-219 (Mar. 12, 2025) (*Delete, Delete, Delete Proceeding*). See, e.g., *Executive Order 14192 of January 31, 2025, Unleashing Prosperity Through Deregulation*, 24 Fed. Reg. 9065 (Feb. 6, 2025) (Executive Order 14192); see also *Executive Order 14219 of February 19, 2025, Ensuring Lawful Governance and Implementing the President’s “Department of Government Efficiency” Deregulatory Initiative*, 36 Fed. Reg. 10583 (Feb. 25, 2025) (Executive Order 14219).

⁴ 47 U.S.C. § 310(b) (“No broadcast or common carrier or aeronautical en route or aeronautical fixed radio station license shall be granted to or held by—(1) any alien or the representative of any alien; (2) any corporation organized under the laws of any foreign government; (3) any corporation of which more than one-fifth of the capital stock is owned of record or voted by aliens or their representatives or by a foreign government or representative thereof or by any corporation organized under the laws of a foreign country; (4) any corporation directly or indirectly controlled by any other corporation of which more than one-fourth of the capital stock is owned of record or voted by aliens, their representatives, or by a foreign government or representative thereof, or by any corporation organized under the laws of a foreign country, if the Commission finds that the public interest will be served by the refusal or revocation of such license.”).

aeronautical en route, and aeronautical fixed radio station licensees.⁵ The provisions of Section 310(b) apply to applications for initial radio licenses, applications for assignment and transfer of control of radio licenses, and spectrum leasing arrangements under the Commission's secondary market rules.⁶ In particular, Section 310(b)(3) prohibits foreign individuals, governments, and corporations from holding equity and/or voting interests of more than 20 percent in a U.S. broadcast, common carrier, or aeronautical radio station licensee.⁷ As noted below, under Section 310(b)(3), the Commission adopted a forbearance approach for common carrier licensees, providing these licensees the option to file a petition for declaratory ruling requesting prior Commission approval to exceed the 20 percent foreign ownership limits in Section 310(b)(3) where the foreign ownership interests would be held in the licensee through intervening U.S.-organized entities that do not control the licensee.⁸

3. Section 310(b)(4) prohibits foreign individuals, governments, and corporations from holding equity and/or voting interests of more than 25 percent in a U.S.-organized entity that directly or indirectly controls a U.S. broadcast, common carrier, or aeronautical en route or aeronautical fixed radio

⁵ *Id.* Unless otherwise noted, in this *NPRM*, we refer to broadcast, common carrier, aeronautical en route, and aeronautical fixed radio station applicants and licensees (including broadcast permittees) and to common carrier spectrum lessees collectively as "licensees." See 47 CFR § 1.9003 (defining "Spectrum lessees"). We use the term "common carrier" or "common carrier licensees" to encompass common carrier, aeronautical en route, and aeronautical fixed radio station applicants and licensees unless the context applies only to common carrier licensees. We refer to aeronautical en route and aeronautical fixed licensees collectively as "aeronautical licensees." This reference does not include other types of aeronautical radio station licenses issued by the Commission. See, e.g., 47 CFR § 87.5 (defining various types of aeronautical radio stations); 47 CFR § 87.19(a)-(b) (applying foreign ownership requirements to aeronautical en route and aeronautical fixed station licenses). A "station license" is "that instrument of authorization required by [the] Act or the rules and regulations of the Commission made pursuant to [the] Act, for the use or operation of apparatus for transmission of energy, or communications, or signals by radio by whatever name the instrument may be designated by the Commission." 47 U.S.C. § 153(49). For example, the Commission issues radio station licenses for the provision of broadcast, wireless personal communications services, cellular, microwave, aeronautical en route, and mobile satellite services. See also 47 U.S.C. § 319 (construction permits). For ease of reference, we refer to "radio station licenses" as "licenses" unless the context warrants otherwise.

⁶ 47 CFR §§ 1.9020(d)(2)(ii), 1.9030(d)(2)(ii), 1.9035(e)(1); see *Review of Foreign Ownership Policies for Common Carrier and Aeronautical Radio Licensees Under Section 310(b)(4) of the Communications Act of 1934, as Amended*, IB Docket No. 11-133, Second Report and Order, 28 FCC Rcd 5741, 5747-49, paras. 7-10 (2013) (*2013 Foreign Ownership Second Report and Order*). Under the Commission's secondary market rules, some wireless licensees are permitted to transfer *de facto* control of their spectrum to spectrum lessees (and spectrum sublessees), subject to prior approval and other conditions. In such cases, lessees and sublessees providing common carrier service are subject to the same foreign ownership requirements that apply to common carrier licensees under Section 310(a) and (b) of the Act. Although broadcast television stations may enter into a spectrum lease for the provision of ancillary and supplementary services, the broadcast service rules do not currently permit lessees to exercise any form of control over the spectrum. See *Promoting Broadcast Internet Innovation through ATSC 3.0*, Declaratory Ruling and Notice of Proposed Rulemaking, 35 FCC Rcd 5916, 5923, para. 14, n.43 (2020).

⁷ 47 U.S.C. § 310(b)(3).

⁸ See *infra* note 1111. In the *2012 Foreign Ownership Order*, the Commission decided to forbear from applying the foreign ownership limits in Section 310(b)(3) to the class of common carrier licensees in which foreign ownership in the licensee is held through U.S.-organized entities that do not control the licensee, to the extent the Commission determines such foreign ownership is consistent with the public interest under the policies and procedures that apply to the Commission's public interest review of foreign ownership subject to Section 310(b)(4) of the Act. See *Review of Foreign Ownership Policies for Common Carrier and Aeronautical Radio Licensees under Section 310(b)(4) of the Communications Act of 1934, as Amended*, IB Docket No. 11-133, First Report and Order, 27 FCC Rcd 9832 (2012) (*2012 Foreign Ownership Report and Order*). The Commission codified the Section 310(b)(3) forbearance approach in the *2013 Foreign Ownership Second Report and Order*. *2013 Foreign Ownership Second Report and Order*, 28 FCC Rcd at 5763, para. 37; 47 CFR § 1.5000(a)(2). However, the Commission's forbearance authority does not extend to broadcast or aeronautical radio station licensees covered by Section 310(b)(3). See 47 U.S.C. § 160. 47 U.S.C. § 310(b)(3).

station licensee.⁹ With a prior Commission finding that the proposed foreign ownership is in the public interest, a foreign individual, government, or entity may hold, directly or indirectly, more than 25 percent (and up to 100 percent) of the equity and voting interests of a licensee's controlling U.S. parent.¹⁰ In this regard, a licensee must request Commission approval of their controlling U.S. parent's foreign ownership under Section 310(b)(4) by filing a petition for declaratory ruling and obtaining Commission approval *before* direct or indirect foreign ownership interests in the controlling U.S. parent exceed the 25 percent benchmark.¹¹

B. Relevant Proceedings Under Section 310(b)(4)

4. *Case by Case Foreign Ownership Review Prior to 2013.* Before the Commission adopted its foreign ownership rules in 2013, the Commission reviewed common carrier foreign ownership petitions to exceed the 25 percent benchmarks set forth in Section 310(b)(4) on a case-by-case basis. At that time, a petitioner was required to provide to the Commission the citizenship and principal places of business of its investors, including individuals and entities that held *de minimis* interests directly or indirectly through multiple intervening investment vehicles and holding companies.¹² Additionally, the Commission's declaratory rulings in response to petitions typically approved only the licensee's ownership as set forth in its filed petition.¹³ As a result, a licensee that received a declaratory ruling often had to return repeatedly to the Commission for additional approvals under Section 310(b) before its foreign ownership could exceed the specific parameters of its ruling.¹⁴

5. *2013 Foreign Ownership Second Report and Order – Common Carrier Wireless Licensee Rules.* For the first time, in the *2013 Foreign Ownership Second Report and Order*, the Commission adopted rules for the review and processing of petitions for declaratory rulings under Section 310(b) requesting foreign ownership of common carrier wireless licensees.¹⁵ By adopting this rules-based approach, the Commission sought to reduce the regulatory costs and burdens imposed on licensees;

⁹ 47 U.S.C. § 310(b)(4).

¹⁰ *Id.* For more background on the foreign ownership provisions in Section 310(a) and (b)(1)-(3) of the Act, 47 U.S.C. § 310(a), (b)(1)-(3), see the *2013 Foreign Ownership Second Report and Order*, 28 FCC Rcd at 5747-50, paras. 7-11.

¹¹ 47 CFR 1.5000(a)(1). See, e.g., *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*, GN Docket No. 15-236, Report and Order, 31 FCC Rcd 11272, 11277, para. 6 (2016) (*2016 Foreign Ownership Report and Order*), *pet. for recon. dismissed*, 32 FCC Rcd 4780 (2017); *Review of Foreign Ownership Policies for Common Carrier and Aeronautical Radio Licensees Under Section 310(b)(4) of the Communications Act of 1934, as Amended*, IB Docket No. 11-133, Notice of Proposed Rulemaking, 26 FCC Rcd 11703, 11710, para. 11 (2011) (*2011 Foreign Ownership NPRM*). Under the Commission's Section 310(b)(3) forbearance approach applicable to common carrier licensees, common carrier licensees may seek authority to exceed the 20 percent foreign ownership limits in Section 310(b)(3) by filing a petition for declaratory ruling requesting prior Commission approval provided that the foreign ownership interests would be held in the licensee through intervening U.S.-organized entities that do not control the licensee. See *supra* note 8; 47 CFR § 1.5000(a)(2). For ease of reference, and because the Commission's forbearance authority does not extend to broadcast or aeronautical licensees covered by Section 310(b)(3), we refer to petitions for declaratory ruling generally in this *NPRM* to mean petitions for declaratory ruling filed under Section 310(b)(4) of the Act, unless the context warrants otherwise.

¹² *2011 Foreign Ownership NPRM*, 26 FCC Rcd at 11705, at para. 2.

¹³ See, e.g., *International Authorizations Granted, Section 214 Applications* (47 CFR § 63.18), *Section 310(b) Requests*, Public Notice Report No. TEL-01090, DA 06-2366, 21 FCC Rcd 13575 (IB Nov. 24, 2006); *International Authorizations Granted, Section 214 Applications* (47 CFR § 63.18), *Section 310(b) Requests*, Public Notice Report No. TEL-01481, DA 11-259, 26 FCC Rcd 1359 (IB Feb. 10, 2011).

¹⁴ *2011 Foreign Ownership NPRM*, 26 FCC Rcd at 11705, at para. 2.

¹⁵ *2013 Foreign Ownership Second Report and Order*, 28 FCC Rcd 5741. The *2013 Foreign Ownership Second Report and Order* did not address requests for foreign ownership of broadcast licensees.

provide greater transparency and more predictability with respect to the Commission's filing requirements and review process; and facilitate investment from new capital sources, while continuing to protect national security, law enforcement, foreign policy and trade policy interests.¹⁶ In particular, the Commission clarified and streamlined the foreign ownership review process. Among other things, the Commission:

- Codified the requirement for prior approval of certain equity and voting interest limits;
- Removed requirements for petitioners to identify foreign investors with a proposed ownership of 5 percent or less equity and/or voting in the licensee (in certain circumstances, 10 percent or less);
- Allowed petitioners to request advance approval for individuals and entities previously granted specific approval for their proposed ownership in the licensee, to increase their ownership at some future time without having to obtain a new ruling from the Commission;
- Allowed investors with a proposed non-controlling interest, to seek advance approval of up to a non-controlling 49.99 percent equity and/or voting interest;
- Allowed a foreign investor that would have an indirect controlling interest in the licensee of less than 100 percent, to request advance approval to increase its ownership to 100 percent at some future date; and
- Allowed licensees to seek a 100 percent aggregate allowance for unnamed and future foreign investors, provided that the licensee obtains prior Commission approval before any foreign investor acquires an interest that exceeds five percent (or, in certain situations, an interest that exceeds ten percent) of the licensee's equity and/or voting interests.¹⁷

6. *2013 Broadcast Clarification Order.* In the *2013 Broadcast Clarification Order*, the Commission articulated and clarified its policies and procedures for evaluating potential foreign investment in broadcast licensees under Section 310(b)(4) of the Act to remove apparent uncertainty.¹⁸ The Commission clarified that it would continue to conduct the fact-specific, individual case-by-case review of each application or Section 310(b)(4) petition for declaratory ruling involving broadcast stations.¹⁹ The Commission emphasized that, with respect to the application of Section 310(b)(4) in broadcast cases, the 25 percent benchmarks are “only a trigger for the exercise of our discretion, which we then exercise based upon a more searching analysis of the circumstances in each case.”²⁰

¹⁶ See *id.*

¹⁷ *2013 Foreign Ownership Second Report and Order*, 28 FCC Rcd at 5745-5747, at para. 5, Section IV.B.

¹⁸ *Commission Policies and Procedures Under Section 310(b)(4) of the Communications Act, Foreign Investment in Broadcast Licensees*, MB Docket No. 13-50, Declaratory Ruling, 28 FCC Rcd 16244 (2013) (*2013 Broadcast Clarification Order*).

¹⁹ The Commission stated that it would not entertain petitions to exceed the foreign ownership limits of Section 310(b)(3) for foreign investment in broadcast licensees. *2013 Broadcast Clarification Order*, 28 FCC Rcd at 16252, para. 15, n.49. Unlike Section 310(b)(4), the Commission reasoned that Section 310(b)(3) does not afford the Commission any discretion to approve foreign investment in broadcast licensees in excess of the limitations contained therein. Although the Commission has statutory authority to forbear from applying any regulation or provision of the Act to a telecommunications carrier or service if the Commission determines that forbearance is in the public interest, that authority is limited to telecommunications carriers or services. See 47 U.S.C. § 160.

²⁰ *2013 Broadcast Clarification Order*, 28 FCC Rcd at 16249-50, para. 11. For the first time for broadcast licensees, in the *2015 Pandora Declaratory Ruling*, the Commission granted a petition for declaratory ruling filed by Pandora Radio LLC to permit its parent company, Pandora Media, Inc., a publicly traded U.S. company, to exceed the 25 percent foreign ownership benchmarks set out in Section 310(b)(4). *Pandora Radio LLC Petition for Declaratory Ruling Under Section 310(b)(4) of the Communications Act of 1934, as Amended*, MB Docket No. 14-109, Declaratory Ruling, 30 FCC Rcd 5094, 5095-96, para. 4 (2015), *recon. denied*, 30 FCC Rcd 10570 (2015).

7. *2016 Foreign Ownership Report and Order - Extended the Streamlined Rules to Broadcast Licensees.* In the *2016 Foreign Ownership Report and Order*, the Commission extended the streamlined rules and procedures for foreign ownership reviews for common carrier and certain aeronautical licensees to broadcast licensees under Section 310(b)(4), with certain limited exceptions.²¹ Among other things, the rules expressly allow broadcast licensees to request in their Section 310(b)(4) petitions approval for up to and including 100 percent aggregate foreign voting and/or equity investment by unnamed and future foreign investors in the controlling U.S. parent of a licensee.²²

8. The Commission also adopted other revisions and clarifications related to non-compliance with the Commission's foreign ownership rules. Specifically, the Commission adopted a methodology for common carrier licensees and broadcast licensees that are themselves, or are controlled by, U.S. public companies, to assess compliance with Section 310(b).²³ This revised methodology: (1) requires these licensees to exercise due diligence in identifying and determining the citizenship of their known or reasonably known interest holders; (2) specifies the information these licensees can rely on for purposes of complying with Section 310(b), subject to exercising the required due diligence; and (3) eliminates the need for these licensees to conduct surveys or random samplings of their shares and allows licensees to apply citizenship presumptions about their unknown shareholders.²⁴ The Commission also adopted a safe harbor process for U.S. public companies to cure inadvertent violations of the foreign ownership limits, 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.²⁵ This process allows U.S. public companies to file a remedial petition to address the newly discovered foreign ownership.²⁶ While the Commission declined to extend these provisions to privately held companies,²⁷ it decided to allow privately held entities to use the methodology applicable to U.S. publicly traded companies on a case-by-case basis.²⁸

C. Petition for Declaratory Ruling Process

9. *Initial Petitions for Declaratory Ruling.* A licensee must submit a petition for declaratory

²¹ See generally *2016 Foreign Ownership Report and Order*.

²² *Id.* at 11282, para. 15. To exercise in a meaningful way the discretion conferred by statute, the Commission must receive detailed information from the applicant sufficient for the Commission to make the public interest finding the statute requires. See, e.g., *id.* at 11282, 11283-84, paras. 15, 20 (noting that the requirements adopted in the streamlined foreign ownership rules ensure that the Commission has the information necessary to evaluate and understand a licensee's ownership structure and to fulfill its obligations under Section 310(b) of the Act). See also, *Rules and Policies on Foreign Participation in the U.S. Telecommunications Market: Market Entry and Regulation of Foreign-Affiliated Entities*, IB Docket Nos. 97-142 and 95-22, Report and Order and Order on Reconsideration, 12 FCC Rcd 23891 (1997).

²³ See generally 47 CFR § 1.5000; see *2016 Foreign Ownership Report and Order*, 31 FCC Rcd at 11289-90, para. 35.

²⁴ *2016 Foreign Ownership Report and Order*, at 11293-98, paras. 44-53.

²⁵ 47 CFR § 1.5004(f); *2016 Foreign Ownership Report and Order* at 11308-11, paras. 78-84.

²⁶ See *infra* para. 11; see also *2016 Foreign Ownership Report and Order*, 31 FCC Rcd at 11309-10, paras. 80-82.

²⁷ See *2016 Foreign Ownership Report and Order* at 11311, para. 87. "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 Sections 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." See 47 CFR § 1.5000(d)(8).

²⁸ *2016 Foreign Ownership Report and Order*, 31 FCC Rcd at 11311-12, para. 88 & n.224 ("We note that the Commission staff frequently works with private entities to address and resolve impediments to identifying ownership interests, and we expect that this collaborative process will continue as private entities explore whether it is appropriate to rely on the revised methodology we adopt today for U.S. publicly traded companies.").

ruling *before* direct or indirect foreign ownership of its controlling U.S. parent exceeds the 25 percent statutory benchmarks under Section 310(b).²⁹ The rules set out the specific requirements for what must be included in the petition,³⁰ which include, among other things, the proposed aggregate foreign ownership and the citizenship for all individuals and entities, both United States or foreign, that will hold a direct or indirect 10 percent or greater equity and/or voting interest in the controlling U.S. parent of the licensee(s).³¹ The petition must also identify the foreign individuals and entities for which specific approval is requested.³² The petition may, but is not required to, request advance approval for any entity for which specific approval is requested.³³ The petition must also include certain national security and law enforcement certifications.³⁴ For each petition, the Commission assesses whether the proposed foreign interests are in the public interest.

10. The Commission's public interest analysis considers national security, law enforcement, foreign policy, or trade policy issues that may be raised by the foreign ownership.³⁵ The Commission coordinates as necessary and appropriate with the relevant Executive Branch agencies, which may include the agencies that comprise the Committee for the Assessment of Foreign Participation in the United States Telecommunications Services Sector (Committee).³⁶ To that end, the petitioner is required to provide

²⁹ See 47 CFR § 1.2 (Declaratory rulings); *2011 Foreign Ownership NPRM*, 26 FCC Rcd at 11703, 11710, para. 11.

³⁰ 47 CFR § 1.5001.

³¹ *Id.* § 1.5001(e), (f), (g), (h).

³² *Id.* § 1.5001(i). The petition must request specific approval for all foreign individuals and entities that will have more than a 5 percent direct or indirect equity and/or voting interest in the controlling U.S. parent (10 percent in certain circumstances). *Id.* § 1.5001(i)(1), (2), (3). The petitioner may also, but is not required to, request specific approval for other foreign individuals or entities that will hold a lower ownership interest. *Id.* § 1.5001(i)(4).

³³ 47 CFR § 1.5001(k). The petition may request up to 100 percent equity and/or voting interests for an individual or entity with specific approval of a controlling interest in the controlling U.S. parent. *Id.* § 1.5001(k)(1). The petition may also request up to a non-controlling 49.99 percent equity and/or voting interest for an individual or entity with a specific approval for a non-controlling interest. *Id.* § 1.5001(k)(2).

³⁴ *Id.* § 1.5001(n)(1) (certifications for broadcast applicants and licensees); *Id.* § 1.5001(n)(2) (certifications for common carrier applicants and licensees).

³⁵ See *2013 Foreign Ownership Second Report and Order*, 28 FCC Rcd at 5751, 5762, paras. 13, 34; *Rules and Policies on Foreign Participation in the U.S. Telecommunications Market: Market Entry and Regulation of Foreign-Affiliated Entities*, IB Docket Nos. 97-142 and 95-22, Report and Order on Reconsideration, 12 FCC Rcd 23891, 23920, para. 63 (1997) (*Foreign Participation Order*), Order on Reconsideration, 15 FCC Rcd 18158 (2000). See also *Executive Branch Review of FCC Applications and Petitions with Foreign Ownership for National Security, Law Enforcement, Foreign Policy and Trade Policy Concerns*, IB Docket No. 16-155, Notice of Proposed Rulemaking, 31 FCC Rcd 7456 (2016) (*2016 Executive Branch Review NPRM*).

³⁶ 47 CFR § 1.400001(a). In 2020, the Commission, in its *Executive Branch Review Report and Order*, formalized the process for the Committee to complete its review consistent with Executive Order 13913 of April 4, 2020. See generally *Process Reform for Executive Branch Review of Certain FCC Applications and Petitions Involving Foreign Ownership*, IB Docket No. 16-155, Report and Order, 35 FCC Rcd 10927, 10929-30, 10935, paras. 5-6, 18-21 (2020) (*Executive Branch Review Report and Order*); Executive Order 13913, § 1, 85 FR 19643 (2020) (stating that "[t]he security, integrity, and availability of United States telecommunications networks are vital to United States national security and law enforcement interests"); Executive Order 13913, § 3(a), 85 FR at 19643-44 (stating that "[t]he function of the Committee shall be . . . to review applications and licenses for risks to national security and law enforcement interests posed by such applications or licenses. . . ."); Executive Order 13913, § 3(b)-(d), 85 FR at 19643-44 (establishing the "Committee," composed of the Secretary of Defense (DOD), the Secretary of Homeland Security (DHS), and the Attorney General of the Department of Justice (DOJ), who serves as the Chair, and the head of any other executive department or agency, or any Assistant to the President, as the President determines appropriate (Members), and also providing for Advisors, including the Secretary of State, the Secretary of Commerce, and the United States Trade Representative (USTR)); see also FCC, *Requirements for Applications*

(continued....)

responses to national security and law enforcement Standard Questions directly to the Committee before or when it files the petition with the Commission.³⁷ The Commission considers the results of the Committee's review as part of the Commission's analysis on whether granting the petition for declaratory ruling is in the public interest.³⁸

11. *Remedial Petitions for Declaratory Ruling.* In situations where the licensee finds that it is out of compliance with the benchmarks in Section 310(b) or its foreign ownership ruling, the licensee must notify the Commission within 30 days of when it knows, or has reason to know, that the licensee is not in compliance.³⁹ The licensee must take action to be in compliance and may be subject to enforcement action.⁴⁰ As discussed above, in the *2016 Foreign Ownership Report and Order*, the Commission adopted a safe harbor process for licensees whose controlling U.S. parent is a U.S. public company and circumstances led to it being out of compliance that were beyond the licensee's control.⁴¹ In these circumstances, the licensee may file a notification with the Commission within 10 days after learning of the investments that caused it to exceed the benchmarks in Section 310(b) or be out of compliance with its existing foreign ownership ruling. The licensee's notification should state that the licensee will take actions within 30 days to become compliant, either by filing a request for a new declaratory ruling or by making changes to the licensee's ownership to come into compliance.⁴² In such situations, the Commission will generally not take enforcement action due to the non-compliance by the licensee.⁴³

III. DISCUSSION

12. In this *NPRM*, we propose or seek comment on updates to set clear expectations about the Commission's review under Section 310(b) of the Act of foreign investment in both common carrier and broadcast licensees and on other updates that apply only to broadcast licensees. Additionally, this *NPRM* seeks comment on other opportunities to improve the foreign ownership rules or ways we can reduce regulatory burdens, including whether there are any service-specific differences that would warrant alternative approaches for particular categories of licensees. Through these efforts, we strive to increase the likelihood of more fulsome initial submissions from petitioners to reduce inefficient follow-up discussions between Commission staff and petitioners to ensure compliance with Section 310(b) of the Act.

A. Common Carrier and Broadcast Licensees

13. Below, as applied to both common carrier and broadcast licensees, we propose to codify certain policies and practices with respect to the Commission's foreign ownership rules for common carrier and broadcast licensees subject to 310(b) of the Act and seek comment on possible approaches to other aspects of the rules. This *NPRM* seeks comment on or proposes to amend the rules to: (1) codify existing policy regarding which entity is the controlling U.S. parent; (2) codify the Commission's advance approval policy regarding certain deemed voting interests; (3) require identification of trusts and trustees; (4) extend the remedial procedures and methodology to privately held companies; (5) add requirements regarding the contents of remedial petitions; (6) require the filing of amendments as a

and Petitions Subject to Executive Branch Review, <https://www.fcc.gov/international-affairs/requirements-applications-and-petitions-subject-executive-branch-review>.

³⁷ 47 CFR § 1.5001(m).

³⁸ *Id.* § 1.40001(b).

³⁹ *Id.* § 1.5004(f).

⁴⁰ *Id.* § 1.5004(f)(1).

⁴¹ *See supra* para. 8.

⁴² 47 CFR § 1.5004(f)(3).

⁴³ *Id.* § 1.5004(f)(3), (4).

complete restatement to petitions for declaratory ruling; and (7) clarify U.S. residency requirements.

1. Controlling U.S. Parent Definition

14. To receive more fulsome and complete initial petitions, reduce additional submissions by the petitioners, and to streamline processing, we propose to define the controlling U.S. parent in our rules. In the *2016 Foreign Ownership Report and Order*, the Commission, among other things, clarified the citizenship and filing requirements for obtaining prior approval from the Commission for foreign ownership in the controlling U.S. parent of a licensee that would exceed the 25 percent benchmarks in Section 310(b)(4).⁴⁴ Although the Commission adopted definitions for several terms related to its review of foreign ownership under Section 310(b), including “public company,” “subsidiary,” and “control,” the Commission did not adopt a definition of “controlling U.S. parent” at that time.⁴⁵ Since 2016, the overwhelming majority of petitions for declaratory ruling submitted under Section 310(b)(4) have identified a controlling U.S. parent at the lowest permissible level in the vertical ownership chain while other petitions submitted have identified an entity higher up in the vertical ownership chain.⁴⁶ These different approaches to identifying the controlling U.S. parent often result in considerable additional processing time to ensure that the petitioner has properly identified the controlling U.S. parent of the licensee(s); to assess a licensee’s vertical chain of control; to clarify ownership calculations; and/or to submit any corrections in the docket.

15. Based on this experience,⁴⁷ we propose to define the controlling U.S. parent as “the first controlling entity organized in the United States that is above the licensee(s) in the vertical chain of control and does not itself hold a license subject to [S]ection 310(b).”⁴⁸ We believe that adding a definition to our rules would benefit both the petitioners and the Commission for a few reasons. Our proposed definition would provide regulatory certainty to petitioners in determining how to appropriately factor in the controlling U.S. parents in their foreign ownership analyses to comply with Section 310(b) of the Act and the Commission’s rules. We believe that it would also reduce regulatory burdens by minimizing the need for staff to seek supplemental information.⁴⁹ For staff and petitioners alike, this

⁴⁴ See *Id.* § 1.5000; see generally *2016 Foreign Ownership Report and Order*.

⁴⁵ 47 CFR § 1.5000(d); see, e.g., *Process Reform for Executive Branch Review of Certain FCC Applications and Petitions Involving Foreign Ownership*, IB Docket No. 16-155, Second Report and Order, 36 FCC Rcd 14848, 14942, Attach. E (2021) (stating that “Relevant Parties” to a petition for declaratory ruling include the “Proposed Controlling U.S. Parent of the Licensee.”).

⁴⁶ 47 U.S.C. § 310(b)(4).

⁴⁷ See, e.g., *International Authorizations Granted, Section 214 Applications* (47 CFR § 63.18), *Section 310(b) Requests*, Public Notice, Report No. TEL-02379, DA 24-697 (OIA July 18, 2024), 2024 WL 3506597 (granting petitioners’ request for a declaratory ruling and finding that “the public interest would not be served by prohibiting foreign ownership in Novacap Holdings, the *controlling U.S. parent of Licensees*, in excess of the 25 percent benchmarks in [S]ection 310(b)(4) of the Act” (emphasis added); *Applications of Liberty Latin America Ltd. and AT&T Inc. for Consent to the Transfer of Control of the Licenses, Authorizations, and Spectrum Lease Held by AT&T Mobility Puerto Rico Inc. and AT&T Mobility USVI Inc. to Liberty Latin America Ltd.*, WT Docket No. 19-384, Memorandum and Order and Declaratory Ruling, 36 FCC Rcd 2328 (WTB, WCB, and IB 2020) (finding “that the public interest would not be served by prohibiting the foreign ownership that would be held in the Transferred Companies’ proposed, *controlling U.S. parent*, Beach, post-closing.” (emphasis added). We note that when we evaluated these petitions, we identified the controlling U.S. parent at the lowest permissible level in the vertical chain of control.

⁴⁸ We propose to codify this definition in proposed Section 1.5000(d)(5). See Appendix A. For the purposes of Section 310(b) of the Act, control includes actual working control (*de jure* or *de facto* 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. 47 CFR § 1.5000(d)(3).

⁴⁹ See, e.g., *International Authorizations Granted, Section 214 Applications* (47 CFR §§ 63.18, 63.24); *Section 310(b) Petitions* (47 CFR § 1.5000), File No. ISP-PDR-20240809-00004, Public Notice, Report No. TEL-02428,

(continued....)

could potentially reduce the time and effort required to correctly identify the controlling U.S. parent, an exercise that can be burdensome depending on the complexity of the vertical ownership chain.

16. Further, we believe that the proposed definition, which codifies existing practice, would provide more certainty for petitioners and the ability to utilize the flexibilities provided for petitioners in Sections 1.5004(c)(1) (insertion of new controlling foreign organized company) and 1.5004(d)(1) (insertion of new non-controlling foreign organized company) of the Commission's rules.⁵⁰ For example, with this clarity, petitioners could confidently seek to insert within the vertical chain of control an additional controlling foreign-organized company immediately above the controlling U.S. parent without obtaining a new declaratory ruling, provided petitioners comply with the other requirements of Section 1.5004(c)(1). We also believe the proposed definition would clarify how licensees can comply with the Commission's foreign ownership rules in Sections 1.5001(e)-(f) (disclosable interest holders), 1.5001(i) (specific approvals), and 1.5001(k) (advance approval)—which all rely on the term controlling U.S. parent.⁵¹ We believe that the proposed definition will not affect any requirements under Section 310(b)(4) of the Act or the Commission's foreign ownership rules.⁵²

17. We seek comment on our proposal, including our expectations regarding its effects. Would our proposal reduce burdens on staff and petitioners, as we expect? If not, what, if any, types of burdens would result, and would the benefits of including the proposed definition in the rules outweigh any burdens? We propose to apply this definition to all Section 310(b) petitioners regardless of size or revenue but seek comment on whether there are certain considerations that should be noted for small entities. Would the proposed definition result in a more streamlined petition and review process, as we expect, and if so in what ways? Does this definition provide sufficient clarity for petitioners and the public while also allowing petitioners flexibility in structuring their ownership chains? Would the proposed definition impact other foreign ownership rules, and if so, how? Should the Commission instead define the term controlling U.S. parent differently, and if so, how, and what benefits and burdens would the proposed alternative present? Should the Commission decline to define the term "controlling U.S. parent" at this time and if so, why would that be preferable?

2. Deemed Voting Interest and Advance Approval

18. We propose to amend our rules to clarify how the Commission treats limited partners and members of limited liability companies (LLC members) that have deemed voting interests when considering a request for advance approval in a Section 310(b) petition. Under the Commission's rules, foreign individuals and/or entities that receive specific approval pursuant to Section 1.5001(i) may also receive advance approval pursuant to Section 1.5001(k) for a future increase in their interests in the controlling U.S. parent.⁵³ The advance approval rules provide flexibility for the foreign investors in a controlling U.S. parent to increase their interests at some future time up to the approved amount, eliminating the need to file a Section 310(b) petition at the time of a future foreign investment that increases these interests. We propose to amend the foreign ownership rules to codify existing

DA 25-173 (rel. IB Feb. 27, 2025) (granting Section 310(b)(4) petition for declaratory ruling filed by Conterra Ultra Broadband Holdings, Inc.); *International Authorizations Granted, Section 214 Applications* (47 CFR §§ 63.18, 63.24); *Section 310(b) Petitions* (47 CFR § 1.5000), File No. ISP-PDR-20220603-00003, Public Notice, Report No. TEL-02259, 38 FCC Rcd 1969 (OIA 2025).

⁵⁰ 47 CFR § 1.5004(c)(1) (permitting the insertion of a new controlling foreign-organized company in the vertical chain above the controlling U.S. parent under certain circumstances); *Id.* § 1.5004(d)(1) (permitting the insertion of a new non-controlling foreign-organized company in the vertical ownership chain above the controlling U.S. parent under certain circumstances). Our rules require petitioners to notify the Commission of such changes. *See Id.* § 1.5004(c)(2), (d)(2).

⁵¹ *Id.* § 1.5001(e)-(f); 1.5001(i); 1.5001(k).

⁵² *See supra* note 47.

⁵³ 47 CFR § 1.5001(i), (k).

Commission practice to provide petitioners greater certainty concerning Section 310(b) petitions involving limited partners and LLC members that have deemed voting interests. The proposed language would state explicitly that a finding of deemed voting interest of 50 percent or more is not a finding of control in and of itself. We also propose to amend the rule for advance approval, Section 1.5001(k), to state that a foreign individual or entity that has a deemed voting interest of 50 percent or greater voting interest in the controlling U.S. parent, but that does not have *de jure* or *de facto* control of the controlling U.S. parent, may request advance approval 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 equity and/or voting interest. We seek comment on this approach.

19. *Specific Approval.* Section 1.5001(i) of the Commission's rules requires petitioners to submit the names of individuals and entities that hold or would hold a greater than 5 percent equity and/or voting interest in the controlling U.S. parent (in certain circumstances, 10 percent), to request specific approval from the Commission to hold these interests at these levels.⁵⁴ In determining which foreign individuals and/or entities require specific approval under Section 1.5001(i) of the Commission's rules, the Commission assesses the deemed voting interests of limited partners and LLC members. Although deemed voting interests are not direct voting rights, for purposes of specific approval requests submitted by petitioners under Section 1.5001(i), the Commission treats deemed voting interests as direct voting rights. Entities with deemed voting interests under Section 1.5001(i) may have less than a 5 percent equity interest and would not otherwise be subject to specific approval requirements. However, due to the way partnerships and LLCs are structured, such entities can be involved in the management of the partnership or LLC even with a less than 5 percent equity interest.⁵⁵ Consequently, the Commission assesses the deemed voting interests for individuals or entities as part of the Commission's public interest analysis for Section 310(b)(4) petitions.

20. *Advance Approval.* Section 1.5001(k) of the Commission's rules allows petitioners to request advance approval for named individuals or entities that have requested specific approval (under Section 1.5001(i)) to increase their interests in the controlling U.S. parent at some future time. Individuals or entities that do not have actual control over the controlling U.S. parent may only request advance approval of up to a non-controlling 49.99% equity and/or voting interest. The Commission does not use deemed voting interests in determining what advance approval a petitioner may request for an individual or entity that obtains specific approval. The Commission's rules regarding advance approval do not specifically address deemed voting interests. The Commission staff have received requests for advance approval for individuals or entities that may have 50 percent or greater deemed voting interests, but do not have *de jure* or *de facto* control over the controlling U.S. parent. Staff receive questions about these topics given their interrelated concepts and individuals and/or entities involved. We believe that our clarification in our rules here would ensure petitioners understand the requirement for advance approval, would facilitate provision of more appropriate ownership information, and would reduce processing time for staff and petitioners.

21. *Insulation and Determining Voting Interests.* In determining the voting interests held by limited partners and LLC members for purposes of determining their deemed voting interests, the Commission assesses whether the interests held in the limited partnership and LLC are insulated.⁵⁶ Section 1.5003 of the Commission's rules sets out the criteria for determining if such interests are to be

⁵⁴ *Id.*

⁵⁵ The deemed voting interest may be either directly in a controlling U.S. parent that is organized as a partnership or LLC or indirectly through an intervening partnership or LLC in the vertical ownership structure of the partnership or LLC. See *id.* § 1.5001(i)(3)(ii)(C), Notes 1 and 2.

⁵⁶ We note that, in the broadcast services, insulation of limited partnership, limited liability partnership, and limited liability company interests for applicants and licensees shall be determined in accordance with note 2(f) of Section 73.3555 of the Commission's rules. See *id.* § 1.5000(i)(1); see also *id.* § 73.3555, note 2.

considered insulated or not.⁵⁷ These criteria look at whether the limited partner or LLC member is prohibited by the operative agreement from active engagement in the management of the partnership or LLC and in fact is not actively involved in management, and whether the rights afforded by the partnership agreement are limited to usual and customary investor protections.⁵⁸ Usual and customary investor protections include such things as the power to prevent the sale of all or substantially all of the assets of the limited partnership or LLC or a voluntary bankruptcy or liquidation.⁵⁹ If the limited partnership or LLC is considered to be insulated under the Commission's rules, the limited partner or LLC member is deemed to hold a voting interest equal to its equity interest. On the other hand, if the limited partnership or LLC is determined to be uninsulated, the limited partner or LLC member is deemed to hold the same voting interest as the limited partnership or LLC holds in the next lower tier in the licensee's vertical ownership chain.⁶⁰ If the limited partnership or LLC holds its interest directly in the controlling U.S. parent, it is deemed to hold a 100 percent voting interest.⁶¹

22. *Deemed Voting Interest and Control.* In determining how much indirect foreign ownership constitutes control over a licensee, the Commission distinguishes between *deemed voting interests* and *actual voting interests*. As stated above, the deemed voting interest is only used to determine which entities require specific approval, and for which advance approval may be requested. A finding of a deemed voting interest of 50 percent or more is not a finding of *de jure* or *de facto* control of the controlling U.S. parent. Rather, it is an indication of the potential influence of the limited partner or LLC member in the partnership or LLC. The Commission has long found that an owner with a greater than 5 percent equity and/or voting interest may have the ability to influence a licensee and thus the foreign ownership rules have set a 5 percent equity or voting ownership level (in certain circumstances, 10 percent) as the benchmark for when a foreign individual or entity is required to obtain specific approval for its ownership interest in the controlling U.S. parent.⁶²

23. While under certain circumstances, influence can confer control, influence and control are not the same. Under the Commission's rules, a disclosure of deemed voting interest(s) does not

⁵⁷ 47 CFR § 1.5003.

⁵⁸ *Id.* The Commission presumes that a general partner has a controlling interest in the partnership and is deemed to hold an uninsulated interest in the partnership. *Id.* § 1.5001(e), (f), and Notes.

⁵⁹ *Id.* § 1.5003(c)(1). The other protections are: "(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 paragraph (c)(1) through (c)(6) of this [S]ection."

⁶⁰ *Id.* § 1.5001(i), Note 2 to paragraph (i)(3)(ii)(C).

⁶¹ *Id.* § 1.5001(i), Note 1 to paragraph (i)(3)(ii)(C).

⁶² See 2013 Foreign Ownership Second Report and Order, 28 FCC Rcd at 5787, para. 85; 47 CFR § 1.5004(a).

constitute a presumptive conclusion about control.⁶³ In assessing whether an individual or entity does or does not control a licensee, the Commission examines *de jure* and *de facto* control.⁶⁴ *De jure* control (control as a matter of law) is typically determined by examining whether a shareholder owns or legally controls more than 50 percent of the voting shares of a corporation.⁶⁵ *De facto* control (control in fact) is typically determined by examining whether, as a matter of fact, a minority shareholder is able to determine some or all of the licensee's core policies and operations or dominate corporate affairs.⁶⁶ In the broadcast and common carrier contexts, a variety of different factors have been found to be relevant in determining whether a person or entity has *de facto* control over a company.⁶⁷

24. *Deemed Voting Interest and Influence.* The Commission utilizes deemed voting interests to measure foreign influence separate from its analysis of whether a particular investor has actual decision-making power.⁶⁸ As such, a determination that a foreign investor has deemed voting interests in

⁶³ See *id.* § 1.5000(d)(3) (“[c]ontrol 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.”); *Rochester Tel. Corp. v. U.S.*, 23 F. Supp. 634, 636 (W.D.N.Y. 1938), *aff’d*, 307 U.S. 125 (1939) (Congress intended the term “control” as used in the Act to “embrace every form of control, actual or legal, direct or indirect, negative or affirmative”). In construing the term “control,” the Commission has held that influence and control are not the same. Rather, the influence necessary to constitute *de facto* control must be such that the minority shareholder is able to determine some or all of the licensee's core policies and operations, or dominate corporate affairs. See *News Int'l*, Memorandum Opinion and Order, 97 F.C.C.2d 349, 356, para. 16 (1984) (*News International*); *WHDH, Inc.*, Memorandum Opinion and Order, 17 F.C.C.2d 856, 863 (1969) (*WHDH, Inc.*); *Benjamin L. Dubb*, 16 F.C.C. 274, 289 (1951) (*Benjamin L. Dubb*).

⁶⁴ See generally *Applications of Intermountain Microwave*, Public Notice, 12 F.C.C.2d 559 (1963) (*Intermountain Microwave*) (control of common carriers); *Application of Ellis Thompson Corp.*, CC Docket No. 94-136, Summary Decision, 10 FCC Rcd 12554, 12555-56, para. 9 (ALJ 1995) (same); *Terrier Media Buyer, Inc., Petition for Declaratory Ruling*, MB Docket No. 19-196, Declaratory Ruling, 34 FCC Rcd 10544, 10550-51, nn.55-58 (MB 2019) (noting that the a determination of whether a party holds or will hold *de facto* control over a licensee “transcends formulas” and involves an “issue of fact which must be resolved by the special circumstances presented”) (citing *Applications of Univision Holdings, Inc.*, Memorandum Opinion and Order, 7 FCC Rcd 6672, 6675, para. 15 (1992); *Stereo Broadcasters, Inc.*, Memorandum Opinion and Order, 55 F.C.C.2d 819, 821 (1975) (control of broadcast licensees)); see *WGPR, Inc. & CBS, Inc.*, Memorandum Opinion and Order, 10 FCC Rcd 8140, 8142, para. 11 (1995) (“The touchstone of control, in short, is not divining who executes the station's programming, personnel and finance responsibilities, but who establishes policies governing the three areas and exercises ultimate control.”) (same); *2011 Foreign Ownership NPRM*, 26 FCC Rcd at 11727, para. 46, n.93; cf. *Promoting Efficient Use of Spectrum Through Elimination of Barriers to the Development of Secondary Markets*, WT Docket No. 00-230, Report and Order and Further Notice of Proposed Rulemaking, 18 FCC Rcd 20604, 20626-30, paras. 46-53 (2003) (replacing the *Intermountain Microwave* standard interpreting Section 310(d) requirements specifically in the context of spectrum leasing with a new, more flexible standard for assessing *de facto* control while leaving the relevant control analysis for Section 310(b) of the Act undisturbed).

⁶⁵ See *Applications For Consent to the Transfer of Corporate Control from John W. Kluge (De Facto Control) to John W. Kluge (De Jure Control)*, Memorandum Opinion and Order, 98 F.C.C.2d 300, 306 (1984).

⁶⁶ See, e.g., *News International*, 97 F.C.C.2d at 356, para. 16; *WHDH, Inc.*, 17 F.C.C.2d at 863; *Benjamin L. Dubb*, 16 F.C.C. at 289.

⁶⁷ See generally *supra* note 63.

⁶⁸ The *2013 Foreign Ownership Second Report and Order* addresses concerns raised by the Executive Branch agencies that “even without *de facto* control, ‘a primary stakeholder can nonetheless exert influence or obtain access sufficient to raise potential national security, law enforcement, or public safety concerns.’” The Commission determined that “the non-controlling 49.99 percent approval option would require the petitioner to specify the maximum percentages of equity and voting interests for which it seeks approval for a particular named investor to acquire in the future.” The Commission reasoned that “this requirement will provide the Commission and the relevant Executive Branch agencies the opportunity to review whether any particular foreign interest may present an unacceptable level of influence or allow the investor to obtain access sufficient to raise potential national security,

(continued....)

the controlling U.S. parent does not necessarily mean that such foreign investor also has *de jure* or *de facto* control of the controlling U.S. parent. When the Commission reviews a Section 310(b) petition and there is a deemed 100 percent voting interest directly in a controlling U.S. parent that is organized as a partnership or LLC, the Commission's practice has been to permit a petitioner to request advance approval *only* up to a non-controlling 49.99 percent equity and/or voting interest for that entity. Similarly, when there is a deemed 50 percent or more voting interest indirectly in a controlling U.S. parent, the Commission's practice has been to permit a petitioner to request advance approval *only* up to a non-controlling 49.99 percent voting interest for that entity.

25. The exception to this, however, is when the Commission determines that there is an actual controlling interest in which case the Commission would permit a petitioner to request advance approval for up to a 100% voting interest.⁶⁹ As noted, a finding of a specific deemed voting interest of 50 percent or greater is not the same as a finding of control, and therefore entities that do not already hold an actual controlling interest and seek to exceed the 49.99 percent equity and/or voting interest threshold in the future must file a new petition for declaratory ruling and seek prior Commission approval to hold a controlling interest in the applicant, licensee, or controlling U.S. parent. Were we to treat deemed voting interests of 50 percent or greater the same as actual controlling interests, we would need to require more disclosures from the licensee, initiate review of the interests, potentially refer the application to the Committee for national security review, and determine whether the transfer of control of the licensee was in the public interest. The Commission's current practice provides flexibility to permit foreign minority shareholders to increase their interest at some future time after the grant of the declaratory ruling, while minimizing burdens associated with disclosing information at a level required of a controlling interest holder.

26. As noted above, we propose to amend our rules to codify our existing Commission practice of how the Commission will analyze petitions involving limited partners and LLC members that have deemed voting interests. We seek comment on this approach. Would the proposal reduce burdens on petitioners, including small entities, improve transparency, and add clarity to our rules? What additional benefits may arise from this approach? Should the Commission decline to amend the rules at this time or consider an alternative approach, and if so, how would these options affect petitioners, including small business entities?

3. Trust and Trustees Requirements

27. We propose to amend our rules to specify the information that petitioners must submit in Section 310(b) petitions concerning trusts and trustees. The changes to the rules will facilitate more fulsome submissions in the initial petition and reduce inefficient follow-up discussions between staff and petitioners to obtain the necessary information. Under Section 1.5001(e) and (f) of the rules, a petitioner must disclose trusts, as well as any other entity⁷⁰ or individual, U.S. or foreign, as a disclosable interest holder, if the entity or individual holds, or would hold, a direct or indirect interest of ten percent or more,

law enforcement, or public safety concerns.” 2013 Foreign Ownership Second Report and Order, 28 FCC Rcd at 5782, para. 74.

⁶⁹ When deemed voting is an issue, the Commission's Media Bureau and Office of International Affairs include the following language in their declaratory rulings for entities seeking advance approval: “[u]ninsulated individuals and entities that hold minority equity and voting interests in [controlling U.S. parent] with a deemed 100 percent voting interest in [controlling U.S. parent] in accordance with Section 1.5002(b)(2)(iii)(A) of the Commission's rules will continue to be deemed to hold a 100 percent voting interest in [controlling U.S. parent] in accordance with Section 1.5002(b)(2)(iii)(A) of the Commission's rules. A finding that an entity is ‘deemed’ to hold a 100 percent voting interest for purposes of determining compliance with Section 310(b)(4) of the Act and Section 1.5000(a)(1) *et seq.* of the Commission's rules does not indicate that the interest constitutes *de jure* control for purposes of compliance with Section 310(d) of the Act.”

⁷⁰ 47 CFR § 1.5000(d)(4) (defining “entity” as including “a partnership, association, estate, trust, corporation, limited liability company, governmental authority or other organization”).

or a controlling interest, in the controlling U.S. parent of the petitioning common carrier applicant or licensee.⁷¹ In the broadcast context, the petitioner must utilize the attribution rules and policies applicable to broadcasters to determine the U.S. and foreign interests that must be disclosed in a Section 310(b)(4) petition.⁷²

28. Another requirement in a petition is that with regard to foreign equity and/or voting interests that are more than 5%, both broadcast and common carrier petitioners must also request specific approval for such interests in a controlling U.S. parent of the petitioning applicant or licensee.⁷³ In particular, specific approval must be requested for a foreign trust or other entity that is organized in a foreign country, or an individual that is a citizen of a foreign country, if such entity or individual “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 controlling U.S. parent,”⁷⁴ in the petitioning common carrier applicant or licensee, unless the foreign investment is exempt.⁷⁵ For any foreign entity or individual for which the petitioner requests specific approval under Section 1.5001(i) of the Commission’s rules,⁷⁶ the petitioner may request advance approval “to increase its direct and/or indirect equity and/or voting interests in the controlling U.S. parent of the”⁷⁷ petitioning applicant/licensee at some future point above the amount requested under paragraph (i) without needing to file another petition with the Commission. We also note that Section 1.5004(f)(2) prohibits parties from using a trust “as part of a plan or scheme to evade the application of the Commission’s rules or policies under [S]ection 310(b)” and subjects violators to enforcement action by the Commission.⁷⁸

29. We propose to amend our rules to conform with policy and practice that trustees must be disclosed under Sections 1.5001(e), (f), and (i), as applicable, which currently require disclosure of interests held in trust. To analyze whether a particular trust holds an equity and/or voting interest in the controlling U.S. parent for purposes of compliance with Section 310(b), the Commission staff requires

⁷¹ *Id.* § 1.5001(e)(1), (f)(1). Or, in the case of petitions filed under Section 1.5000(a)(2), or in the petitioning common carrier applicant or licensee. *Id.* § 1.5001(e)(2), (f)(2).

⁷² *Id.* § 1.5001(e), (f).

⁷³ For petitions filed pursuant to 47 U.S.C. § 310(b)(3) and 47 CFR § 1.5000(a)(2), with regard to foreign equity and/or voting interests that are more than 5 percent, common carrier petitioners must “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[%] of the equity and/or voting interests in the applicant or licensee unless the foreign investment is exempt under paragraph (i)(3).” 47 CFR § 1.5001(i)(2).

⁷⁴ *Id.* § 1.5001(i)(1).

⁷⁵ *See generally id.* § 1.5001(i)(3) (stating that foreign investment may be exempt from the specific approval requirement if a foreign entity or individual holds, or would hold, directly or indirectly, only ten percent equity and/or voting interests in the controlling U.S. parent or petitioning applicant or licensee and “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”); *see supra* note 73.

⁷⁶ 47 CFR § 1.5001(i).

⁷⁷ *Id.* § 1.5001(k) (explaining that the petitioner may request advance approval of up to a 49.99 percent non-controlling interest for a foreign entity or individual that holds or would hold a non-controlling interest as a result of consummation of any transactions described in the petition, or up to a 100 percent controlling interest for a foreign entity or individual that holds or would hold a controlling interest as a result of consummation of any transactions described in the petition). For petitions filed pursuant to 47 U.S.C. § 310(b)(3) and 47 CFR § 1.5000(a)(2), the petitioner may seek advance approval to increase its direct and/or indirect equity and/or voting interests in the petitioning common carrier applicant/licensee at some future point above the amount requested under paragraph (i) without needing to file another petition with the Commission. 47 CFR § 1.5001(k)(2).

⁷⁸ *Id.* § 1.5004(f)(2).

specific information regarding the identity of trustees of a trust. Where this information is not provided in the petition, staff require petitioners to submit it through supplemental filings. To reduce the costs and burdens associated with additional requests when the petitioner fails to provide trustee information in an initial petition, we propose to codify staff practice by stating that the petitioner must disclose both a trust and its trustee(s) under Sections 1.5001(e) and/or (f). We believe that our proposal will provide clarity to petitioners about the type of information required for trusts and trustees under the rules, streamline the filing process for petitioners, and enable the Commission to more efficiently review petitions filed pursuant to 1.5000(a).⁷⁹ We seek comment on the proposed approach. Should the Commission decline to amend the rules at this time or consider an alternative approach, and if so, how would these options affect petitioners, including small business entities?

4. Extending the Methodology and Remedial Process to Privately Held Entities

30. To address the increasingly complex ownership structures of privately held companies, we seek to revisit whether we should extend certain calculation methods and safe harbors afforded to U.S. public companies in the *2016 Foreign Ownership Report and Order* to privately held companies. Specifically, we seek comment on extending the Commission's methodology for determining foreign ownership and the remedial process for inadvertent non-compliance with the foreign ownership benchmarks to privately held entities for all services subject to Section 310(b)(4).⁸⁰ Currently, the methodology for determining foreign ownership⁸¹ and the remedial process for inadvertent non-compliance with Section 310(b)(4) are limited to U.S. public companies.⁸² The Commission reasoned that privately held companies do not face the same difficulties in identifying interest holders and that they have greater flexibility to enact controls—such as restrictions on the transfer of ownership interests—necessary to ensure continued compliance with Section 310(b).⁸³ However, the Commission indicated that it would allow private companies to use the revised calculation methodology that is applicable to U.S. publicly traded companies on a case-by-case basis, e.g., “if in a particular case, there are significant impediments that prevent a privately held entity from conducting an up-the-chain analysis to ascertain all of its indirect ownership interests, including non-voting equity interests held by remote, insulated investors.”⁸⁴

31. Since the *2016 Foreign Ownership Report and Order*, the Commission has observed increasingly complex ownership structures of its licensees, including both U.S. public companies and

⁷⁹ *2012 Foreign Ownership Report and Order*, 27 FCC Rcd at 9843, para. 27, n.58 (citing *Galesburg Broadcasting Company*, Letter Order, 6 FCC Rcd 2210 (1991) (finding that the transfer of a majority of the voting stock in the U.S.-organized parent of the licensee to a trustee wholly owned by a Canadian bank without prior Commission approval “deprived the Commission of the opportunity to pass on the propriety of alien ownership which Section 310(b)(4) of the Act contemplates”).

⁸⁰ See *supra* paras. 8 and 11.

⁸¹ See *supra* para. 8.

⁸² See *supra* para. 11.

⁸³ Specifically, the Commission stated that privately held companies “do not face the same challenges in identifying shareholders/interest holders as publicly traded companies (e.g., shares held largely in the name of a bank or broker), and they have greater flexibility to enact controls—such as restrictions on the transfer of ownership interests—necessary to ensure continued compliance with Section 310(b). Accordingly, we find that it is reasonable to require privately held entities to continue to account for the ownership of all their voting and non-voting equity interests consistent with our policies and procedures.” See *2016 Foreign Ownership Report and Order*, 31 FCC Rcd at 11311, para. 87.

⁸⁴ *Id.* at 11311-12, para. 88.

privately held companies.⁸⁵ Notably, licensees whose controlling U.S. parents are privately held companies, report that the licensees experience similar issues as public companies in identifying all disclosable interest holders, particularly if the “up-the-chain” ownership structure includes entities, such as equity funds, that may themselves either be public companies or have diverse ownership interests (including other funds). These licensees also indicate that they have experienced difficulty in controlling or preventing changes in these funds, even though the entities are privately held. While current Commission policy allows for some flexibility in calculating ownership percentages on a case-by-case basis, absent the safe harbor available to publicly traded companies, privately held companies are subject to potential enforcement action if there is an inadvertent violation of the foreign ownership benchmarks.⁸⁶

32. Allowing privately held companies to use the methodology that is applicable to U.S. publicly traded companies in the calculation of ownership percentages on a case-by-case basis has provided relief to privately held companies in such situations in prior proceedings.⁸⁷ In our experience, the case-by-case approach provides effective relief when warranted without unduly impacting our ability to ensure compliance with Section 310(b). Nevertheless, we seek comment on whether we should adopt a methodology, similar to that applicable to U.S. publicly traded companies.⁸⁸ Commenters should explain the basis for their views. What distinctions between public and private companies are relevant to our analysis and how should we account for these distinctions? What are the benefits and burdens of continuing to utilize a case-by-case approach versus adopting a more formal methodology?

33. We also seek comment on whether we should extend the Commission’s remedial process, currently available only to publicly held companies, to privately held companies to allow for the cure of inadvertent non-compliance with the foreign ownership statutory benchmarks with respect to any service subject to Section 310(b). When a publicly held licensee determines that it has inadvertently exceeded the statutory foreign ownership benchmarks or its previously authorized foreign ownership levels, it may remediate its noncompliance in one of two ways: (1) the licensee can file a remedial petition for declaratory ruling seeking Commission approval of the increased foreign ownership; or (2) it can eliminate the excess foreign ownership.⁸⁹ The Commission has stated that in either case, it does not, as a general rule, expect to take enforcement action related to the licensee’s non-compliance with the foreign ownership rules, provided that the licensee takes two actions. First, the licensee submits a letter to the Commission no later than 10 days after learning of the investment(s) that rendered the licensee non-compliant, that states the licensee’s intention to file a petition for declaratory ruling or, alternatively, take remedial action to come into compliance within 30 days of the date the licensee learned of the non-compliant foreign interest(s).⁹⁰ Second, the licensee’s petition (or a letter notifying the relevant Bureaus and Offices that the non-compliance has been timely remedied) demonstrates that the licensee’s non-compliance with the Section 310(b)(4) benchmarks or the terms of the licensee’s existing Section 310(b)(4) declaratory ruling, was due solely to circumstances beyond the licensee’s control that were not

⁸⁵ For example, the Commission has generally observed in recent years petitions for declaratory ruling involving offshore investment vehicles, pension or insurance funds, Employee Stock Ownership Plans, and other ownership structures such as the use of LLCs to potentially seek to insulate foreign owners.

⁸⁶ See 47 CFR § 1.5004(f)(3)-(4); see also *supra* para. 8.

⁸⁷ See, e.g., *Applications of LightSquared Subsidiary LLC, Debtor-in-Possession, and LightSquared Subsidiary LLC For Consent to Assign and Transfer Licenses and Other Authorizations and Request for Declaratory Ruling on Foreign Ownership*, IB Docket No. 15-126, Memorandum Opinion and Order and Declaratory Ruling, 30 FCC Rcd 13988, 13999-14002, paras. 23-27 (2015) (permitting Fortress, a widely held, publicly traded limited liability company to be treated in the same manner as a corporation for purposes of calculating foreign voting interests in the licensee through Fortress).

⁸⁸ 47 CFR § 1.5000(e).

⁸⁹ *Id.* § 1.5004(f).

⁹⁰ *Id.* § 1.5004(f)(3)(i).

reasonably foreseeable to or known by the licensee with the exercise of the required due diligence.⁹¹

34. Should we amend our rules to provide that the remedial process is available to all privately held companies or on a case-by-case basis, consistent with the current approach regarding privately held companies' use of the calculation methodology that is applicable to U.S. publicly traded companies? What distinctions between public and private companies are relevant to our analysis and how should we account for these distinctions? We expect that this process would conserve public and private resources by minimizing the need for enforcement action. If we extend the remedial process to privately held entities, we propose that any new approach should apply to all services subject to Section 310(b). Would extending the remedial process and, in particular, refraining from enforcement action if the licensee follows all requirements, encourage greater self-reporting of newly discovered or inadvertent foreign ownership in excess of the statutory benchmarks and greater compliance with the Commission's rules? Would it result in a more streamlined remediation process? We seek comment on the expected benefits of extending the remedial process to privately held companies, as well as any burdens that may arise in our implementation of this proposal. Would the benefits of this proposal outweigh the potential burdens?

5. Contents of Remedial Petitions

35. We propose to amend a specific subsection of our rules to state what information petitioners must include in a remedial petition for declaratory ruling under Section 1.5004(f)(3)-(4) when seeking to remedy non-compliance with the existing requirements for foreign ownership benchmarks with respect to any service subject to Section 310(b). We believe our proposed rule amendment would promote more efficient processing and reduce delays resulting from confusion among petitioners about what information is required for remedial petitions for declaratory ruling. Our rules currently require that remedial petitions for declaratory ruling filed under Section 310(b) of the Act must be filed as new petitions for declaratory ruling⁹² and set forth the required contents of petitions for declaratory ruling.⁹³ Our proposed rule amendment would state explicitly that remedial petitions must contain all of the information required for an initial petition for declaratory ruling and not just the information related to the newly discovered non-compliant interest(s).⁹⁴ Under a remedial petition, a petitioner seeks Commission approval of the controlling U.S. parent's above-benchmarks aggregate foreign ownership interests, or approval of any particular foreign equity and/or voting interests that require specific approval under the licensee's existing Section 310(b)(4) declaratory ruling.⁹⁵

36. When an eligible licensee opts to file a remedial petition for declaratory ruling under Sections 1.5004(f)(3) or (f)(4) of the Commission's rules to address an instance of non-compliance with the Commission's foreign ownership rules, the Commission has required that the remedial petition contain all the information required for an initial petition and not just the information related to the non-

⁹¹ *Id.* § 1.5004(f)(3)(ii).

⁹² 47 CFR § 1.5004(f).

⁹³ *Id.* § 1.5001.

⁹⁴ *See* proposed Section 1.5004(f)(5) in Appendix A.

⁹⁵ Section 1.5004(e) of the Commission's rules provides that when a licensee that has received a foreign ownership declaratory ruling, it shall file a new petition for declaratory ruling under Section 1.5000 of the Commission's rules and obtain Commission approval before its declaratory ruling exceeds the routine terms and conditions of Section 1.5004 and any specific terms and conditions of its declaratory ruling. Similarly, a remedial petition under Section 1.5004(f) would be subject to the same requirements, though in this instance licensees would be filing the petition for declaratory ruling after terms and conditions of Section 1.5004 and any specific terms and conditions of its declaratory ruling have been exceeded. *See* 47 CFR §§ 1.5000, 1.5004(e)-(f). Alternatively, as noted above, the controlling U.S. parent has the option to remedy the non-compliance by, for example, redeeming the foreign interest(s) that rendered the licensee non-compliant with Section 310(b)(4) or the licensee's existing Section 310(b)(4) ruling.

compliant interest(s). Indeed, as noted above, the Commission's current rules require that remedial petitions for declaratory ruling contain all information required in Section 1.5001.⁹⁶ And while the Commission has observed that most petitioners proceed in this fashion *sua sponte*, there have been instances where petitioners, despite the existing Commission rules on foreign ownership, have initially provided only the information related to the non-compliant interest(s), resulting in multiple submissions by the petitioners. We believe that failure to provide all relevant information unduly delays and frustrates efficient processing of petitions, including remedial petitions.

37. We propose to codify revised language in a specific subsection of our rules to state the existing requirement that remedial petitions for declaratory ruling must contain all the ownership information required in an initial petition for a declaratory ruling,⁹⁷ and not just the information related to the non-compliant interest(s). We seek comment on this proposal. We note that there are similar information requirements in other parts of our foreign ownership rules. In fact, the Commission rules require a licensee with an existing declaratory ruling to submit a new petition for declaratory ruling under Section 1.5000, and thus include all required information under Section 1.5001, before its foreign ownership exceeds the routine terms and conditions set forth in Section 1.5004 and/or any specific terms or conditions of its declaratory ruling.⁹⁸ In addition, petitioners submitting remedial petitions for declaratory ruling are already required to file responses to the Commission's Standard Questions⁹⁹ in connection with the remedial petition for declaratory ruling to ensure the Committee receives all information required for its review.¹⁰⁰ This rule applies to all petitions for declaratory ruling (e.g., initial or remedial), and we do not propose to change that requirement here.

38. We seek comment on the expected benefits of the proposal. We expect that the proposal would result in a more streamlined process since we are not proposing to change the substantive requirements of the rule, but rather to add language to state what is already required. We therefore do not anticipate our proposal would result in any new burdens. We seek comment on these assessments, including how our proposal may impact small business entities.

6. Filing Amendments as a Complete Restatement to Petitions for Declaratory Ruling

39. The Commission's rules do not specify the procedure for filing an amendment to a

⁹⁶ See 47 CFR § 1.5004(f)(3) ("Where the controlling U.S. parent of a . . . licensee . . . is an eligible U.S. public company within the meaning of § 1.5000(e), the licensee may file a remedial petition for declaratory ruling under § 1.5000(a)(1) seeking approval of particular foreign equity and/or voting interests that are non-compliant with the licensee's foreign ownership ruling or the Commission's rules relating to foreign ownership. . . ."). Petitions for declaratory ruling under Section 1.5000(a)(1) must contain the information requirements in Section 1.5001. See 47 CFR §§ 1.5000(a)(1), 1.5001.

⁹⁷ Section 1.5001 of the Commission's rules sets out the required information to be disclosed by petitioners. *Id.* § 1.5001.

⁹⁸ *Id.* § 1.5004(e). This rule mandates, for example, that a licensee seek prior Commission approval for any new or additional foreign individual, entity, or group of such individuals or entities to hold, directly and/or indirectly, more than five percent (or more than ten percent for certain institutional investors) of the equity and/or voting interests, or a controlling interest, in the company. *Id.* The licensee is required to file a new petition for declaratory ruling under Section 1.5000 and is thus subject to all applicable content requirements set forth in Section 1.5001. See *id.*; see also 47 CFR § 1.5000.

⁹⁹ 47 CFR § 1.40003. The Commission's Standard Questions can be found at: <https://www.fcc.gov/international-affairs/requirements-applications-and-petitions-subject-executive-branch-review>. The Standard Questions consist of six separate questionnaires (based on subject matter) and a supplement for the provision of personally identifiable information (PII). *Id.*

¹⁰⁰ The Commission's rules provide that petitioners for declaratory rulings seeking to exceed the statutory foreign ownership benchmarks must answer the applicable set of Standard Questions and submit the answers directly to the Committee. 47 CFR § 1.40003(c).

petition for declaratory ruling, which can cause confusion concerning the parameters of pending requests. We therefore seek comment on codifying a requirement that any amendments to a pending petition for declaratory ruling must be filed as a complete restatement of the initial petition. In the *2016 Foreign Ownership Report and Order*, the Commission adopted rules for the filing and processing of Section 310(b) petitions for declaratory ruling, but it did not codify procedures for filing an amendment to a petition.¹⁰¹ The practice of the Office of International Affairs and the Media Bureau is that when there have been substantial changes to the petition, is to have petitioners file a complete restatement of the petition instead of filing an amendment or supplement with specific changes and to also file a cover letter with a narrative description of what is being amended. This practice has ensured that the public and Commission staff can access accurate and complete ownership information for review without undue confusion about which filings or portions of filings are active and/or current. To avoid confusion and promote regulatory consistency, we seek comment on whether to codify this practice. Further, to minimize burdens, we seek comment on whether there are certain ministerial changes to petitions for declaratory ruling that could be filed by an amendment without filing a complete restatement. If so, we seek comment on what would constitute a “ministerial change,” such as a misspelled name or incorrect address, and on this approach generally. We seek comment on the expected benefits and burdens on petitioners, including small entities. Would the benefits of such a requirement outweigh the burdens? Would this proposal result in a more streamlined process?

7. U.S. Residency Requirements

40. Based on questions Commission staff have received regarding whether foreign investors in companies seeking a petition for declaratory ruling must maintain U.S. residency, we propose to clarify that there is no Commission requirement that a foreign investor must reside within the United States. Specifically, a foreign investor’s lack of a U.S. residence is not a factor in the Commission’s assessment of whether a petition for declaratory ruling is in the public interest. United States residency status has not been required or expected previously under our foreign ownership rules.¹⁰² We believe requiring a foreign investor to maintain U.S. residence would be contrary to the Commission’s policy of allowing certain levels of foreign ownership that are not contrary to the public interest.¹⁰³ We seek comment on this proposed clarification. As noted above, we propose that any new approach adopted by the Commission should apply to all services subject to Section 310(b).

B. Broadcast Licensees Only

41. As discussed below, regarding broadcast licensees only, in this *NPRM*, we seek comment on: (1) how the Commission should process applications filed by a broadcast licensee during the pendency of a remedial petition for declaratory ruling under Section 310(b)(4); and (2) other foreign ownership considerations related to processing applications for NCE and LPFM stations.

1. Processing Broadcast Licensee Applications During the Remedial Process

42. To help provide clarity to the broadcast industry, we seek comment on how the Commission, including the Media Bureau pursuant to delegated authority, should process applications generally, or certain types of applications, filed by a broadcast licensee during the remedial process set

¹⁰¹ See, e.g., *2016 Foreign Ownership Report and Order*, 31 FCC Rcd at 11289, para. 34 (establishing procedures for filing broadcast petitions for declaratory ruling).

¹⁰² See generally 47 CFR §§ 1.5000-1.5004 (excluding a rule requiring United States residency for foreign investors).

¹⁰³ By contrast, for service of process purposes, the Commission’s rules require all applicants to certify in their petition for declaratory ruling that they agree to “designate a point of contact who is located in the United States and is a U.S. citizen or lawful U.S. permanent resident, for the execution of lawful requests and as an agent for legal service of process.” See 47 CFR § 1.5001(n)(1)(i) (broadcast applicants), § 1.5001(n)(2)(iii) (common carrier applicants); *Executive Branch Review Report and Order*, 35 FCC Rcd at 10948, 10952, paras. 55-56, 68.

forth in Section 1.5004(f) of the Commission's rules.¹⁰⁴ We tentatively find that processing guidelines will best inform the broadcast industry on how the Commission will process broadcast applications while a remedial petition is subject to review and we seek comment on that position.¹⁰⁵ Indeed, the Commission routinely issues guidelines to help provide clarity regarding the processing of certain applications.¹⁰⁶

43. Under the Commission's current remedial process, where a licensee's controlling U.S. parent is an eligible U.S. public company, the licensee may file a remedial petition for declaratory ruling seeking approval of the U.S. parent's above-benchmark, aggregate foreign ownership interests or approval of any particular foreign equity and/or voting interests that require specific approval under the licensee's existing Section 310(b)(4) ruling.¹⁰⁷ Alternatively, the U.S. parent has the option to remedy the non-compliance by, for example, redeeming the foreign interest(s) that rendered the licensee non-compliant with Section 310(b)(4) or the licensee's existing Section 310(b)(4) ruling.¹⁰⁸

44. As noted above, the Commission has stated that it does not, as a general rule, expect to take enforcement action related to the licensee's non-compliance with the foreign ownership rules in either case, provided the licensee satisfies certain requirements.¹⁰⁹ Nonetheless, the Commission may ultimately determine that the licensee was not actually entitled to use the remedial process or the Commission may ultimately reject the proposed foreign ownership.¹¹⁰ Therefore, the existence of the remedial process, on its own, does not necessarily resolve the issue of whether the broadcast licensee is in compliance with the Commission's rules during the pendency of a remedial petition for declaratory ruling or following remedy of the non-compliance. This is significant because it has been the Media Bureau's practice, often in consultation with the Enforcement Bureau, to place a hold on certain types of applications while a broadcast licensee is subject to an investigation for a potential violation of the Commission's rules.¹¹¹ As a result, any unresolved foreign ownership questions presented by non-

¹⁰⁴ 47 CFR § 1.5004(f). We seek comment on whether to extend the Commission's remedial process for inadvertent violations of the foreign ownership benchmarks to privately held entities. *See supra* Section III.A.4. Therefore, in the context of this proposal, we consider "broadcast licensees" to encompass both U.S. public companies and privately held entities. In so doing, we are not prejudging the outcome of the proposal to make the remedial process available to privately held entities or any other proposal in this item.

¹⁰⁵ Non-broadcast services are subject to different application processes and standards; accordingly, this proposal to develop processing guidelines is limited to broadcast licensees only.

¹⁰⁶ *See, e.g., Media Bureau Announces Procedures for Processing FCC Form 314 & 315 Assignment & Transfer of Control Applications for Commercial Stations in Light of Third Circuit Mandate*, MB Docket Nos. 14-50, et al., Public Notice, 34 FCC Rcd 12374 (MB 2019).

¹⁰⁷ 47 CFR § 1.5004(f)(3).

¹⁰⁸ *Id.*

¹⁰⁹ *See supra* para. 11; *2016 Foreign Ownership Report and Order*, 31 FCC Rcd at 11309-10, para. 80.

¹¹⁰ The Commission has the right to take enforcement action in cases where the licensee was not actually entitled to use the remedial process. 47 CFR § 1.5004(f)(1) ("Except as specified in paragraph (f)(3) of this section, if at any time the licensee, including any successor-in-interest and any subsidiary or affiliate as described in paragraph (b) of this section, knows, or has reason to know, that it is no longer in compliance with its foreign ownership ruling or the Commission's rules relating to foreign ownership, it shall file a statement with the Commission explaining the circumstances within 30 days of the date it knew, or had reason to know, that it was no longer in compliance therewith. Subsequent actions taken by or on behalf of the licensee to remedy its non-compliance shall not relieve it of the obligation to notify the Commission of the circumstances (including duration) of non-compliance. Such licensee and any controlling companies, whether U.S.- or foreign-organized, shall be subject to enforcement action by the Commission for such non-compliance, including an order requiring divestiture of the investor's direct and/or indirect interests in such entities.").

¹¹¹ "Enforcement holds" are often placed by the Commission's Enforcement Bureau in connection with complaints filed against a licensee or its stations that remain under investigation. For example, pursuant to guidance from the Enforcement Bureau, while "such an enforcement hold is in place, the renewal application subject to the hold will

(continued....)

compliance with our rules or the terms of a prior declaratory ruling may impede the processing of pending license applications.

45. Moreover, fundamentally, a licensee with a pending remedial petition for declaratory ruling has a foreign ownership interest that is inconsistent with the Commission's rules and that has not yet been approved. And indeed, upon review of the remedial petition, the Commission may not ultimately approve the foreign ownership interest. In such circumstances, we seek comment on whether the Commission should grant the licensee new authorizations or allow a licensee to dispose of certain authorizations while the petition for declaratory ruling is pending. If so, should any grant of a license be explicitly conditioned on the grant of the pending remedial petition for declaratory ruling and on any enforcement action that may be warranted if the remedial petition is deemed inadequate? Or should staff hold pending license applications until review of a remedial petition is completed? In determining how to proceed, should the Commission take into account the type of license application that is at issue? Are there certain types of applications that should continue to be processed in the normal course during the pendency of the remedial process, such as applications related to the continued operations of the current broadcast facilities (e.g., applications for special temporary authority or minor modifications)? Conversely, are there non-routine applications such as major modifications, license renewals, and assignments/transfers of control, that the Commission should refrain from processing during the pendency of a remedial petition for declaratory ruling? Similarly, are there otherwise routine applications that should not be processed during this time, such as changes in community of license or changes that would expand coverage areas? What facts and public interest considerations should the Commission consider in determining whether to process or grant a license application while a remedial petition is pending? And should any public notice accepting the application disclose the pending remedial petition for declaratory ruling? We also seek comment on whether there are any limitations on the Commission's authority to grant license applications while a remedial petition for declaratory ruling is pending. To what extent do these proposals impact the Commission's statutory standard for granting applications under Sections 308(b), 309(a), 310(b)(4), and 310(d) of the Act,¹¹² if at all?

46. Previously, the Media Bureau has, on occasion, found that the public interest would be served by granting an assignment of license or transfer of control application during the pendency of a remedial petition.¹¹³ In doing so, however, the Bureau imposed a number of conditions to acknowledge the non-compliant foreign ownership and to ensure the applicant's ability and commitment to comply with the outcome of the Commission's review. Notably, these conditions included the suspension of any voting rights for the unapproved interests, heightened insulation requirements for the new foreign interests, limitations on the payment of all dividends and/or distributions while the remedial petition was pending, and the potential to unwind the transaction if the proposed foreign ownership was ultimately rejected. Should the Commission continue to process such applications so long as they are similarly

not be granted until the Enforcement Bureau releases the hold." See *Enforcement Bureau Provides Guidance for Renewal Hold Checks*, Public Notice, 35 FCC Rcd 2888 (IHD 2020).

¹¹² 47 U.S.C. §§ 308(b), 309(a), 310(b)(4), 310(d).

¹¹³ In these instances, the Media Bureau has concluded that the public interest would be served by granting certain applications, e.g., assignment applications, with conditions, that are designed to insulate, to the extent possible, certain foreign interests while a remedial petition for declaratory ruling is pending. See, e.g., *Cumulus Licensing LLC (Assignor) and Cumulus Licensing Holding Company II LLC (Assignee), et al.*, Application File Nos. 0000240099, et al., Memorandum Opinion and Order, 39 FCC Rcd 4108 (MB 2024) (*Cumulus*) (granting applications for assignment of license to Cumulus Licensing Holding Company II LLC, with conditions designed to insulate, to the extent possible, new foreign interests in Cumulus Media, Inc., while the remedial petition for declaratory ruling seeking specific approval of such interests was pending); *Applications of Mortenson Broadcasting Co. of Texas, Inc., et al.*, Application File Nos. 0000129304, et al., Memorandum Opinion and Order, 36 FCC Rcd 5935, 5939-42, paras. 9-12 (MB 2021) (*Mortenson*) (granting applications for assignment of licenses to iHM Licenses, LLC, with conditions designed to insulate, to the extent possible, new foreign interests in iHeart Media, Inc., while the remedial petition for declaratory ruling seeking specific approval of such interests was pending).

conditioned,¹¹⁴ or conditioned in another manner?

47. We seek comment on whether adopting rules concerning the processing of broadcast applications while a foreign ownership petition is pending would offer greater benefits or fewer burdens than issuing guidance. Commenters should identify specific anticipated benefits or burdens, including burdens on small entities, associated with the adoption of rules or guidance.

2. Assessing Foreign Ownership of Noncommercial Educational (NCE) and Low Power FM (LPFM) Stations

48. To better incorporate the ownership structures of NCE and LPFM stations seeking approval for proposed foreign ownership into our rules, we seek to clarify how we approach determining the foreign ownership levels of these particular stations. We therefore seek comment on changes to the Commission's foreign ownership rules that would assess the foreign ownership levels of NCE stations, including full-service FM radio and television stations and LPFM stations, by considering their unique structures. Just as with their commercial counterparts, ownership—including foreign ownership—of NCE and LPFM stations is subject to the provisions of Section 310(b).¹¹⁵ As such, the Commission's foreign ownership rules are not limited to commercial stations, though the rules discuss ownership in terms of the voting and equity shares of individuals and entities.¹¹⁶ This characterization of ownership, however, is rarely applicable in the NCE/LPFM context, as these entities are often governed by a board of directors or an unincorporated association without traditional voting or equity shares in the entity. The Commission's rules and policies, however, have long recognized that these governing bodies—and, by extension, the individual board members—direct the operations of these stations.¹¹⁷ The Commission has addressed this in the broadcast ownership report context, for attribution purposes, by looking to the composition of the respondent's governing board or other governing entity, and whether it is directly or indirectly under the control of another entity.¹¹⁸

¹¹⁴ See, e.g., *supra* note 113.

¹¹⁵ 47 U.S.C. § 310; see also *Wilner and Scheiner*, Declaratory Ruling, 103 F.C.C.2d 511, 514, para. 7 (1985), *recon. granted in part*, 1 FCC Rcd 12 (1986) (“Consistent with this statutory language, the Commission has applied the strictures of Section 310(b) to a variety of noncorporate entities.”) (citing *Kansas City Broadcasting Co.*, 5 R.R. 1057 (1952) (members of a church); *Chicagoland TV Co.*, 4 R.R.2d 747, 752 (1965) (labor union)); *Creation of Low Power Radio Serv.*, Memorandum Opinion and Order on Reconsideration, 15 FCC Rcd 19208, 19244, para. 90 (2000) (“We recognize that many entities that will hold LPFM licenses will be non-stock corporations or other non-stock entities, and that non-stock entities do not have ‘owners’ in the traditional sense. As the Commission has explained, the specific citizenship requirements of Section 310(b) reflect a deliberate judgment on the part of Congress to prevent undue foreign influence in broadcasting. Thus, for the purpose of determining whether a non-stock LPFM applicant or licensee complies with the statutory foreign ownership requirements, we will first consider the citizenship of those individuals who would have the ability, comparable to that of a traditional owner, to influence or control the licensee.”) (internal citations and subsequent history omitted); *Casa de Oracion Getsemani et al.*, Memorandum Opinion and Order, 23 FCC Rcd 4118, 4126, para. 17 (2008) (“Because Ephese [Ephese French SDA Church] does not have stockholders, we look to the persons ‘who would have the ability, comparable to that of a traditional owner, to influence or control the licensee.’”) (subsequent history omitted); FCC Form 2100, Schedule 315 – Application for Consent to Transfer Control of Entity Holding Broadcast Station Construction Permit or License (stating that all applicants, including those seeking to acquire control of an NCE station(s), must comply with Section 310(b), including the requirement in Section 310(b)(4) that the applicant file a petition for declaratory ruling if the proposed level of indirect foreign ownership exceeds 25 percent).

¹¹⁶ See 47 CFR § 1.5000 *et seq.*

¹¹⁷ See, e.g., 47 CFR § 73.3573(a)(1) (addressing transfers of control of NCE FM applicants resulting from changes in the governing board); see also generally *Transfers of Control of Certain Licensed Non-Stock Entities*, MM Docket No. 89-77, Notice of Inquiry, 4 FCC Rcd 3403 (1989) (evaluating transfer of control issues for certain non-stock licensed entities, e.g., NCE station licensees).

¹¹⁸ See FCC Form 323-E, Instructions for Ownership Report for Noncommercial Broadcast Stations.

49. While to date, there have been relatively few instances of requests for proposed foreign ownership of NCE and LPFM stations under the Commission's current foreign ownership rules, we believe it would be beneficial to consider how to incorporate the structures of these stations into the current rules.¹¹⁹ As we do in the broadcast ownership report context, in determining the voting shares of NCE stations in the course of our Section 310(b)(4) reviews, we propose to consider the composition of the governing board or other governing entity, and whether it is directly or indirectly under the control of another entity for purposes of assessing compliance with the foreign ownership limits set forth in the Act and the Commission's rules. For example, if an NCE station licensee (or applicant) is governed by a board with five members, each member would be deemed to have a 20 percent voting interest (or "share") in the licensee absent an agreement that sets forth different voting shares for each individual member, in which case each member would be deemed to have the percentage interest designated in the agreement. If there are four members, each member would have a 25 percent voting interest, and so forth.¹²⁰ In the event that greater than 25 percent of the controlling interest holders in the licensee's controlling U.S. parent would be non-U.S. citizens, the licensee would first need to seek approval for such foreign ownership consistent with Section 310(b)(4)¹²¹ and the Commission's foreign ownership rules. Direct foreign interests in the licensee would be subject to the 20 percent benchmarks in Section 310(b)(3).¹²²

50. We also note that, consistent with the broadcast ownership context, there may be station-specific agreements or circumstances that could impact how the ownership percentages are calculated. For example, the governing board could cede its decision-making authority over the station to an executive in the operating organization. Any such circumstances would continue to be subject to individual review under Section 310(b). And while governing board members in noncommercial entities do not traditionally have equity interests in the licensee, any such equity interests specific to a particular licensee would also be subject to the 310(b) benchmarks.¹²³

51. We seek comment on this approach for determining percentage ownership interests for the purpose of evaluating whether foreign ownership is consistent with that laid out in the Section 310(b) benchmarks. We also seek comment on the expected benefits of this approach, and what, if any, burdens it could impose on petitioners, including small entities.

52. We also seek comment on circumstances in which an individual noncommercial licensee/permittee/applicant adopts a different approach to determining voting shares, e.g., by allocating voting power to board members on something other than a pro rata basis. In what cases might a noncommercial organization adopt an agreement that sets forth different voting shares for each individual member? Do these types of voting agreements raise any concerns, such that the Commission should restrict their use in some or all circumstances? Further, are such weighted governance structures (i.e., non pro rata) typically permitted by state or federal laws regarding the incorporation and governance of noncommercial entities? If agreements that set forth different voting shares are permissible, should the Commission require that a copy of the voting agreement accompany the petition for declaratory ruling?

¹¹⁹ We note that currently there are several applications pending before the Media Bureau seeking new LPFM authorizations that involve noncommercial applicants with foreign ownership, which could be affected by the outcome of this proceeding. We seek comment on how to treat such pending applications, including whether or not any rules ultimately adopted as a result of this proceeding should be applied to applications pending as of the effective date of any such new rules.

¹²⁰ See, e.g., *NCE MX Group 503*, Letter, 26 FCC Rcd 6155 (MB 2011); *Texas Educational Broadcasting Cooperative, Inc.*, Memorandum Opinion and Order and Notice of Apparent Liability for Forfeiture, 22 FCC Rcd 13038 (MB 2007).

¹²¹ 47 U.S.C. § 310(b)(4).

¹²² 47 U.S.C. § 310(b)(3). As noted above, the Commission's forbearance authority does not extend to broadcast or aeronautical radio station licensees covered by Section 310(b)(3).

¹²³ See *Caribbean Festival Association, Inc.*, Letter Order, 22 FCC Rcd 19238 (MB 2007) (acknowledging that an "equity interest" in an LPFM station would be subject to 310(b)).

Alternatively, is there a different approach for determining voting control that would better reflect the structure of NCE and/or LPFM stations? Are there circumstances in which application of the current foreign ownership rules would not be appropriate? How should we address such situations, e.g., waiver or alternate procedures, for petitions involving NCE/LPFM stations? We seek comment on these questions. We also seek comment on the expected benefits of each approach, and what, if any, burdens each approach could impose on petitioners.

3. NCE/LPFM Application Processing Issues

53. We seek comment on whether and how to clarify the Commission's rules and procedures regarding the application of Section 310(b) in the context of filing windows for construction permits for noncommercial authorizations. Under the Commission's rules, companies with foreign investors are eligible to apply for new construction permits that are available for application during a filing window, including noncommercial filing windows. Those companies with foreign investors in excess of the statutory benchmarks must, at the time the application for a construction permit is filed, also submit a petition for declaratory ruling, unless they are already covered by such a ruling.¹²⁴ However, the current rules do not address various procedural issues that might arise in the context of a filing window for a noncommercial authorization. For example, the Commission has on occasion opened application windows for new and major modifications to NCE FM radio stations, NCE full power television stations, and LPFM stations, which award such authorizations using a point system for selection criteria. Applicants must make various certifications regarding their foreign ownership, including whether the applicant is in compliance with the terms and conditions of an existing foreign ownership declaratory ruling and whether there have been any changes in the applicant's foreign ownership since the issuance of a declaratory ruling(s).¹²⁵ In the NCE FM¹²⁶ and television context, for example, applicants must also submit information regarding point system factors and tie breakers, which award merit points based on certain distinct criteria, including: (1) established local applicant; (2) diversity of ownership; (3) state-wide network; and (4) technical parameters.¹²⁷ Applications that conflict with one another from an engineering perspective are considered mutually exclusive (MX).¹²⁸ Applications are assigned points based on these criteria and the Bureau awards the authorization to the applicant with the superior showing. In the event MX applications are tied with the highest number of points, the tied applicants will proceed to a tie-breaker round in which certain tiebreakers are considered.¹²⁹

54. In light of these NCE/LPFM filing window procedures, we seek comment on how best to structure our review of Section 310(b) compliance. First, we propose to clarify that, under the current requirements in Section 1.5000(b) regarding construction permit applications, entities with foreign ownership in excess of the statutory benchmarks in Section 310(b)(4) and without an existing declaratory

¹²⁴ 47 CFR § 1.5000(b).

¹²⁵ See FCC Form 2100, Schedule 340 – Noncommercial Educational Reserved Channel Construction Permit Application; FCC Form 2100, Schedule A-340 – Noncommercial Educational Reserved Channel Construction Permit Application (collectively, “Schedule 340”).

¹²⁶ For NCE FM applications, for MX groups in which NCE FM applicants propose service to different communities, the Commission employs a threshold fair distribution study pursuant to Section 307(b) of the Communications Act of 1934, as amended. See 47 U.S.C. § 307(b); 47 CFR § 73.7002. If the fair distribution analysis does not remove the conflict, the Commission moves to a point system analysis for MX NCE FM applications. See 47 CFR § 73.7003.

¹²⁷ See *Media Bureau Announces NCE FM New Station Filing Procedures and Requirements for November 2 – 9, 2021, Window Limited Application Filing Freeze to Commence on October 5, 2021*, MB Docket No. 20-343, Public Notice, 36 FCC Rcd 11458, 11465 (MB 2021) (*NCE FM Procedures PN*); see also *Media Bureau Announces Filing Window for New Noncommercial Educational Television Stations From December 4 Through December 11, 2024, and Sets Forth Filing Procedures and Requirements*, Public Notice, DA 24-1065 (MB Oct. 10, 2024).

¹²⁸ See, e.g., *NCE FM Procedures PN*, 36 FCC Rcd at 11461.

¹²⁹ *Id.* at 11466-67.

ruling can participate in an NCE/LPFM filing window so long as they file a petition for declaratory ruling seeking approval of the foreign ownership interest at the same time they file the application for a construction permit required for participation in the filing window. Given that, at that point, the applicant has yet to be awarded a construction permit or a license, how should the Commission process the petition? For example, would the entities also need to file responses to the Standard Questions at the time of filing the application or would this result in unnecessary filings for those entities that are not deemed the tentative selectee in the filing window? Should we require that the petition for declaratory ruling be processed by Commission staff only if and when the applicant is deemed the tentative selectee and condition the grant of a construction permit on the grant of such a petition? In that case, would the applicant then file its responses to the Standard Questions after it has been selected? Could processing a petition for declaratory ruling after the selection result in circumstances in which an unqualified broadcast applicant is selected, e.g., an entity with foreign ownership that violates Section 310(b)(4)? Should the Commission delay referring the petition for declaratory ruling to the Executive Branch until after an applicant is selected? We seek comment on these issues as well as the expected benefits and burdens imposed on petitioners in each scenario.

55. Additionally, we seek comment on how accepting applications with proposed but as-yet unapproved foreign ownership impact MX groups, if at all? For example, if an applicant is selected in an MX group but ultimately fails to obtain approval for its foreign ownership, how should the Commission proceed with respect to the construction permit? Should it be awarded to the applicant with the second-highest point tally, as it would under our existing selection criteria, should such an applicant exist?¹³⁰ To what extent should we apply the existing selection criteria to situations in which the tentative selectee fails to obtain approval for its foreign ownership?¹³¹ Given the length of time for review of a petition for declaratory ruling, how might this review period impact the selection process? How do the procedures we propose here impact other technical rules, such as the protected status of new station or modification applications? We also seek comment on how, if at all, the point system should consider proposed foreign ownership. How should the Commission formalize any approach it may adopt, e.g., rule changes, processing guidance, or both? We seek comment on these questions as well as the expected benefits and burdens imposed on petitioners in each scenario.

C. Other Opportunities to Improve or Ways to Reduce Regulatory Burdens Concerning the Foreign Ownership Rules

56. We seek comment generally on what other opportunities we can take to improve the foreign ownership rules or ways we can reduce regulatory burdens. Are there additional ways we can streamline our Section 310(b) rules or processes? We seek comment on whether there are any service-specific differences that would warrant alternative approaches or additional guidance for particular categories of licensees or small business entities with regard to any of our proposals discussed above. We seek comment on whether there are any other processes or policies that may need to be codified in our rules to further assist petitioners and expedite processing of Section 310(b) petitions. Consistent with the *Delete, Delete, Delete Proceeding*, we also seek comment on opportunities to alleviate unnecessary regulatory burdens in the context of our rules or our foreign ownership review under Section 310(b) of the Act.¹³²

57. Additionally, throughout Appendix A, we propose various ministerial, non-substantive changes such as shifting the language of the notes and examples into the text of the relevant rule as subsections to conform to the publishing conventions of the National Archives and Records Administration's (NARA) Office of the Federal Register. These changes include, among other things,

¹³⁰ See *supra* paras. 53-54.

¹³¹ See 47 CFR §§ 73.7002-7003.

¹³² *Delete, Delete, Delete Proceeding*. See, e.g., Executive Order 14192, *supra* note 3; see also Executive Order 14219, *supra* note 3.

revisions to language and terms to ensure consistency of references used in Sections 1.5000-1.5004 of the Commission's rules. Appendix A contains a proposed complete republication of Subpart T (47 CFR §§ 1.5001-1.5004). The proposed changes are shown through bold text for proposed additions and strike through for proposed deletions. We seek comment on these proposals.

IV. COST/BENEFIT ANALYSIS

58. This *NPRM* proposes to codify certain policies and practices with respect to the Commission's foreign ownership rules for common carrier and broadcast licensees subject to 310(b) of the Act and seeks comment on possible approaches to other aspect of the rules. This *NPRM* seeks comment on or proposes to amend the rules to: (1) codify existing policy regarding which entity is the controlling U.S. parent; (2) codify the Commission's advance approval policy regarding certain deemed voting interests; (3) require identification of trusts and trustees; (4) extend the remedial procedures and methodology to privately held companies; (5) add requirements regarding the contents of remedial petitions; (6) require the filing of amendments as a complete restatement to petitions for declaratory ruling; and (7) clarify U.S. residency requirements. As applied to broadcast licensees only, we also seek comment on: (1) how the Commission should process applications filed by a broadcast licensee during the pendency of a remedial petition for declaratory ruling under Section 310(b); and (2) other foreign ownership considerations related to processing applications for noncommercial educational (NCE) and low power FM (LPFM) stations. Finally, the *NPRM* seeks comment on other ways to improve the foreign ownership rules or reduce regulatory burdens.

59. We find that clarifying our rules, codifying existing requirements and practices related to foreign ownership, and providing guidance with respect to filing of applications should reduce uncertainty for applicants, which in turn should reduce the need to revise or refile requests and thus expedite the application approval process without significantly burdening petitioners. We further find that extending the methodology and the remedial process for inadvertent non-compliance with the foreign ownership benchmarks to privately held entities for all services subject to Section 310(b)(4) should further reduce enforcement costs by limiting the likelihood of Commission enforcement action in circumstances where the non-compliance with U.S. foreign ownership benchmarks was inadvertent. More broadly, by clarifying the rules and potentially streamlining processes, we find that the proposed rules and processing guidelines could facilitate foreign investments in the U.S. market, while simultaneously reducing any risks to national security, law enforcement, foreign policy, and trade policy interests.¹³³

60. As a result, we tentatively conclude that the costs associated with the proposed rules are negligible and that the benefits associated with the proposed rules outweigh the costs. We seek comment on our tentative conclusion and more generally on the benefits and costs associated with adopting the proposals set forth in this *NPRM*. We also seek comment on any benefits to the public and to industry through adoption of our proposals, including the effects of our proposed changes on small entities. Comments should be accompanied by specific data and analysis supporting claimed costs and benefits.

V. PROCEDURAL MATTERS

A. Initial Regulatory Flexibility Act Analysis

61. The Regulatory Flexibility Act of 1980, as amended (RFA),¹³⁴ requires that an initial regulatory flexibility analysis be prepared for notice-and-comment rule making proceedings, unless the agency certifies that "the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities."¹³⁵ Accordingly, we have prepared an Initial Regulatory Flexibility

¹³³ For instance, we propose to amend Section 1.5001(k)(1) to specify that such foreign entities that are minority shareholders can only request advance approval of up to a non-controlling 49.99 percent interest. *Supra* para. 20.

¹³⁴ See 5 U.S.C. § 603. The RFA, *see* 5 U.S.C. § 601-612, has been amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), Pub. L. No. 104-121, Title II, 110 Stat. 857 (1996).

¹³⁵ 5 U.S.C. § 605(b).

Analysis (IRFA) concerning the potential impact of rule and policy changes in this Notice of Proposed Rulemaking on small entities. The IRFA is set forth in Appendix B. Written public comments are requested on the IRFA. Comments must be filed by the deadlines for comments on the Notice indicated on the first page of this document and must have a separate and distinct heading designating them as responses to IRFA.

B. Initial Paperwork Reduction Act Analysis

62. This *NPRM* proposes new or modified information collection requirements. The Commission, as part of its continuing effort to reduce paperwork burdens and pursuant to the Paperwork Reduction Act of 1995, Public Law 104-13, invites the general public and the Office of Management and Budget (OMB) to comment on these information collection requirements. In addition, pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107-198, *see* 44 U.S.C. § 3506(c)(4), we seek specific comment on how we might further reduce the information collection burden for small business concerns with fewer than 25 employees.

C. Filing Requirements—Comments and Replies

63. Pursuant to Sections 1.415 and 1.419 of the Commission's rules, 47 CFR §§ 1.415, 1.419, interested parties may file comments and reply comments on or before the dates indicated on the first page of this document. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS).¹³⁶

- **Electronic Filers:** Comments may be filed electronically using the Internet by accessing the ECFS: <http://apps.fcc.gov/ecfs/>.
- **Paper Filers:** Parties who choose to file by paper must file an original and one copy of each filing.
 - Filings can be sent by hand or messenger delivery, by commercial courier, or by the U.S. Postal Service. **All filings must be addressed to the Secretary, Federal Communications Commission.**
 - Hand-delivered or messenger-delivered paper filings for the Commission's Secretary are accepted between 8:00 a.m. and 4:00 p.m. by the FCC's mailing contractor at 9050 Junction Drive, Annapolis Junction, MD 20701. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes and boxes must be disposed of before entering the building.
 - Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9050 Junction Drive, Annapolis Junction, MD 20701.
 - Filings sent by U.S. Postal Service First-Class Mail, Priority Mail, and Priority Mail Express must be sent to 45 L Street, NE, Washington, DC 20554.
- **People with Disabilities.** To request materials in accessible formats for people with disabilities (braille, large print, electronic files, audio format), send an e-mail to fcc504@fcc.gov or call the Consumer and Governmental Affairs Bureau at (202) 418-0530.

D. Ex Parte Rules

64. The proceeding this *NPRM* initiates shall be treated as a "permit-but-disclose" proceeding in accordance with the Commission's *ex parte* rules.¹³⁷ Persons making *ex parte* presentations must file a copy of any written presentation or a memorandum summarizing any oral presentation within two business days after the presentation (unless a different deadline applicable to the

¹³⁶ See *Electronic Filing of Documents in Rulemaking Proceedings*, 63 FR 24121 (1998).

¹³⁷ 47 CFR § 1.1200 *et seq.*

Sunshine period applies). Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentation must (1) list all persons attending or otherwise participating in the meeting at which the *ex parte* presentation was made, and (2) summarize all data presented and arguments made during the presentation. If the presentation consisted in whole or in part of the presentation of data or arguments already reflected in the presenter's written comments, memoranda, or other filings in the proceeding, the presenter may provide citations to such data or arguments in his or her prior comments, memoranda, or other filings (specifying the relevant page and/or paragraph numbers where such data or arguments can be found) in lieu of summarizing them in the memorandum. Documents shown or given to Commission staff during *ex parte* meetings are deemed to be written *ex parte* presentations and must be filed consistent with rule 1.1206(b). Written *ex parte* presentations and memoranda summarizing oral *ex parte* presentations, and all attachments thereto, must be filed through the electronic comment filing system in the docket established for this proceeding, and must be filed in their native format (e.g., .doc, .xml, .ppt, searchable .pdf). Participants in this proceeding should familiarize themselves with the Commission's *ex parte* rules.

E. Providing Accountability Through Transparency Act

65. Consistent with the Providing Accountability Through Transparency Act, Public Law 118-9, a summary of this document will be available on <https://www.fcc.gov/proposed-rulemakings>.¹³⁸

F. Additional Information

66. For additional information on this proceeding, contact Fara Mohsenikolour, Telecommunications and Analysis Division, Office of International Affairs, at Fara.Mohsenikolour@fcc.gov or (202) 418-1429.

VI. ORDERING CLAUSES

67. Accordingly, **IT IS ORDERED** that, pursuant to the authority found in Sections 1, 2, 4(i), 4(j), 303, 307, 308, 309, 310, of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 152, 154(i), 154(j), 303, 307, 308, 309, 310, this Notice of Proposed Rulemaking **IS ADOPTED**.

68. **IT IS FURTHER ORDERED** that the Commission's Office of the Secretary, **SHALL SEND** a copy of this *Notice of Proposed Rulemaking*, including the Initial Regulatory Flexibility Act Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary

¹³⁸ 5 U.S.C. § 553(b)(4). The Providing Accountability Through Transparency Act, Pub. L. No. 118-9 (2023), amended Section 553(b) of the Administrative Procedure Act.

APPENDIX A

Proposed Rules

Deleted text is marked with a ~~strike through~~ and new text is **bolded**.

The Federal Communications Commission proposes to amend 47 CFR part 1 to read as follows:

Part 1 of Title 47 of the U.S. Code of Federal Regulations is proposed to be amended to read as follows:

PART 1 – PRACTICE AND PROCEDURE

1. The authority citation for part 1 continues to read as follows:

AUTHORITY: 47 U.S.C. chs. 2, 5, 9, 13; 28 U.S.C. 2461 note; 47 U.S.C. 1754, unless otherwise noted.

2. Revise and republish subpart T, consisting of §§ 1.5000 through 1.5004, to read as follows:

SUBPART T-- FOREIGN OWNERSHIP OF BROADCAST, COMMON CARRIER,
AERONAUTICAL EN ROUTE, AND AERONAUTICAL FIXED RADIO STATION LICENSEES

Sec.

1.5000 Citizenship and filing requirements under section 310(b) of the Communications Act of 1934, as amended.

1.5001 Contents of petitions for declaratory ruling under section 310(b) of the Communications Act of 1934, as amended.

1.5002 How to calculate indirect equity and voting interests.

1.5003 Insulation criteria for interests in limited partnerships, limited liability partnerships, and limited liability companies.

1.5004 Routine terms and conditions.

§ 1.5000 Citizenship and filing requirements under section 310(b) of the Communications Act of 1934, as amended.

The rules in this subpart establish the requirements and conditions for obtaining the Commission's prior approval of foreign ownership in broadcast, common carrier, aeronautical en route, and aeronautical fixed radio station licensees and common carrier spectrum lessees that would exceed the 25 percent benchmarks in section 310(b)(4) of the Act. These rules also establish the requirements and conditions for obtaining the Commission's prior approval of foreign ownership in common carrier (but not broadcast, 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. These rules also establish the methodology applicable to eligible U.S. public companies for purposes of determining and ensuring their compliance with the foreign ownership limitations set forth in sections 310(b)(3) and 310(b)(4) of the Act.

(a)

(1) A broadcast, 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 **controlling** U.S. parent's equity interests and/or 25 percent of its voting interests. An applicant for a broadcast, 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.

(i) ~~Note 1 to paragraph (a):~~ 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 broadcast, 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~~ **controlling U.S. parent** that itself directly or indirectly controls a broadcast, 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~~ **controlling U.S. parent** 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).

(ii) [Reserved]

(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.

(i) ~~Note 2 to paragraph (a):~~ 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 Aug. 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). The Commission's forbearance approach does not apply to broadcast, aeronautical en route or aeronautical fixed radio station licenses.

(ii) [Reserved]

(3) Examples under paragraphs (a)(1) and (2) of this section.

(i) 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 benchmarks 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 5 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 § 1.5001(i)(3).

(ii) *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 5 percent of U.S.-organized Corporation A's equity and/or voting interests, unless the foreign investment is exempt under § 1.5001(i)(3).

(iii) *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 (a)(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 noncontrolling, 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 § 1.5001(i).

(b) Except for petitions involving broadcast stations only, the petition for declaratory ruling required by paragraph (a) of this section shall be filed electronically through the International Communications Filing System (ICFS) or any successor system thereto. For information on filing a petition through ICFS, see subpart Y of this part and the ICFS homepage at <https://www.fcc.gov/icfs>. Petitions for declaratory ruling required by paragraph (a) of this section involving broadcast stations only shall be filed electronically on the Internet through the Media Bureau’s Consolidated Database System (CDBS) **Licensing and Management System (LMS)** or any successor system thereto when submitted to the Commission as part of an application for a construction permit, assignment, or transfer of control of a broadcast license; if there is no associated construction permit, assignment or transfer of control application, petitions for declaratory ruling should be filed with the Office of the Secretary via the Commission's Electronic Comment Filing System (ECFS).

(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, broadcast, 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 § 1.5001, such information should be set out separately for each joint petitioner, except as otherwise permitted in § 1.5001(h)(2).

(i) Each joint petitioner shall certify to the information contained in the petition in accordance with the provisions of § 1.16 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 §§ 1.5001 through 1.5004.

(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) *Controlling U.S. parent* refers to the first controlling entity organized in the United States that is above the licensee(s) in the vertical chain of control and that does not itself hold a license subject to section 310(b).

~~(4)~~(5) *Entity* includes a partnership, association, estate, trust, corporation, limited liability company, governmental authority or other organization.

~~(5)~~(6) *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)~~(7) *Individual* refers to a natural person as distinguished from a partnership, association, corporation, or other organization.

~~(7)~~(8) *Licensee* as used in §§ 1.5000 through 1.5004 includes a spectrum lessee as defined in § 1.9003.

~~(8)~~(9) *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 sections 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)~~(10) *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 sections 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)~~(11) *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)~~(12) *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)~~(13) *Would hold* as used in §§ 1.5000 through 1.5004 includes 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 paragraphs (a)(1) or (2) of this section.

(e)

(1) This section sets forth the methodology applicable to broadcast, common carrier, aeronautical en route, and aeronautical fixed radio station licensees and common carrier spectrum lessees that are, or are directly or indirectly controlled by, an eligible U.S. public company for purposes of monitoring the licensee's or spectrum lessee's compliance with the foreign ownership limits set forth in sections 310(b)(3) and 310(b)(4) of the Act and with the terms and conditions of a licensee's or spectrum lessee's foreign ownership ruling issued pursuant to paragraph (a)(1) or (2) of this section. For purposes of this section:

(i) An "eligible U.S. public company" is a company that is organized in the United States; whose stock is traded on a stock exchange in the United States; and that has issued a class of equity securities for which beneficial ownership reporting is required by security holders and other beneficial owners under sections 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;

(ii) A “beneficial owner” of a security refers to any person who, directly or indirectly, through any contract, arrangement, understanding, relationship, or otherwise has or shares voting power, which includes the power to vote, or to direct the voting of, such security; and

(iii) An “equity interest holder” refers to any person or entity that has the right to receive or the power to direct the receipt of dividends from, or the proceeds from the sale of, a share.

(2) An eligible U.S. public company shall use information that is known or reasonably should be known by the company in the ordinary course of business, as described in this paragraph, to identify the beneficial owners and equity interest holders of its voting and non-voting stock:

(i) Information recorded in the company's share register;

(ii) Information as to shares held by officers, directors, and employees;

(iii) Information reported to the Securities and Exchange Commission (SEC) in Schedule 13D (17 CFR 240.13d-101) and in Schedule 13G (17 CFR 240.13d-102), including amendments filed by or on behalf of a reporting person, and company specific information derived from SEC Form 13F (17 CFR 249.325);

(iv) Information as to beneficial owners of shares required to be identified in a company's annual reports (or proxy statements) and quarterly reports;

(v) Information as to the identify and citizenship of a beneficial owner and/or equity interest holder where such information is actually known to the public company as a result of shareholder litigation, financing transactions, and proxies voted at annual or other meetings; and

(vi) Information as to the identity and citizenship of a beneficial owner and/or equity interest holder where such information is actually known to the company by whatever source.

(3) An eligible U.S. public company shall use information that is known or reasonably should be known by the company in the ordinary course of business to determine the citizenship of the beneficial owners and equity interest holders, identified pursuant to paragraph (e)(2) of this section, including information recorded in the company's shareholder register, information required to be disclosed pursuant to rules of the Securities and Exchange Commission, other information that is publicly available to the company, and information received by the company through direct inquiries with the beneficial owners and equity interest holders where the company determines that direct inquiries are necessary to its compliance efforts.

(4) A licensee or spectrum lessee that is, or is directly or indirectly controlled by, an eligible U.S. public company, shall exercise due diligence in identifying and determining the citizenship of such public company's beneficial owners and equity interest holders.

(5) To calculate aggregate levels of foreign ownership, a licensee or spectrum lessee that is, or is directly or indirectly controlled by, an eligible U.S. public company, shall base its foreign ownership calculations on such public company's known or reasonably should be known foreign equity and voting interests as described in paragraphs (e)(2) and (3) of this section. The licensee shall aggregate the public company's known or reasonably should be known foreign voting interests and separately aggregate the public company's known or reasonably should be known foreign equity interests. If the public company's known or reasonably should be known foreign voting interests and its known or reasonably should be known foreign equity interests do not exceed 25 percent (20 percent in the case of an eligible publicly traded licensee subject to section 310(b)(3)) of the company's total outstanding voting shares or 25 percent (20

percent in the case of an eligible publicly traded licensee subject to Section 310(b)(3)) of the company's total outstanding shares (whether voting or non-voting), respectively, the company shall be deemed compliant, under this section, with the applicable statutory limit.

(i) *Example.* Assume that a licensee's controlling U.S. parent is an eligible U.S. public company. The publicly traded U.S. parent has one class of stock consisting of 100 total outstanding shares of common voting stock. The licensee (and/or the U.S. parent on its behalf) has exercised the required due diligence in following the above-described methodology for identifying and determining the citizenship of the **controlling** U.S. parent's "known or reasonably should be known" interest holders and has identified one foreign shareholder that owns 6 shares (i.e., 6 percent of the total outstanding shares) and another foreign shareholder that owns 4 shares (i.e., 4 percent of the total outstanding shares). The licensee would add the **controlling** U.S. parent's known foreign shares and divide the sum by the number of the **controlling** U.S. parent's total outstanding shares. In this example, the licensee's **controlling** U.S. parent would be calculated as having an aggregate 10 percent foreign equity interests and 10 percent foreign voting interests (6 + 4 foreign shares = 10 foreign shares; 10 foreign shares divided by 100 total outstanding shares = 10 percent). Thus, in this example, the licensee would be deemed compliant with Section 310(b)(4).

(ii) [Reserved]

§ 1.5001 Contents of petitions for declaratory ruling under section 310(b) of the Communications Act of 1934, as amended.

The petition for declaratory ruling required by § 1.5000(a)(1) and/or (2) shall contain the following information:

(a) ***Applicant or licensee information.*** 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) ***Third party information.*** 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) ***Services covered.***

(1) For each named licensee, list the type(s) of radio service authorized (e.g., broadcast service, cellular radio telephone service; microwave radio service; mobile satellite service; aeronautical fixed service). In the case of broadcast licensees, also list the call sign, facility identification number (if applicable), and community of license or transmit site for each authorization covered by the petition.

(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., broadcast service, cellular radio telephone service; microwave radio service; mobile satellite service; aeronautical fixed service).

(d) **Type of Declaratory Ruling.** With respect to each petitioner, include a statement as to whether the petitioner is requesting a declaratory ruling under § 1.5000(a)(1) and/or (2).

(e) *Disclosable interest holders—direct U.S. or foreign interests in the controlling U.S. parent.*

Paragraphs (e)(1) through (4) of this section apply only to petitions filed under § 1.5000(a)(1) and/or (2) for common carrier, aeronautical en route, and aeronautical fixed radio station applicants or licensees, as applicable. Petitions filed under § 1.5000(a)(1) for broadcast licensees shall provide the name of any individual or entity that holds, or would hold, directly, an attributable interest in the controlling U.S. parent of the petitioning broadcast station applicant(s) or licensee(s), as defined in the Notes to § 73.3555 of this chapter. Where no individual or entity holds, or would hold, directly, an attributable interest in the controlling U.S. parent (for petitions filed under § 1.5000(a)(1)), the petition shall specify that no individual or entity holds, or would hold, directly, an attributable interest in the U.S. parent, applicant(s), or licensee(s).

(1) *Direct U.S. or foreign interests of ten percent or more or a controlling interest.* With respect to petitions filed under § 1.5000(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)(4)(i) through (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 § 1.5000(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)(4)(i) through (iv) 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 § 1.5000(a)(1)) or in the applicant or licensee (for petitions filed under § 1.5000(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 **controlling** 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, regardless of its equity interest, and any insulated partner 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 uninsulated, based on the insulation criteria specified in § 1.5003.

(iv) Where a named U.S. parent, applicant, or licensee is organized as a limited liability company, provide the name(s) of each uninsured member, regardless of its equity interest, any insured 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 insured or uninsured, based on the insulation criteria specified in § 1.5003, and whether the member is a manager.

(5) With respect to trusts, the trustee(s) of the trust must be disclosed regardless of whether the trustee(s) otherwise holds, or would otherwise hold, directly 10 percent or more of the equity interests and/or voting interests, or a controlling interest, in the controlling U.S. parent, petitioning applicant/licensee, or an intervening U.S. entity that does not control the petitioning applicant/licensee.

~~(6) Note to paragraph (e):~~ The Commission presumes that a general partner of a general partnership or limited partnership has a controlling (100 percent) voting interest in the partnership. A general partner shall in all cases be deemed to hold an uninsured interest in the partnership.

(f) Disclosable interest holders — indirect U.S. or foreign interests in the controlling U.S. parent. Paragraphs (f)(1) through (3) of this section apply only to petitions filed under § 1.5000(a)(1) and/or § 1.5000(a)(2) for common carrier, aeronautical en route, and aeronautical fixed radio station applicants or licensees, as applicable. Petitions filed under § 1.5000(a)(1) for broadcast licensees shall provide the name of any individual or entity that holds, or would hold, indirectly, an attributable interest in the controlling U.S. parent of the petitioning broadcast station applicant(s) or licensee(s), as defined in the Notes to § 73.3555 of this chapter. Where no individual or entity holds, or would hold, indirectly, an attributable interest in the controlling U.S. parent (for petitions filed under § 1.5000(a)(1)), the petition shall specify that no individual or entity holds, or would hold, indirectly, an attributable interest in the **controlling** U.S. parent, applicant(s), or licensee(s).

(1) Indirect U.S. or foreign interests of 10 percent or more or a controlling interest. With respect to petitions filed under § 1.5000(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 § 1.5002.

(2) Indirect U.S. or foreign interests of 10 percent or more or a controlling interest. With respect to petitions filed under § 1.5000(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 § 1.5002.

*(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 controlling interest, in the controlling U.S. parent (for petitions filed under § 1.5000(a)(1)) or in the petitioning applicant(s) or licensee(s) (for petitions filed under § 1.5000(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 **controlling** U.S. parent, applicant(s), or licensee(s).*

(4) With respect to trusts, the trustee(s) of the trust must be disclosed regardless of whether the trustee(s) otherwise holds, or would otherwise hold, indirectly 10 percent or more of the equity

interests and/or voting interests, or a controlling interest, in the controlling U.S. parent, petitioning applicant/licensee, or an intervening U.S. entity that does not control the petitioning applicant/licensee.

(5) 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) *Citizenship and other information*

(1) Citizenship and other information for disclosable interests in common carrier, aeronautical en route, and aeronautical fixed radio station applicants and licensees. 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).

(2) Citizenship and other information for disclosable interests in broadcast station applicants and licensees. For each attributable interest holder named in response to paragraphs (e) and (f) of this section, describe the nature of the attributable interest and, if applicable, 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) *Ownership information.*

(1) Estimate of aggregate foreign ownership. For petitions filed under § 1.5000(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 § 1.5000(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 § 1.5000(a)(1)) and either:

(i) For common carrier, aeronautical en route, and aeronautical fixed radio station applicants and licensees, 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; or

(ii) For broadcast station applicants and licensees, the attributable interest holders 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 broadcast, common carrier or aeronautical radio station applicant(s) or licensee(s) for petitions filed under § 1.5000(a)(1), and in each petitioning common carrier applicant or licensee for petitions filed under § 1.5000(a)(2).

(1) Each petitioning broadcast, common carrier or aeronautical radio station applicant or licensee filing under § 1.5000(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 held indirectly in the petitioner's controlling U.S. parent shall be calculated in accordance with the principles set forth in §§ 1.5002 and 1.5003. Equity and voting interests held directly in a petitioner's controlling U.S. parent that is organized as a partnership or limited liability company shall be calculated in accordance with ~~Note 1 to~~ paragraph (i)(34)(ii)(C)(I) of this section.

~~(2) Note to paragraph (i)(1):~~ Solely for the purpose of identifying foreign interests that require specific approval under this paragraph (i), broadcast station applicants and licensees filing petitions under § 1.5000(a)(1) should calculate equity and voting interests in accordance with the principles set forth in §§ 1.5002 and 1.5003 and *not* as set forth in the Notes to § 73.3555 of this chapter, to the extent that there are any differences in such calculation methods. Notwithstanding the foregoing, the insulation of limited partnership, limited liability partnership, and limited liability company interests for broadcast applicants and licensees *shall* be determined in accordance with Note 2(f) of § 73.3555 of this chapter.

~~(32)~~ Each petitioning common carrier radio station applicant or licensee filing under § 1.5000(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 held indirectly in the applicant or licensee shall be calculated in accordance with the principles set forth in §§ 1.5002 and 1.5003. Equity and voting interests held directly in an applicant or licensee that is organized as a partnership or limited liability company shall be calculated in accordance with ~~Note 1 to~~ paragraph (i)(34)(ii)(C)(I) of this section.

~~(i) Note 1 to paragraphs (i)(1) and (2):~~ Certain foreign interests of 5 percent or less may require specific approval under paragraphs (i)(1) and (2). See ~~Note 2 to~~ paragraph (i)(34)(ii)(C)(2) of this section.

~~(ii) Note 2 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.

(iii) Example. Common carrier applicant (“Applicant”) is preparing a petition for declaratory ruling to request Commission approval for foreign ownership of its controlling U.S. parent to

exceed the 25 percent benchmarks in section 310(b)(4) of the Act and section 1.5000(a)(1) of the Commission's rules. The Applicant identifies that Trust A, a U.S. entity, will hold indirect 40 percent equity and voting interests in the Applicant's controlling U.S. parent. A Trustee to Trust A is a foreign citizen. Pursuant to section 1.5001(e) of the Commission's rules, the Applicant must disclose the Trustees to Trust A. Pursuant to section 1.5001(i), if the foreign Trustee(s) holds or will hold more than five percent equity and/or voting interests, the Trustee(s) must request specific approval for its equity and/or voting interests in the Applicant's controlling U.S. parent prior to its interests exceeding five percent.

(43) 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 **controlling** U.S. parent (for petitions filed under § 1.5000(a)(1)) or the petitioning applicant or licensee (for petitions filed under § 1.5000(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 (2) of this section:

(A) Where the petitioning applicant or licensee, controlling U.S. parent, or entity holding a direct or indirect equity and/or voting interest in the applicant/licensee or **controlling** U.S. parent is a "public company," as defined in § 1.5000(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.

(1) *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 benchmarks in section 310(b)(4) of the Act. Applicant does not currently hold any FCC licenses. Shares of **controlling** U.S. ~~Pparent~~ trade publicly on the New York Stock Exchange. Based on a review of its shareholder records, **controlling** U.S. ~~Pparent~~ has determined that its aggregate foreign ownership on any given day may exceed an aggregate 25 percent, including a 6 percent common stock interest held by a foreign-organized mutual fund ("Foreign Fund"). **Controlling** U.S. ~~Pparent~~ 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). **Controlling** U.S. ~~Pparent~~ also has confirmed that Foreign Fund does not hold any other interests in **controlling** U.S. ~~Pparent~~'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 6 percent interest in **controlling** U.S. ~~Pparent~~.

(2) ~~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, in addition to 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 10 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 petitioning applicant or licensee, controlling U.S. parent, or entity holding a direct and/or indirect equity and/or voting interest in the applicant/licensee or U.S. parent is a "privately held" corporation, as defined in § 1.5000(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 petitioning applicant or 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 § 1.5000(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 § 1.5003.

~~(I) Note 1 to paragraph (i)(3)(ii)(C):~~ For purposes of identifying foreign interests that require specific approval, where the petitioning applicant, licensee, or controlling U.S. parent is itself organized as a partnership or LLC, a general partner, uninsulated limited partner, uninsulated LLC member, and non-member LLC manager shall be deemed to hold a controlling (100 percent) voting interest in the applicant, licensee, or controlling U.S. parent.

~~(2) Note 2 to paragraph (i)(3)(ii)(C):~~ For purposes of identifying foreign interests that require specific approval, where interests are held indirectly in the petitioning applicant, licensee, or controlling U.S. parent through one or more intervening partnerships or LLCs, a general partner, uninsulated limited partner, uninsulated LLC members, and non-member LLC managers shall be deemed to hold the same voting interest as the partnership or LLC holds in the company situated in the next lower tier of the petitioner's vertical ownership chain and, ultimately, the same voting interest as the partnership or LLC is calculated as holding in the controlling U.S. parent (for petitions filed under § 1.5000(a)(1)) or in the applicant or licensee (for petitions filed under § 1.5000(a)(2)). See § 1.5002(b)(2)(ii)(A) and (b)(2)(iii)(A). Where a limited partner or LLC member is insulated, the limited partner's or LLC member's voting interest in the controlling U.S. parent (for petitions filed under § 1.5000(a)(1)), or in the applicant or licensee (for petitions filed under § 1.5000(a)(2)) is calculated as equal to the limited partner's or LLC member's equity interest in the **controlling** U.S. parent or in the applicant or licensee, respectively. See § 1.5002(b)(2)(ii)(B) and (b)(2)(iii)(B). Thus, depending on the particular ownership structure presented in the petition, a foreign general partner, uninsulated limited partner, LLC member, or non-member LLC manager of an intervening partnership or LLC may be deemed to hold an indirect voting interest in the controlling U.S. parent or in the petitioning applicant or licensee that requires specific approval because the voting interest exceeds the 5 percent amount specified in paragraphs (i)(1) and (2) of this section and, unless the voting interest is otherwise insulated at a lower tier of the petitioner's vertical ownership chain, the voting interest would not qualify as exempt from specific approval under this paragraph (i)(34)(ii)(C) even in circumstances where the voting interest does not exceed 10 percent.

(3) A finding that a foreign individual or entity is deemed to hold a 100 percent voting interest in the controlling U.S. parent for purposes of § 1.5001(i)(4)(ii)(C)(1) or a 50 percent or greater voting interest in the controlling U.S. parent pursuant to § 1.5001(i)(4)(ii)(C)(2), does not indicate that the interest constitutes de jure control for purposes of compliance with Section 310(d) of the Act.

(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 § 1.5000(a)(1)) or in the petitioning applicant or licensee (for petitions filed under § 1.5000(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 paragraph (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) **Specific approval information.** 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)

(A) For common carrier, aeronautical en route, and aeronautical fixed radio station applicants and

licensees, 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 § 1.5002.

(B) For broadcast applicants and licensees, the name of any individual or entity that holds, or would hold, directly and/or indirectly, through one or more intervening entities, an attributable 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). Attributable interests shall be calculated in accordance with the principles set forth in the Notes to § 73.3555 of this chapter.

(iii)

(A) For common carrier, aeronautical en route, and aeronautical fixed radio station applicants and licensees, 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.

(B) For broadcast applicants and licensees, where no individual or entity holds, or would hold, directly and/or indirectly, an attributable interest in the foreign entity, the petition shall specify that no individual or entity holds, or would hold, directly and/or indirectly, an attributable 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 broadcast, common carrier or aeronautical radio station licensee, for petitions filed under § 1.5000(a)(1), and/or in the common carrier licensee, for petitions filed under § 1.5000(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 § 1.5000(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 **controlling** 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 **controlling** U.S. parent's direct and/or indirect equity and/or voting interests.

(2) *Petitions filed under § 1.5000(a)(1) and/or (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 § 1.5000(a)(1), or in the licensee, for petitions filed under § 1.5000(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 § 1.5000(a)(2), or in the controlling U.S. parent of the licensee, for petitions filed under § 1.5000(a)(1).

(3) Foreign individuals or entities that are deemed to hold 100 percent voting interest pursuant to § 1.5001(i)(4)(ii)(C)(1) or a 50 percent or greater voting interest in the controlling U.S. parent pursuant to § 1.5001(i)(4)(ii)(C)(2), but do not have *de jure* or *de facto* control of the controlling U.S. parent, may only request advance approval in the petition for declaratory ruling 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.

(l) Each applicant, licensee, or spectrum lessee filing a petition for declaratory ruling shall certify to the information contained in the petition in accordance with the provisions of § 1.16 and the requirements of § 1.5000(c)(1).

(m) *Submission of petition and responses to standard questions to the Committee for the assessment of foreign participation in the United States telecommunications services sector.* For each petition subject to a referral to the executive branch pursuant to § 1.40001, the petitioner must submit:

(1) Responses to standard questions, prior to or at the same time the petitioner files its petition with the Commission, pursuant to subpart CC of this part, directly to the Committee for the Assessment of Foreign Participation in the United States Telecommunications Services Sector (Committee). The standard questions and instructions for submitting the responses are available on the FCC website. The required information shall be submitted separately from the petition and shall be submitted directly to the Committee.

(2) A complete and unredacted copy of its FCC petition(s), including the file number(s) and docket number(s), to the Committee within three **(3) business days of filing it with the Commission. The instructions for submitting a copy of the FCC petition(s) to the Committee are available on the FCC website.**

~~(3) business days of filing it with the Commission. The instructions for submitting a copy of the FCC petition(s) to the Committee are available on the FCC website.~~

(n) *Certifications.*

(1) Broadcast applicants and licensees shall make the following certifications by which they agree:

(i) To designate a point of contact who is located in the United States and is a U.S. citizen or lawful U.S. permanent resident, for the execution of lawful requests and as an agent for legal service of process;

(ii)

(A) That the petitioner is responsible for the continuing accuracy and completeness of all information submitted, whether at the time of submission of the petition or subsequently in response to either the Commission or the Committee's request, as required in § 1.65(a), and that the petitioner agrees to inform

the Commission and the Committee of any substantial and significant changes while a petition is pending; and

(B) After the petition is no longer pending for purposes of § 1.65, the petitioner must notify the Commission and the Committee of any changes in petitioner information and/or contact information promptly, and in any event within thirty (30) days; and

(iii) That the petitioner understands that if the petitioner or an applicant or licensee covered by the declaratory ruling fails to fulfill any of the conditions and obligations in the certifications set out in paragraph (n)(1) of this section or in the grant of an application, petition, license, or authorization associated with the declaratory ruling and/or that if the information provided to the United States Government is materially false, fictitious, or fraudulent, the petitioner, applicants, and licensees may be subject to all remedies available to the United States Government, including but not limited to revocation and/or termination of the Commission's declaratory ruling, authorization or license, and criminal and civil penalties, including penalties under 18 U.S.C. 1001.

(2) Common carrier applicants, licensees, or spectrum lessees shall make the following certifications by which they agree:

(i) To comply with all applicable Communications Assistance for Law Enforcement Act (CALEA) requirements and related rules and regulations, including any and all FCC orders and opinions governing the application of CALEA, pursuant to the Communications Assistance for Law Enforcement Act and the Commission's rules and regulations in subpart Z of this part;

(ii) To make communications to, from, or within the United States, as well as records thereof, available in a form and location that permits them to be subject to a valid and lawful request or legal process in accordance with U.S. law, including but not limited to:

(A) The Wiretap Act, 18 U.S.C. 2510 et seq.;

(B) The Stored Communications Act, 18 U.S.C. 2701 et seq.;

(C) The Pen Register and Trap and Trace Statute, 18 U.S.C. 3121 et seq.; and

(D) Other court orders, subpoenas, or other legal process;

(iii) To designate a point of contact who is located in the United States and is a U.S. citizen or lawful U.S. permanent resident, for the execution of lawful requests and as an agent for legal service of process;

(iv)

(A) That the petitioner is responsible for the continuing accuracy and completeness of all information submitted, whether at the time of submission of the petition or subsequently in response to either the Commission or the Committee's request, as required in § 1.65(a), and that the petitioner agrees to inform the Commission and the Committee of any substantial and significant changes while a petition is pending; and

(B) After the petition is no longer pending for purposes of § 1.65 of the rules, the petitioner must notify the Commission and the Committee of any changes in petitioner information and/or contact information promptly, and in any event within thirty (30) days; and

(v) That the petitioner understands that if the petitioner or an applicant or licensee covered by the declaratory ruling fails to fulfill any of the conditions and obligations set forth in the certifications set out in paragraph (n)(2) of this section or in the grant of an application, petition, license, or authorization associated with this declaratory ruling and/or that if the information provided to the United States Government is materially false, fictitious, or fraudulent, the petitioner, applicants, and licensees may be subject to all remedies available to the United States Government, including but not limited to revocation and/or termination of the Commission's declaratory ruling, authorization or license, and criminal and civil penalties, including penalties under 18 U.S.C. 1001.

§ 1.5002 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 § 1.5001.

(b) *Indirect equity and voting interests*

(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.

(i) Example (for rulings issued under § 1.5000(a)(1)).

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.

(ii) [Reserved]

(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.

(A) Example (for rulings issued under § 1.5000(a)(1)). 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 ($30\% \times 100\% = 30\%$).

(B) [Reserved]

(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 § 1.5003.

(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 § 1.5003 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.

~~(C) Note to paragraph (b)(2)(ii):~~ 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.

(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 § 1.5003.

(B) *Insulated membership interests.* A member of a limited liability company that satisfies the insulation criteria specified in § 1.5003 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.

§ 1.5003 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 § 1.5002(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. Notwithstanding the foregoing, the insulation of limited partnership and limited liability partnership interests for broadcast applicants and licensees shall be determined in accordance with Note 2(f) of § 73.3555 of this chapter.

(b) A member of a limited liability company shall be treated as uninsulated for purposes of § 1.5002(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. Notwithstanding the foregoing, the insulation of limited liability company interests for broadcast applicants and licensees shall be determined in accordance with Note 2(f) of § 73.3555 of this chapter.

(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 paragraph (c)(1) through (c)(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.

§ 1.5004 Routine terms and conditions.

Foreign ownership **declaratory** rulings issued pursuant to §§ 1.5000 through 1.5004 shall be subject to the following terms and conditions, except as otherwise specified in a particular **declaratory** ruling:

(a)

(1) Aggregate allowance for **declaratory** rulings issued under § 1.5000(a)(1). In addition to the foreign ownership interests approved specifically in a licensee's declaratory ruling issued pursuant to § 1.5000(a)(1), the controlling U.S.-~~organized~~ parent named in the **declaratory** ruling (or a U.S.-organized successor-in-interest formed as part of a pro forma reorganization) may be 100 percent owned, directly and/or indirectly through one or more U.S.- or foreign-organized entities, on a going-forward basis (i.e., after issuance of the **declaratory** ruling) by other foreign investors without prior Commission approval. This "100 percent aggregate allowance" is subject to the requirement that the licensee seek and obtain Commission approval before any foreign individual, entity, or "group" not previously approved acquires, directly and/or indirectly, more than 5 percent of the **controlling** U.S. parent's outstanding capital stock (equity) and/or voting stock, or a controlling interest, with the exception of any foreign individual, entity, or "group" that acquires an equity and/or voting interest of 10 percent or less, provided that the interest is exempt under § 1.5001(i)(3).

(2) Aggregate allowance for **declaratory** rulings issued under § 1.5000(a)(2). In addition to the foreign ownership interests approved specifically in a licensee's declaratory ruling issued pursuant to § 1.5000(a)(2), the licensee(s) named in the ruling (or a U.S.-organized successor-in-interest formed as part of a pro forma reorganization) may be 100 percent owned on a going forward basis (i.e., after issuance of the **declaratory** ruling) by other foreign investors holding interests in the licensee indirectly through U.S.-organized entities that do not control the licensee, without prior Commission approval. This "100 percent aggregate allowance" is subject to the requirement that the licensee seek and obtain Commission approval before any foreign individual, entity, or "group" not previously approved acquires directly and/or indirectly, through one or more U.S.-organized entities that do not control the licensee, more than 5 percent of the licensee's outstanding capital stock (equity) and/or voting stock, with the exception of any foreign individual, entity, or "group" that acquires an equity and/or voting interest of 10 percent or less, provided that the interest is exempt under § 1.5001(i)(3). Foreign ownership interests held directly in a licensee shall not be permitted to exceed an aggregate 20 percent of the licensee's equity and/or voting interests.

(3) ~~Note to paragraph (a):~~ Licensees have an obligation to monitor and stay ahead of changes in foreign ownership of their controlling U.S.-~~organized~~ parent ~~companies~~ (for **declaratory** rulings issued pursuant to § 1.5000(a)(1)) and/or in the licensee itself (for **declaratory** rulings issued pursuant to § 1.5000(a)(2)), to ensure that the licensee obtains Commission approval before a change in foreign ownership renders the licensee out of compliance with the terms and conditions of its declaratory ruling(s) or the Commission's rules. Licensees, their controlling parent ~~companies~~, and other entities in the licensee's vertical ownership chain may need to place restrictions in their bylaws or other organizational documents to enable the licensee to ensure compliance with the terms and conditions of its declaratory ruling(s) and the Commission's rules.

(4) *Example 1 (for **declaratory** rulings issued under § 1.5000(a)(1)).* U.S. Corp. files an application for a common carrier license. U.S. Corp. is wholly owned and controlled by U.S. Parent, which is a newly formed, privately held Delaware Corporation in which no single shareholder has de jure or de facto control. A shareholder's agreement provides that a five-member board of directors shall govern the affairs of the company; five named shareholders shall be entitled to one seat and one vote on the board; and all decisions of the board shall be determined by majority vote. The five named shareholders and their respective equity interests are as follows: Foreign Entity A, which is wholly owned and controlled by a foreign citizen (5 percent); Foreign Entity B, which is wholly owned and controlled by a foreign citizen (10 percent); Foreign Entity C, a foreign public company with no controlling shareholder (20 percent); Foreign Entity D, a foreign pension fund that is controlled by a foreign citizen and in which no individual or entity has a pecuniary interest exceeding one percent (21 percent); and U.S. Entity E, a U.S. public

company with no controlling shareholder (25 percent). The remaining 19 percent of U.S. Parent's shares are held by three foreign-organized entities as follows: F (4 percent), G (6 percent), and H (9 percent). Under the shareholders' agreement, voting rights of F, G, and H are limited to the minority shareholder protections listed in § 1.5001(i)(5). Further, the agreement expressly prohibits G and H from becoming actively involved in the management or operation of U.S. Parent and U.S. Corp.

As required by the rules, U.S. Corp. files a section 310(b)(4) petition concurrently with its application. The petition identifies and requests specific approval for the ownership interests held in U.S. Parent by Foreign Entity A and its sole shareholder (5 percent equity and 20 percent voting interest); Foreign Entity B and its sole shareholder (10 percent equity and 20 percent voting interest), Foreign Entity C (20 percent equity and 20 percent voting interest), and Foreign Entity D (21 percent equity and 20 percent voting interest) and its fund manager (20 percent voting interest). The Commission's **declaratory** ruling specifically approves these foreign interests. The **declaratory** ruling also provides that, on a going-forward basis, U.S. Parent may be 100 percent owned in the aggregate, directly and/or indirectly, by other foreign investors, subject to the requirement that U.S. Corp. seek and obtain Commission approval before any previously unapproved foreign investor acquires more than 5 percent of U.S. Parent's equity and/or voting interests, or a controlling interest, with the exception of any foreign investor that acquires an equity and/or voting interest of ten percent or less, provided that the interest is exempt under § 1.991(i)(3).

In this case, foreign entities F, G, and H would each be considered a previously unapproved foreign investor (along with any new foreign investors). However, prior approval for F, G and H would only apply to an increase of F's interest above 5 percent (because the ten percent exemption under § 1.5001(i)(3) does not apply to F) or to an increase of G's or H's interest above 10 percent (because G and H do qualify for this exemption). U.S. Corp. would also need Commission approval before Foreign Entity D appoints a new fund manager that is a non-U.S. citizen and before Foreign Entities A, B, C, or D increase their respective equity and/or voting interests in U.S. Parent, unless the petition previously sought and obtained Commission approval for such increases (up to non-controlling 49.99 percent interests). (See § 1.5001(k)(2).) Foreign shareholders of Foreign Entity C and U.S. Entity E would also be considered previously unapproved foreign investors. Thus, Commission approval would be required before any foreign shareholder of Foreign Entity C or U.S. Entity E acquires (1) a controlling interest in either company; or (2) a non-controlling equity and/or voting interest in either company that, when multiplied by the company's equity and/or voting interests in U.S. Parent, would exceed 5 percent of U.S. Parent's equity and/or voting interests, unless the interest is exempt under § 1.5001(i)(3).

(5) Example 2 (for *declaratory* rulings issued under § 1.5000(a)(2)). Assume that the following three U.S.-organized entities hold non-controlling equity and voting interests in common carrier Licensee, which is a privately held corporation organized in Delaware: U.S. corporation A (30 percent); U.S. corporation B (30 percent); and U.S. corporation C (40 percent). Licensee's shareholders are wholly owned by foreign individuals X, Y, and Z, respectively. Licensee has received a declaratory ruling under § 1.5000(a)(2) specifically approving the 30 percent foreign ownership interests held in Licensee by each of X and Y (through U.S. corporation A and U.S. corporation B, respectively) and the 40 percent foreign ownership interest held in Licensee by Z (through U.S. corporation C). On a going-forward basis, Licensee may be 100 percent owned in the aggregate by X, Y, Z, and other foreign investors holding interests in Licensee indirectly, through U.S.-organized entities that do not control Licensee, subject to the requirement that Licensee obtain Commission approval before any previously unapproved foreign investor acquires more than 5 percent of Licensee's equity and/or voting interests, with the exception of any foreign investor that acquires an equity and/or voting interest of 10 percent or less, provided that the interest is exempt under § 1.5001(i)(3). In this case, any foreign investor other than X, Y, and Z would be considered a previously unapproved foreign investor. Licensee would also need Commission approval before X, Y, or Z increases its equity and/or voting interests in Licensee unless the petition previously

sought and obtained Commission approval for such increases (up to non-controlling 49.99 percent interests). (See § 1.5001(k)(2).)

(b) *Subsidiaries and affiliates.* A foreign ownership **declaratory** ruling issued to a licensee shall cover it and any U.S.-organized subsidiary or affiliate, as defined in § 1.5000(d), whether the subsidiary or affiliate existed at the time the **declaratory** ruling was issued or was formed or acquired subsequently, provided that the foreign ownership of the licensee named in the **declaratory** ruling, and of the subsidiary and/or affiliate, remains in compliance with the terms and conditions of the licensee's **declaratory** ruling and the Commission's rules.

(1) The subsidiary or affiliate of a licensee named in a foreign ownership **declaratory** ruling issued under § 1.5000(a)(1) may rely on that **declaratory** ruling for purposes of filing its own application for an initial broadcast, common carrier or aeronautical license or spectrum leasing arrangement, or an application to acquire such license or spectrum leasing arrangement by assignment or transfer of control provided that the subsidiary or affiliate, and the licensee named in the **declaratory** ruling, each certifies in the application that its foreign ownership is in compliance with the terms and conditions of the foreign ownership **declaratory** ruling and the Commission's rules.

(2) The subsidiary or affiliate of a licensee named in a foreign ownership **declaratory** ruling issued under § 1.5000(a)(2) may rely on that **declaratory** ruling for purposes of filing its own application for an initial common carrier radio station license or spectrum leasing arrangement, or an application to acquire such license or spectrum leasing arrangement by assignment or transfer of control provided that the subsidiary or affiliate, and the licensee named in the **declaratory** ruling, each certifies in the application that its foreign ownership is in compliance with the terms and conditions of the foreign ownership **declaratory** ruling and the Commission's rules.

(3) The certifications required by paragraphs (b)(1) and (2) of this section shall also include the citation(s) of the relevant **declaratory** ruling(s) (i.e., the DA or FCC Number, FCC Record citation when available, and release date).

(c) *Insertion of new controlling foreign-organized companies.*

(1) Where a licensee's foreign ownership **declaratory** ruling specifically authorizes a named, foreign investor to hold a controlling interest in the licensee's controlling U.S.-~~organized~~ parent, for **declaratory** rulings issued under § 1.5000(a)(1), or in an intervening U.S.-organized entity that does not control the licensee, for **declaratory** rulings issued under § 1.5000(a)(2), the **declaratory** ruling shall permit the insertion of new, controlling foreign-organized companies in the vertical ownership chain above the controlling U.S. parent, for **declaratory** rulings issued under § 1.5000(a)(1), or above an intervening U.S.-organized entity that does not control the licensee, for **declaratory** rulings issued under § 1.5000(a)(2), without prior Commission approval provided that any new foreign-organized company(ies) are under 100 percent common ownership and control with the foreign investor approved in the **declaratory** ruling.

(2) Where a previously unapproved foreign-organized entity is inserted into the vertical ownership chain of a licensee, or its controlling U.S.-~~organized~~ parent, without prior Commission approval pursuant to paragraph (c)(1) of this section, the licensee shall file a letter to the attention of the Chief, Office of International Affairs, within 30 days after the insertion of the new, foreign-organized entity. The letter must include the name of the new, foreign-organized entity and a certification by the licensee that the entity complies with the 100 percent common ownership and control requirement in paragraph (c)(1) of this section. The letter must also reference the licensee's foreign ownership **declaratory** ruling(s) by ICFS File No. and FCC Record citation, if available. This letter notification need not be filed if the ownership

change is instead the subject of a pro forma application or pro forma notification already filed with the Commission pursuant to the relevant broadcast service rules, wireless radio service rules or satellite radio service rules applicable to the licensee.

(3) Note to paragraph (c)(2): For broadcast stations, in order to insert a previously unapproved foreign-organized entity that is under 100 percent common ownership and control with the foreign investor approved in the **declaratory** ruling into the vertical ownership chain of the licensee's controlling U.S.-organized parent, as described in paragraph (c)(1) of this section, the licensee must always file a pro forma application requesting prior consent of the FCC pursuant to section 73.3540(f) of this chapter.

(34) Nothing in this section is intended to affect any requirements for prior approval under 47 U.S.C. 310(d) or conditions for forbearance from the requirements of 47 U.S.C. 310(d) pursuant to 47 U.S.C. 160.

(5) Example (for *declaratory* rulings issued under § 1.5000(a)(1)). Licensee of a common carrier license receives a foreign ownership **declaratory** ruling under § 1.5000(a)(1) that authorizes its controlling, U.S.-organized parent ("U.S. Parent A") to be wholly owned and controlled by a foreign-organized company ("Foreign Company"). Foreign Company is minority owned (20 percent) by U.S.-organized Corporation B, with the remaining 80 percent controlling interest held by Foreign Citizen C. After issuance of the **declaratory** ruling, Foreign Company forms a wholly-owned, foreign-organized subsidiary ("Foreign Subsidiary") to hold all of Foreign Company's shares in U.S. Parent A. There are no other changes in the direct or indirect foreign ownership of U.S. Parent A. The insertion of Foreign Subsidiary into the vertical ownership chain between Foreign Company and U.S. Parent A would not require prior Commission approval, except for any approval otherwise required pursuant to section 310(d) of the Communications Act and not exempt therefrom as a pro forma transfer of control under § 1.948(c)(1).

(6) Example (for rulings issued under § 1.5000(a)(2)). An applicant for a common carrier license receives a foreign ownership ruling under § 1.5000(a)(2) that authorizes a foreign-organized company ("Foreign Company") to hold a non-controlling 44 percent equity and voting interest in the applicant through Foreign Company's wholly-owned, U.S.-organized subsidiary, U.S. Corporation A, which holds the non-controlling 44 percent interest directly in the applicant. The remaining 56 percent of the applicant's equity and voting interests are held by its controlling U.S.-organized parent, which has no foreign ownership. After issuance of the ruling, Foreign Company forms a wholly-owned, foreign-organized subsidiary to hold all of Foreign Company's shares in U.S. Corporation A. There are no other changes in the direct or indirect foreign ownership of U.S. Corporation A. The insertion of the foreign-organized subsidiary into the vertical ownership chain between Foreign Company and U.S. Corporation A would not require prior Commission approval.

(d) Insertion of new non-controlling foreign-organized companies.

(1) Where a licensee's foreign ownership **declaratory** ruling specifically authorizes a named, foreign investor to hold a non-controlling interest in the licensee's controlling U.S.-organized parent, for **declaratory** rulings issued under § 1.5000(a)(1), or in an intervening U.S.-organized entity that does not control the licensee, for **declaratory** rulings issued under § 1.5000(a)(2), the **declaratory** ruling shall permit the insertion of new, foreign-organized companies in the vertical ownership chain above the controlling U.S. parent, for **declaratory** rulings issued under § 1.5000(a)(1), or above an intervening U.S.-organized entity that does not control the licensee, for **declaratory** rulings issued under § 1.5000(a)(2), without prior Commission approval provided that any new foreign-organized company(ies) are under 100 percent common ownership and control with the foreign investor approved in the **declaratory** ruling.

~~(i) Note to paragraph (d)(1):~~ Where a licensee has received a foreign ownership **declaratory** ruling under § 1.5000(a)(2) and the **declaratory** ruling specifically authorizes a named, foreign investor to hold a non-controlling interest directly in the licensee (subject to the 20 percent aggregate limit on direct foreign investment), the **declaratory** ruling shall permit the insertion of new, foreign-organized companies in the vertical ownership chain of the approved foreign investor without prior Commission approval provided that any new foreign-organized companies are under 100 percent common ownership and control with the approved foreign investor.

(ii) Example (for declaratory rulings issued under § 1.5000(a)(1)). Licensee receives a foreign ownership **declaratory** ruling under § 1.5000(a)(1) that authorizes a foreign-organized company (“Foreign Company”) to hold a non-controlling 30 percent equity and voting interest in Licensee’s controlling, U.S.-organized parent (“U.S. Parent A”). The remaining 70 percent equity and voting interests in U.S. Parent A are held by U.S.-organized entities which have no foreign ownership. After issuance of the **declaratory** ruling, Foreign Company forms a wholly-owned, foreign-organized subsidiary (“Foreign Subsidiary”) to hold all of Foreign Company’s shares in U.S. Parent A. There are no other changes in the direct or indirect foreign ownership of U.S. Parent A. The insertion of Foreign Subsidiary into the vertical ownership chain between Foreign Company and U.S. Parent A would not require prior Commission approval.

(iii) Example (for declaratory rulings issued under § 1.5000(a)(2)). Licensee receives a foreign ownership **declaratory** ruling under § 1.5000(a)(2) that authorizes a foreign-organized entity (“Foreign Company”) to hold approximately 24 percent of Licensee’s equity and voting interests, through Foreign Company’s non-controlling 48 percent equity and voting interest in a U.S.-organized entity, U.S. Corporation A, which holds a non-controlling 49 percent equity and voting interest directly in Licensee. (A U.S. citizen holds the remaining 52 percent equity and voting interests in U.S. Corporation A, and the remaining 51 percent equity and voting interests in Licensee are held by its U.S.-organized parent, which has no foreign ownership. After issuance of the **declaratory** ruling, Foreign Company forms a wholly-owned, foreign-organized subsidiary (“Foreign Subsidiary”) to hold all of Foreign Company’s shares in U.S. Corporation A. There are no other changes in the direct or indirect foreign ownership of U.S. Corporation A. The insertion of Foreign Subsidiary into the vertical ownership chain between Foreign Company and U.S. Corporation A would not require prior Commission approval.

(2) Where a previously unapproved foreign-organized entity is inserted into the vertical ownership chain of a licensee, or its controlling U.S.-organized parent, without prior Commission approval pursuant to paragraph (d)(1) of this section, the licensee shall file a letter to the attention of the Chief, Office of International Affairs, within 30 days after the insertion of the new, foreign-organized entity; or in the case of a broadcast licensee, the licensee shall file a letter to the attention of the Chief, Media Bureau, within 30 days after the insertion of the new, foreign-organized entity. The letter must include the name of the new, foreign-organized entity and a certification by the licensee that the entity complies with the 100 percent common ownership and control requirement in paragraph (d)(1) of this section. The letter must also reference the licensee's foreign ownership **declaratory** ruling(s) by ICFS File No. and FCC Record citation, if available; or, if a broadcast licensee, the letter must reference the licensee's foreign ownership **declaratory** ruling(s) by ~~EDBS~~ **LMS** File No., Docket No., call sign(s), facility identification number(s), and FCC Record citation, if available. This letter notification need not be filed if the ownership change is instead the subject of a pro forma application or pro forma notification already filed with the Commission pursuant to the relevant broadcast service, wireless radio service rules or satellite radio service rules applicable to the licensee.

(e) New petition for declaratory ruling required. A licensee that has received a foreign ownership **declaratory** ruling, including a U.S.-organized successor-in-interest to such licensee formed as part of a pro forma reorganization, or any subsidiary or affiliate relying on such licensee’s **declaratory** ruling pursuant to paragraph (b) of this section, shall file a new petition for declaratory ruling under § 1.5000 to

obtain Commission approval before its foreign ownership exceeds the routine terms and conditions of this section, and/or any specific terms or conditions of its **declaratory** ruling.

(f) *Continuing compliance.*

(1) Except as specified in paragraph (f)(3) of this section, if at any time the licensee, including any successor-in-interest and any subsidiary or affiliate as described in paragraph (b) of this section, knows, or has reason to know, that it is no longer in compliance with its foreign ownership **declaratory** ruling or the Commission's rules relating to foreign ownership, it shall file a statement with the Commission explaining the circumstances within 30 days of the date it knew, or had reason to know, that it was no longer in compliance therewith. Subsequent actions taken by or on behalf of the licensee to remedy its non-compliance shall not relieve it of the obligation to notify the Commission of the circumstances (including duration) of non-compliance. Such licensee and any controlling companies, whether U.S.- or foreign-organized, shall be subject to enforcement action by the Commission for such non-compliance, including an order requiring divestiture of the investor's direct and/or indirect interests in such entities.

(2) Any individual or entity that, directly or indirectly, creates or uses a trust, proxy, power of attorney, or any other contract, arrangement, or device with the purpose or effect of divesting itself, or preventing the vesting, of an equity interest or voting interest in the licensee, or in a controlling U.S. parent ~~company~~, as part of a plan or scheme to evade the application of the Commission's rules or policies under section 310(b) shall be subject to enforcement action by the Commission, including an order requiring divestiture of the investor's direct and/or indirect interests in such entities.

(3) Where the controlling U.S. parent of a broadcast, common carrier, aeronautical en route, or aeronautical fixed radio station licensee or common carrier spectrum lessee is an eligible U.S. public company within the meaning of § 1.5000(e), the licensee may file a remedial petition for declaratory ruling under § 1.5000(a)(1) seeking approval of particular foreign equity and/or voting interests that are non-compliant with the licensee's foreign ownership **declaratory** ruling or the Commission's rules relating to foreign ownership; or, alternatively, the licensee may remedy the non-compliance by, for example, redeeming the foreign interest(s) that rendered the licensee non-compliant with the licensee's existing foreign ownership **declaratory** ruling. In either case, the Commission does not expect to take enforcement action related to the non-compliance subject to the requirements specified in paragraphs (f)(3)(i) and (ii) of this section and except as otherwise provided in paragraph (f)(3)(iii) of this section.

(i) The licensee shall notify the relevant Bureau by letter no later than 10 days after learning of the investment(s) that rendered the licensee non-compliant with its foreign ownership ruling or the Commission's rules relating to foreign ownership and specify in the letter that it will file a petition for declaratory ruling under § 1.5000(a)(1) or, alternatively, take remedial action to come into compliance within 30 days of the date it learned of the non-compliant foreign interest(s).

(ii) The licensee shall demonstrate in its petition for declaratory ruling (or in a letter notifying the relevant Bureau that the non-compliance has been timely remedied) that the licensee's non-compliance with the terms of the licensee's existing foreign ownership ruling or the foreign ownership rules was 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.

(iii) Where the licensee has opted to file a petition for declaratory ruling under § 1.5000(a)(1), the Commission will not require that the licensee's **controlling** U.S. parent redeem the non-compliant foreign interest(s) or take other action to remedy the non-compliance during the pendency of the licensee's petition. If the Commission ultimately declines to approve the petition, however, the licensee must have a mechanism available to come into compliance with the terms of its existing **declaratory** ruling within 30 days following the Commission's decision. The Commission reserves the right to require immediate

remedial action by the licensee where the Commission finds in a particular case that the public interest requires such action — for example, where, after consultation with the relevant Executive Branch agencies, the Commission finds that the non-compliant foreign interest presents national security or other significant concerns that require immediate mitigation.

(4) Where a publicly traded common carrier licensee is an eligible U.S. public company within the meaning of § 1.5000(e), the licensee may file a remedial petition for declaratory ruling under § 1.5000(a)(2) seeking approval of particular foreign equity and/or voting interests that are non-compliant with the licensee's foreign ownership **declaratory** ruling or the Commission's rules relating to foreign ownership; or, alternatively, the licensee may remedy the non-compliance by, for example, redeeming the foreign interest(s) that rendered the licensee non-compliant with the licensee's existing foreign ownership **declaratory** ruling. In either case, the Commission does not, as a general rule, expect to take enforcement action related to the non-compliance subject to the requirements specified in paragraphs (f)(3)(i) and (f)(3)(ii) of this section and except as otherwise provided in paragraph (f)(3)(iii) of this section.

~~(i) Note 1 to paragraph (f)(4):~~ For purposes of this paragraph, the provisions in paragraphs (f)(3)(i) through (f)(3)(iii) that refer to petitions for declaratory ruling under § 1.5000(a)(1) shall be read as referring to petitions for declaratory ruling under § 1.5000(a)(2).

(ii) [Reserved]

(5) For all remedial petitions for declaratory ruling, as specified in paragraphs (f)(3) and (f)(4) of this section, the licensee must include all applicable information required by § 1.5001 in addition to specifying the non-compliant interest(s).

APPENDIX B

Initial Regulatory Flexibility Analysis

1. As required by the Regulatory Flexibility Act of 1980, as amended (RFA),¹ the Federal Communications Commission (Commission) has prepared this Initial Regulatory Flexibility Analysis (IRFA) of the policies and rules proposed in the *Notice of Proposed Rulemaking (NPRM)* assessing the possible significant economic impact on a substantial number of small entities. The Commission requests written public comments on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments specified on the first page of the *NPRM*. The Commission will send a copy of the *NPRM*, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration (SBA).² In addition, the *NPRM* and IRFA (or summaries thereof) will be published in the Federal Register.³

A. Need for, and Objectives of, the Proposed Rules

2. In the *NPRM*, the Commission initiates this rulemaking proceeding to obtain comments from small and other entities regarding its proposal to update several of its rules to better reflect current application processing requirements and align Commission procedures with developments in the domestic investment process. In 2013, the Commission adopted streamlined rules and procedures that apply to the review of foreign ownership of common carrier licensees and certain aeronautical licensees under Section 310(b) of the Act.⁴ Subsequently, in 2016, the Commission extended these streamlined rules and procedures to the broadcast context, with certain limited exceptions.⁵ Since that time, the number of foreign ownership petitions has increased, including petitions submitted with complex ownership structures, particularly in privately held companies. This *NPRM* responds to these developments by clarifying the Section 310(b) foreign ownership rules to facilitate foreign investment and reduce regulatory burdens while continuing to protect national security, law enforcement, foreign policy, and trade policy interests.

3. This *NPRM* proposes to clarify the Commission's foreign ownership rules, requirements, and practices for common carrier and broadcast licensees subject to 310(b) of the Act. This *NPRM* seeks comment on or proposes to amend the rules to: (1) codify existing policy regarding which entity is the controlling U.S. parent; (2) codify the Commission's advance approval policy regarding certain deemed voting interests; (3) require identification of trusts and trustees; (4) extend the remedial procedures and methodology to privately held companies; (5) add requirements regarding the contents of remedial petitions; (6) require the filing of amendments as a complete restatement to petitions for declaratory

¹ See 5 U.S.C. § 603. The RFA, see 5 U.S.C. §§ 601-612, has been amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), Pub. L. No. 104-121, Title II, 110 Stat. 857 (1996). The SBREFA was enacted as Title II of the Contract With America Advancement Act of 1996 (CWAAA).

² See 5 U.S.C. § 603(a).

³ See *id.*

⁴ *Review of Foreign Ownership Policies for Common Carrier and Aeronautical Radio Licensees Under Section 310(b)(4) of the Communications Act of 1934, as Amended*, IB Docket No. 11-133, Second Report and Order, 28 FCC Rcd 5741 (2013) (2013 Foreign Ownership Second Report and Order).

⁵ *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*, GN Docket No. 15-236, Report and Order, 31 FCC Rcd 11272 (2016) (2016 Foreign Ownership Report and Order), *pet. for recon. dismissed*, 32 FCC Rcd 4780 (2017). Among other things, the rules adopted in the 2016 Foreign Ownership Report and Order streamlined and clarified the foreign ownership rules governing the identification of relevant interest holders, the determination of citizenship of relevant interest holders, calculation of foreign ownership interests, compliance, remedial procedures, and requirements for privately held entities. See generally *id.*

ruling; and (7) clarify U.S. residency requirements. As applied to broadcast licensees only, we also seek comment on: (1) how the Commission should process applications filed by a broadcast licensee during the pendency of a remedial petition for declaratory ruling under Section 310(b); and (2) other foreign ownership considerations related to processing applications for noncommercial educational (NCE) and low power FM (LPFM) stations. Finally, the *NPRM* seeks comment on other ways to improve the foreign ownership rules or reduce regulatory burdens.

B. Legal Basis

4. The proposed action is authorized pursuant to Sections 1, 2, 4(i), 4(j), 303, 307, 308, 309, 310, of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 152, 154(i), 154(j), 303, 307, 308, 309, and 310.

C. Description and Estimate of the Number of Small Entities to Which the Proposed Rules Will Apply

5. The RFA directs agencies to provide a description of and, where feasible, an estimate of the number of small entities that may be affected by the proposed rules, if adopted.⁶ The RFA generally defines the term “small entity” as having the same meaning as the terms “small business,” “small organization,” and “small governmental jurisdiction.”⁷ In addition, the term “small business” has the same meaning as the term “small business concern” under the Small Business Act.⁸ A “small business concern” is one which: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the SBA.⁹

6. *1.4 GHz Band Licensees.* Licenses in this band include 1.4 GHz band licenses in the paired 1392-1395 MHz and 1432-1435 MHz bands, and in the unpaired 1390-1392 MHz band.¹⁰ Wireless Telecommunications Carriers (except Satellite)¹¹ is the closest industry with an SBA small business size standard applicable to 1.4 GHz band licensees. The SBA small business size standard for this industry classifies a business as small if it has 1,500 or fewer employees.¹² U.S. Census Bureau data for 2017 show that there were 2,893 firms that operated in this industry for the entire year.¹³ Of this number, 2,837 firms employed fewer than 250 employees.¹⁴ Thus under the SBA small business size

⁶ *Id.* § 603(b)(3).

⁷ *Id.* § 601(6).

⁸ *Id.* § 601(3) (incorporating by reference the definition of “small-business concern” in the Small Business Act, 15 U.S.C. § 632). Pursuant to 5 U.S.C. § 601(3), the statutory definition of a small business applies “unless an agency, after consultation with the Office of Advocacy of the Small Business Administration and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the Federal Register.”

⁹ 15 U.S.C. § 632.

¹⁰ See 47 CFR § 27.802.

¹¹ See U.S. Census Bureau, *2017 NAICS Definition, “517312 Wireless Telecommunications Carriers (except Satellite)”*, <https://www.census.gov/naics/?input=517312&year=2017&details=517312>.

¹² See 13 CFR § 121.201, NAICS Code 517312 (as of 10/1/22, NAICS Code 517112).

¹³ See U.S. Census Bureau, *2017 Economic Census of the United States, Employment Size of Firms for the U.S.: 2017*, Table ID: EC1700SIZEEMPFIEM, NAICS Code 517312, <https://data.census.gov/cedsci/table?y=2017&n=517312&tid=ECNSIZE2017.EC1700SIZEEMPFIEM&hidePreview=false>. At this time, the 2022 Economic Census data is not available.

¹⁴ *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard.

standard, the Commission estimates that a majority of the licensees in this industry can be considered small.

7. Based on Commission data as of November 2021, one licensee currently holds the 64 active licenses in this band.¹⁵ The Commission's small business size standards with respect to 1.4 GHz Band Licensees involve eligibility for bidding credits and installment payments in the auction of 1.4 GHz band licenses. For the auction of these licenses, an entity with average annual gross revenues for the three preceding years not exceeding \$40 million is defined as a "small business," and an entity with average annual gross revenues for the three preceding years not exceeding \$15 million is defined as a "very small business."¹⁶

8. In frequency bands where licenses were subject to auction, the Commission notes that as a general matter, the number of winning bidders that qualify as small businesses at the close of an auction does not necessarily represent the number of small businesses currently in service. Further, the Commission does not generally track subsequent business size unless, in the context of assignments or transfers, unjust enrichment issues are implicated. Additionally, since the Commission does not collect data on the number of employees for licensees providing these services, the Commission does not know whether the licensee with the active licenses qualifies as small under the SBA's small business size standard.

9. *1670–1675 MHz Services.* These wireless communications services can be used for fixed and mobile uses, except aeronautical mobile.¹⁷ Wireless Telecommunications Carriers (except Satellite)¹⁸ is the closest industry with an SBA small business size standard applicable to these services. The SBA size standard for this industry classifies a business as small if it has 1,500 or fewer employees.¹⁹ U.S. Census Bureau data for 2017 show that there were 2,893 firms that operated in this industry for the entire year.²⁰ Of this number, 2,837 firms employed fewer than 250 employees.²¹ Thus under the SBA size standard, the Commission estimates that a majority of licensees in this industry can be considered small.

10. According to Commission data as of November 2021, there were three active licenses in this service.²² The Commission's small business size standards with respect to 1670–1675 MHz Services involve eligibility for bidding credits and installment payments in the auction of licenses for these

¹⁵ Based on a FCC Universal Licensing System search on November 8, 2021, <https://wireless2.fcc.gov/UlsApp/UlsSearch/searchAdvanced.jsp>. Search parameters: Service Group = All, "Match only the following radio service(s)", Radio Service = BA, BB; Authorization Type = All; Status = Active. We note that the number of active licenses does not equate to the number of licensees. A licensee can have one or more licenses.

¹⁶ See 47 CFR § 27.807.

¹⁷ See 47 CFR § 27.902.

¹⁸ See U.S. Census Bureau, *2017 NAICS Definition*, "517312 Wireless Telecommunications Carriers (except Satellite)," <https://www.census.gov/naics/?input=517312&year=2017&details=517312>.

¹⁹ See 13 CFR § 121.201, NAICS Code 517312 (as of 10/1/22, NAICS Code 517112).

²⁰ See U.S. Census Bureau, *2017 Economic Census of the United States, Employment Size of Firms for the U.S.: 2017*, Table ID: EC1700SIZEEMPFIEM, NAICS Code 517312, <https://data.census.gov/cedsci/table?y=2017&n=517312&tid=ECNSIZE2017.EC1700SIZEEMPFIEM&hidePrevious=false>. At this time, the 2022 Economic Census data is not available.

²¹ *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard.

²² Based on a FCC Universal Licensing System search on November 8, 2021, <https://wireless2.fcc.gov/UlsApp/UlsSearch/searchAdvanced.jsp>. Search parameters: Service Group = All, "Match only the following radio service(s)", Radio Service = BC; Authorization Type = All; Status = Active. We note that the number of active licenses does not equate to the number of licensees. A licensee can have one or more licenses.

services. For licenses in the 1670-1675 MHz service band, a “small business” is defined as an entity that, together with its affiliates and controlling interests, has average gross revenues not exceeding \$40 million for the preceding three years, and a “very small business” is defined as an entity that, together with its affiliates and controlling interests, has had average annual gross revenues not exceeding \$15 million for the preceding three years.²³ The 1670-1675 MHz service band auction’s winning bidder did not claim small business status.²⁴

11. In frequency bands where licenses were subject to auction, the Commission notes that as a general matter, the number of winning bidders that qualify as small businesses at the close of an auction does not necessarily represent the number of small businesses currently in service. Further, the Commission does not generally track subsequent business size unless, in the context of assignments or transfers, unjust enrichment issues are implicated. Additionally, since the Commission does not collect data on the number of employees for licensees providing these services, at this time we are not able to estimate the number of licensees with active licenses that would qualify as small under the SBA’s small business size standard.

12. *2.3 GHz Wireless Communications Services.* These services can be used for fixed, mobile, radiolocation, and digital audio broadcasting satellite uses. Wireless Telecommunications Carriers (*except* Satellite)²⁵ is the closest industry with an SBA small business size standard applicable to these services. The SBA size standard for this industry classifies a business as small if it has 1,500 or fewer employees.²⁶ U.S. Census Bureau data for 2017 show that there were 2,893 firms that operated in this industry for the entire year.²⁷ Of this number, 2,837 firms employed fewer than 250 employees.²⁸ Thus under the SBA size standard, the Commission estimates that a majority of licensees in this industry can be considered small.

13. Based on Commission data as of December 2021, there were approximately 10 licensees with 628 active licenses in this service.²⁹ The Commission’s small business size standards with respect to 2.3 GHz Wireless Communications Services (WCS) involve eligibility for bidding credits and installment payments in the auction of 2.3 GHz WCS licenses. For these licenses a “small business” is defined as an entity with average gross revenues of \$40 million for each of the three preceding years, and a “very small business” is defined as an entity with average gross revenues of \$15 million for each of the three preceding years.³⁰ Pursuant to these definitions, seven bidders who won 31 licenses qualified as very

²³ See 47 CFR § 27.906(a).

²⁴ See *1670–1675 MHz Band Auction Closes; Winning Bidder Announced; FCC Form 600s Due May 12, 2003*, Public Notice, DA-03-1472, Report No. AUC-03-46-H (Auction No.46) (May 2, 2003).

²⁵ See U.S. Census Bureau, *2017 NAICS Definition*, “517312 Wireless Telecommunications Carriers (*except* Satellite),” <https://www.census.gov/naics/?input=517312&year=2017&details=517312>.

²⁶ See 13 CFR § 121.201, NAICS Code 517312 (as of 10/1/22, NAICS Code 517112).

²⁷ See U.S. Census Bureau, *2017 Economic Census of the United States, Employment Size of Firms for the U.S.: 2017*, Table ID: EC1700SIZEEMPFIIRM, NAICS Code 517312, <https://data.census.gov/cedsci/table?y=2017&n=517312&tid=ECNSIZE2017.EC1700SIZEEMPFIIRM&hidePreview=false>. At this time, the 2022 Economic Census data is not available.

²⁸ *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard.

²⁹ Based on a FCC Universal Licensing System search on December 10, 2021, <https://wireless2.fcc.gov/UlsApp/UlsSearch/searchAdvanced.jsp>. Search parameters: Service Group = All, “Match only the following radio service(s)”, Radio Service = WS; Authorization Type = All; Status = Active. We note that the number of active licenses does not equate to the number of licensees. A licensee can have one or more licenses.

³⁰ See 47 CFR § 27.210 (b).

small business entities, and one bidder that won one license qualified as a small business entity.³¹ Of these small and very small businesses that won licenses, none had active licenses in December 2021.³²

14. In frequency bands where licenses were subject to auctions, the Commission notes that as a general matter, the number of winning bidders that qualify as small businesses at the close of an auction does not necessarily represent the number of small businesses currently in service. Further, the Commission does not generally track subsequent business size unless, in the context of assignments or transfers, unjust enrichment issues are implicated. Additionally, since the Commission does not collect data on the number of employees for licensees providing these services, at this time we are not able to estimate the number of licensees with active licenses that would qualify as small under the SBA's small business size standard.

15. *218-219 MHz Service.* The 218-219 MHz Service is a service where commercial and private radio stations are licensed and used in Wireless Telecommunications Services.³³ The service is designated as a point-to-multipoint, multipoint-to-point, short-distance private radio service in which licensees may provide information or services to individual subscribers within a service area, and subscribers may provide interactive responses.³⁴ These systems use radio channels in the 218-219 MHz band for fixed and mobile services between the licensee's cell transmitter station (CTS) and the subscriber's response transmitter unit (RTU), or between two CTSs.³⁵ Wireless Telecommunications Carriers (except Satellite)³⁶ is the closest industry with an SBA small business size standard applicable to these services. The SBA size standard for this industry classifies a business as small if it has 1,500 or fewer employees.³⁷ U.S. Census Bureau data for 2017 show that there were 2,893 firms that operated in this industry for the entire year.³⁸ Of this number, 2,837 firms employed fewer than 250 employees.³⁹ Thus under the SBA size standard, the Commission estimates that a majority of licensees in this industry can be considered small.

16. According to Commission data as of July 2021, there were approximately 25 licensees with 32 active licenses in this service.⁴⁰ The Commission's small business size standards with respect to

³¹ See Federal Communications Commission, Economics and Analytics, Auctions, Auction 14: Wireless Communications Service, Summary, Closing Charts, All Markets, https://www.fcc.gov/sites/default/files/wireless/auctions/14/charts/14_cht2.xls.

³² *Id.*; see also FCC Universal Licensing System search on Dec. 10, 2021, <https://wireless2.fcc.gov/UlsApp/UlsSearch/searchAdvanced.jsp>. Search parameters: Service Group = All, "Match only the following radio service(s)", Radio Service = WS; Authorization Type = All; Status = Active. We note that the number of active licenses does not equate to the number of licensees. A licensee can have one or more licenses.

³³ See 47 CFR § 95.1901.

³⁴ See *id.* § 95.1903(a).

³⁵ See *id.* § 95.1903(b).

³⁶ See U.S. Census Bureau, *2017 NAICS Definition*, "517312 Wireless Telecommunications Carriers (except Satellite)," <https://www.census.gov/naics/?input=517312&year=2017&details=517312>.

³⁷ See 13 CFR § 121.201, NAICS Code 517312 (as of 10/1/22, NAICS Code 517112).

³⁸ See U.S. Census Bureau, *2017 Economic Census of the United States, Employment Size of Firms for the U.S.: 2017*, Table ID: EC1700SIZEEMPFIEM, NAICS Code 517312, <https://data.census.gov/cedsci/table?y=2017&n=517312&tid=ECNSIZE2017.EC1700SIZEEMPFIEM&hidePreview=false>. At this time, the 2022 Economic Census data is not available.

³⁹ *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard.

⁴⁰ Based on a FCC Universal Licensing System search on July 15, 2021. <https://wireless2.fcc.gov/UlsApp/UlsSearch/searchAdvanced.jsp>. Search parameters: Service Group = All, "Match

(continued....)

the 218-219 MHz service involves eligibility for bidding credits and installment payments in the auction of 218-219 MHz spectrum licenses. In the auction for these licenses where the Commission defined “small business” as an entity that, together with its affiliates, had no more than a \$6 million net worth and, after federal income taxes (excluding any carry over losses), had no more than \$2 million in annual profits each year for the previous two years, 146 entities qualifying as a small business won 557 of the 594 available licenses.⁴¹ Of the 25 licensees for this service, 4 of the licensees that claimed small or very small business status in the initial auction had active licenses as of July 2021.⁴²

17. Subsequently, for auctions of 218-219 MHz spectrum, the Commission defined a size standard for a “small business” as an entity that, together with its affiliates and persons or entities that hold interests in such an entity and their affiliates, has average annual gross revenues not to exceed \$15 million for the preceding three years, and a “very small business” as an entity that, together with its affiliates and persons or entities that hold interests in such an entity and its affiliates, has average annual gross revenues not to exceed \$3 million for the preceding three years.⁴³

18. In frequency bands where licenses were subject to auction, the Commission notes that as a general matter, the number of winning bidders that qualify as small businesses at the close of an auction does not necessarily represent the number of small businesses currently in service. Further, the Commission does not generally track subsequent business size unless, in the context of assignments or transfers, unjust enrichment issues are implicated. Additionally, since the Commission does not collect data on the number of employees for licensees providing these services, at this time we are not able to estimate the number of licensees with active licenses that would qualify as small under the SBA’s small business size standard. However, for purposes of this regulatory flexibility analysis, the Commission presumes that a majority of the licensees in this service are small entities.

19. *220 MHz Radio Service.* The 220 MHz service is radio service for the licensing of frequencies in the 220-222 MHz band.⁴⁴ Frequencies in the 220-222 MHz band are available for land mobile and fixed use for both government and non-government operations.⁴⁵ Commercial and private radio stations may be licensed in the Wireless Telecommunications Services.⁴⁶ Licensees in this service are classified as Phase I or Phase II licensees.⁴⁷ Wireless Telecommunications Carriers (except Satellite)⁴⁸ is the closest industry with an SBA small business size standard applicable to this services. The SBA size standard for this industry classifies a business as small if it has 1,500 or fewer employees.⁴⁹ U.S. Census Bureau data for 2017 show that there were 2,893 firms that operated in this industry for the

only the following radio service(s)”, Radio Service = ZV; Authorization Type = All; Status = Active. We note that the number of active licenses does not equate to the number of licensees. A licensee can have one or more licenses.

⁴¹ See generally *Implementation of Section 309(j) of the Communications Act – Competitive Bidding*, PP Docket No. 93-253, Fourth Report and Order, 9 FCC Rcd 2330 (1994).

⁴² See Federal Communications Commission, Economics and Analytics, Auctions, Auction 2: Interactive Video And Data Services, Summary, Spreadsheet, Auction Summary by License, <https://www.fcc.gov/sites/default/files/wireless/auctions/02/charts/2market.xls>.

⁴³ See 47 CFR § 95.1916(c).

⁴⁴ See 47 CFR § 90.7.

⁴⁵ See *id.* § 90.701.

⁴⁶ *Id.*

⁴⁷ *Id.*

⁴⁸ See U.S. Census Bureau, *2017 NAICS Definition*, “517312 Wireless Telecommunications Carriers (except Satellite),” <https://www.census.gov/naics/?input=517312&year=2017&details=517312>.

⁴⁹ See 13 CFR § 121.201, NAICS Code 517312 (as of 10/1/22, NAICS Code 517112).

entire year.⁵⁰ Of this number, 2,837 firms employed fewer than 250 employees.⁵¹ Thus under the SBA size standard, the Commission estimates that a majority of licensees in this industry can be considered small.

20. According to Commission data as of November 2021, there were approximately 526 active licenses in the auctioned 220 MHz band.⁵² There were also approximately 351 non-nationwide active licenses⁵³ and 222 active nationwide licenses authorized to operate in the 220 MHz band.⁵⁴ The Commission's small business size standards with respect to the 220 MHz service involves eligibility for bidding credits and installment payments in the auction of 220 MHz spectrum licenses.⁵⁵ In the auctions for these licenses where the Commission defined a "small business" as an entity that, together with its affiliates and controlling principals, had average gross revenues not exceeding \$15 million for the preceding three years, and a "very small business" as an entity that, together with its affiliates and controlling principals, had average gross revenues not exceeding \$3 million for the preceding three years,⁵⁶ 56 bidders winning 592 licenses claimed small or very small business credits.⁵⁷ In November 2021, two of the winning bidders that claimed small business credits in the Phase II 220 MHz auctions had active licenses.⁵⁸

21. In frequency bands where licenses were subject to auction, the Commission notes that as a general matter, the number of winning bidders that qualify as small businesses at the close of an auction

⁵⁰ See U.S. Census Bureau, *2017 Economic Census of the United States, Employment Size of Firms for the U.S.: 2017*, Table ID: EC1700SIZEEMPFIEM, NAICS Code 517312, <https://data.census.gov/cedsci/table?y=2017&n=517312&tid=ECNSIZE2017.EC1700SIZEEMPFIEM&hidePreview=false>. At this time, the 2022 Economic Census data is not available.

⁵¹ *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard.

⁵² Based on a FCC Universal Licensing System search on November 12, 2021, <https://wireless2.fcc.gov/UlsApp/UlsSearch/searchAdvanced.jsp>. Search parameters: Service Group = All, "Match only the following radio service(s)", Radio Service = QA; Authorization Type = All; Status = Active. Phase I licensing was conducted by lottery. A licensee can have one or more licenses.

⁵³ Based on a FCC Universal Licensing System search on November 12, 2021, <https://wireless2.fcc.gov/UlsApp/UlsSearch/searchAdvanced.jsp>. Search parameters: Service Group = All, "Match only the following radio service(s)", Radio Service = NC; Authorization Type = All; Status = Active. We note that the number of active licenses does not equate to the number of licensees. A licensee can have one or more licenses.

⁵⁴ Based on a FCC Universal Licensing System search on November 12, 2021, <https://wireless2.fcc.gov/UlsApp/UlsSearch/searchAdvanced.jsp>. Search parameters: Service Group = All, "Match only the following radio service(s)", Radio Service = QD, QM, QO & QT; Authorization Type = All; Status = Active. We note that the number of active licenses does not equate to the number of licensees. A licensee can have one or more licenses.

⁵⁵ See 47 CFR § 90.701(b). Phase II licenses granted pursuant to auctions were those for which applications were filed after May 24, 1991.

⁵⁶ See 47 CFR § 90.1021(b).

⁵⁷ FCC, Economics and Analytics, Auctions, Auction 18: 220 MHz, Summary, Spreadsheets, All Bidders, <https://www.fcc.gov/sites/default/files/wireless/auctions/18/charts/18bidder.xls>; Auction 24: 220 MHz, Summary, Closing Charts, Licenses by Bidder, <https://www.fcc.gov/sites/default/files/wireless/auctions/24/charts/24cls2.pdf>; and Auction 72: 220 MHz, Summary, Closing Charts, Licenses by Bidder, <https://www.fcc.gov/sites/default/files/wireless/auctions/72/charts/72cls2.pdf>.

⁵⁸ Based on a FCC Universal Licensing System search on November 12, 2021, <https://wireless2.fcc.gov/UlsApp/UlsSearch/searchAdvanced.jsp>. Search parameters: Service Group = All, "Match only the following radio service(s)", Radio Service = QA; Authorization Type = All; Status = Active. We note that the number of active licenses does not equate to the number of licensees. A licensee can have one or more licenses.

does not necessarily represent the number of small businesses currently in service. Further, the Commission does not generally track subsequent business size unless, in the context of assignments or transfers, unjust enrichment issues are implicated. Additionally, since the Commission does not collect data on the number of employees for licensees providing these services, at this time we are not able to estimate the number of licensees with active licenses that would qualify as small under the SBA's small business size standard.

22. *3650–3700 MHz band.* Wireless broadband service licensing in the 3650–3700 MHz band provides for nationwide, non-exclusive licensing of terrestrial operations, utilizing contention-based technologies, in the 3650 MHz band (i.e., 3650–3700 MHz).⁵⁹ Licensees are permitted to provide services on a non-common carrier and/or on a common carrier basis.⁶⁰ Wireless broadband services in the 3650–3700 MHz band fall in the Wireless Telecommunications Carriers (*except* Satellite)⁶¹ industry with an SBA small business size standard that classifies a business as small if it has 1,500 or fewer employees.⁶² U.S. Census Bureau data for 2017 show that there were 2,893 firms that operated in this industry for the entire year.⁶³ Of this number, 2,837 firms employed fewer than 250 employees.⁶⁴ Thus under the SBA size standard, the Commission estimates that a majority of licensees in this industry can be considered small.

23. The Commission has not developed a small business size standard applicable to 3650–3700 MHz band licensees. Based on the licenses that have been granted, however, we estimate that the majority of licensees in this service are small Internet Access Service Providers (ISPs). As of November 2021, Commission data shows that there were 902 active licenses in the 3650–3700 MHz band.⁶⁵ However, since the Commission does not collect data on the number of employees for licensees providing these services, at this time we are not able to estimate the number of licensees with active licenses that would qualify as small under the SBA's small business size standard.

24. *39 GHz Service.* This flexible-use wireless service band encompasses spectrum in the 38.6 - 40 GHz bands that can be used for fifth-generation (5G) wireless, Internet of Things, and other advanced services. Wireless Telecommunications Carriers (*except* Satellite)⁶⁶ is the closest industry with an SBA small business size standard applicable to these services. The SBA small business size standard for this industry classifies a business as small if it has 1,500 or fewer employees.⁶⁷ U.S. Census Bureau

⁵⁹ See 47 CFR §§ 90.1305, 90.1307.

⁶⁰ See *id.* § 90.1309.

⁶¹ See U.S. Census Bureau, *2017 NAICS Definition*, “517312 Wireless Telecommunications Carriers (*except* Satellite),” <https://www.census.gov/naics/?input=517312&year=2017&details=517312>.

⁶² See 13 CFR § 121.201, NAICS Code 517312 (as of 10/1/22, NAICS Code 517112).

⁶³ See U.S. Census Bureau, *2017 Economic Census of the United States, Employment Size of Firms for the U.S.: 2017*, Table ID: EC1700SIZEEMPFIIRM, NAICS Code 517312, <https://data.census.gov/cedsci/table?y=2017&n=517312&tid=ECNSIZE2017.EC1700SIZEEMPFIIRM&hidePreview=false>. At this time, the 2022 Economic Census data is not available.

⁶⁴ *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard.

⁶⁵ Based on a FCC Universal Licensing System search on November 19, 2021, <https://wireless2.fcc.gov/UlsApp/UlsSearch/searchAdvanced.jsp>. Search parameters: Service Group = All, “Match only the following radio service(s)”, Radio Service = NN; Authorization Type = All; Status = Active. We note that the number of active licenses does not equate to the number of licensees. A licensee can have one or more licenses.

⁶⁶ See U.S. Census Bureau, *2017 NAICS Definition*, “517312 Wireless Telecommunications Carriers (*except* Satellite),” <https://www.census.gov/naics/?input=517312&year=2017&details=517312>.

⁶⁷ See 13 CFR § 121.201, NAICS Code 517312 (as of 10/1/22, NAICS Code 517112).

data for 2017 show that there were 2,893 firms that operated in this industry for the entire year.⁶⁸ Of this number, 2,837 firms employed fewer than 250 employees.⁶⁹ Thus under the SBA size standard, the Commission estimates that a majority of licensees in this industry can be considered small.

25. The Commission's small business size standards with respect to the 39 GHz Services involve eligibility for bidding credits and installment payments in the auction of licenses for these services. In 2019, the 39 GHz band was reconfigured in preparation for an incentive auction (Auction 103) to offer new flexible use licenses in the Upper 37 GHz (37.6–38.6 GHz), 39 GHz (38.6–40 GHz), and 47 GHz (47.2–48.2 GHz) bands.⁷⁰ In Auction 103, 5,824 licenses in the 39 GHz band were auctioned as part of the Commission's auction of 14,144 Upper Microwave Flexible Use Service.⁷¹ For purposes of bidding credits, the Commission defined "small business" as an entity with average annual gross revenues that did not exceed \$55 million for the preceding three years average, and a "very small business" as an entity with average annual gross revenues that did not exceed \$20 million for the preceding three years.⁷² Of the 5,824 licenses auctioned in the 39 GHz band in Auction 103, 4 bidders claimed small business status winning 182 licenses.⁷³

26. In frequency bands where licenses were subject to auction, the Commission notes that as a general matter, the number of winning bidders that qualify as small businesses at the close of an auction does not necessarily represent the number of small businesses currently in service. Further, the Commission does not generally track subsequent business size unless, in the context of assignments or transfers, unjust enrichment issues are implicated. Additionally, since the Commission does not collect data on the number of employees for licensees providing these services, at this time we are not able to estimate the number of licensees with active licenses that would qualify as small under the SBA's small business size standard.

27. *600 MHz Band.* These wireless communications services are radiocommunication services licensed in the 617-652 MHz and 663-698 MHz frequency bands that can be used for fixed and mobile flexible uses.⁷⁴ 600 MHz Band services fall within the scope of the Wireless Telecommunications Carriers (except Satellite)⁷⁵ industry where the SBA small business size standard classifies a business as small if it has 1,500 or fewer employees.⁷⁶ U.S. Census Bureau data for 2017 show that there were 2,893

⁶⁸ See U.S. Census Bureau, *2017 Economic Census of the United States, Employment Size of Firms for the U.S.: 2017*, Table ID: EC1700SIZEEMPFIEM, NAICS Code 517312, <https://data.census.gov/cedsci/table?y=2017&n=517312&tid=ECNSIZE2017.EC1700SIZEEMPFIEM&hidePreview=false>. At this time, the 2022 Economic Census data is not available.

⁶⁹ *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard.

⁷⁰ See *Use of Spectrum Bands Above 24 GHz For Mobile Radio Services, et al.*, GN Docket No. 14-177, Fourth Report and Order, FCC 18-180 (Dec. 12, 2018) (*Spectrum Frontiers Fourth R&O*).

⁷¹ See Federal Communications Commission, Office of Economics and Analytics, Auctions, Auction 103: Spectrum Frontiers – Upper 37 GHz, 39 GHz, and 47 GHz, Fact Sheet, <https://www.fcc.gov/auction/103/factsheet>.

⁷² See 47 CFR §§ 30.301, 30.302.

⁷³ See *Incentive Auction of Upper Microwave Flexible Use Service Licenses in the Upper 37 GHz, 39 GHz, and 47 GHz Bands for Next-Generation Wireless Services Closes; Winning Bidders Announced for Auction 103*, Public Notice, 35 FCC Rcd 2015, Attachment B (WTB/OEA 2020); see also <https://www.fcc.gov/document/auction-103-winning-bidders-and-incentive-payments/attachment-b>.

⁷⁴ See 47 CFR §§ 27.4, 27.5(l).

⁷⁵ See U.S. Census Bureau, *2017 NAICS Definition*, "517312 Wireless Telecommunications Carriers (except Satellite)," <https://www.census.gov/naics/?input=517312&year=2017&details=517312>.

⁷⁶ See 13 CFR § 121.201, NAICS Code 517312 (as of 10/1/22, NAICS Code 517112).

firms that operated in this industry for the entire year.⁷⁷ Of this number, 2,837 firms employed fewer than 250 employees.⁷⁸ Thus under the SBA size standard, the Commission estimates that a majority of licensees in this industry can be considered small.

28. Based on Commission data as of November 2021, there were approximately 3,327 active licenses in the 600 MHz Band service.⁷⁹ The Commission's small business size standards with respect to 600 MHz Band services involve eligibility for bidding credits and installment payments in the auction of licenses for these services. For purposes of bidding credits, the Commission defined "small business" as an entity with average gross revenues not exceeding \$55 million for each of the three preceding years, and a "very small business" as an entity with average gross revenues not exceeding \$20 million for each of the three preceding years for the 600 MHz band auction.⁸⁰ Pursuant to these definitions, 15 bidders claiming small business status won 290 licenses.⁸¹

29. In frequency bands where licenses were subject to auction, the Commission notes that as a general matter, the number of winning bidders that qualify as small businesses at the close of an auction does not necessarily represent the number of small businesses currently in service. Further, the Commission does not generally track subsequent business size unless, in the context of assignments or transfers, unjust enrichment issues are implicated. Additionally, since the Commission does not collect data on the number of employees for licensees providing these services, at this time we are not able to estimate the number of licensees with active licenses that would qualify as small under the SBA's small business size standard.

30. *700 MHz Guard Band Licensees.* The 700 MHz Guard Band encompasses spectrum in 746-747/776-777 MHz and 762-764/792-794 MHz frequency bands. Wireless Telecommunications Carriers (*except* Satellite)⁸² is the closest industry with a SBA small business size standard applicable to licenses providing services in these bands. The SBA small business size standard for this industry classifies a business as small if it has 1,500 or fewer employees.⁸³ U.S. Census Bureau data for 2017 show that there were 2,893 firms that operated in this industry for the entire year.⁸⁴ Of this number, 2,837

⁷⁷ See U.S. Census Bureau, *2017 Economic Census of the United States, Employment Size of Firms for the U.S.: 2017*, Table ID: EC1700SIZEEMPFI, NAICS Code 517312, <https://data.census.gov/cedsci/table?y=2017&n=517312&tid=ECNSIZE2017.EC1700SIZEEMPFI&hidePreview=false>. At this time, the 2022 Economic Census data is not available.

⁷⁸ *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard.

⁷⁹ Based on a FCC Universal Licensing System search on November 16, 2021, <https://wireless2.fcc.gov/UlsApp/UlsSearch/searchAdvanced.jsp>. Search parameters: Service Group = All, "Match only the following radio service(s)", Radio Service = WT; Authorization Type = All; Status = Active. We note that the number of active licenses does not equate to the number of licensees. A licensee can have one or more licenses.

⁸⁰ See 47 CFR § 27.1301(a).

⁸¹ See *Incentive Auction Closing and Channel Reassignment Public Notice; Incentive Auction Closes; Reverse Auction and Forward Auction Results Announced; Final Television Band Channel Assignments Announced; Post-Auction Deadlines Announced*, 32 FCC Rcd 2786, Appendix B (Auction No.1002) (April 23, 2017), <https://www.fcc.gov/document/fcc-announces-results-worlds-first-broadcast-incentive-auction-0/appendix-b>.

⁸² See U.S. Census Bureau, *2017 NAICS Definition*, "517312 Wireless Telecommunications Carriers (*except* Satellite)," <https://www.census.gov/naics/?input=517312&year=2017&details=517312>.

⁸³ See 13 CFR § 121.201, NAICS Code 517312 (as of 10/1/22, NAICS Code 517112).

⁸⁴ See U.S. Census Bureau, *2017 Economic Census of the United States, Employment Size of Firms for the U.S.: 2017*, Table ID: EC1700SIZEEMPFI, NAICS Code 517312, <https://data.census.gov/cedsci/table?y=2017&n=517312&tid=ECNSIZE2017.EC1700SIZEEMPFI&hidePreview=false>. At this time, the 2022 Economic Census data is not available.

firms employed fewer than 250 employees.⁸⁵ Thus under the SBA size standard, the Commission estimates that a majority of licensees in this industry can be considered small.

31. According to Commission data as of December 2021, there were approximately 224 active 700 MHz Guard Band licenses.⁸⁶ The Commission's small business size standards with respect to 700 MHz Guard Band licensees involve eligibility for bidding credits and installment payments in the auction of licenses. For the auction of these licenses, the Commission defined a "small business" as an entity that, together with its affiliates and controlling principals, has average gross revenues not exceeding \$40 million for the preceding three years, and a "very small business" an entity that, together with its affiliates and controlling principals, has average gross revenues that are not more than \$15 million for the preceding three years.⁸⁷ Pursuant to these definitions, five winning bidders claiming one of the small business status classifications won 26 licenses, and one winning bidder claiming small business won two licenses.⁸⁸ None of the winning bidders claiming a small business status classification in these 700 MHz Guard Band license auctions had an active license as of December 2021.⁸⁹

32. In frequency bands where licenses were subject to auction, the Commission notes that as a general matter, the number of winning bidders that qualify as small businesses at the close of an auction does not necessarily represent the number of small businesses currently in service. Further, the Commission does not generally track subsequent business size unless, in the context of assignments or transfers, unjust enrichment issues are implicated. Additionally, since the Commission does not collect data on the number of employees for licensees providing these services, at this time we are not able to estimate the number of licensees with active licenses that would qualify as small under the SBA's small business size standard.

33. *Advanced Wireless Services (AWS) - (1710–1755 MHz and 2110–2155 MHz bands (AWS-1); 1915–1920 MHz, 1995–2000 MHz, 2020–2025 MHz and 2175–2180 MHz bands (AWS-2); 2155–2175 MHz band (AWS-3); 2000–2020 MHz and 2180–2200 MHz (AWS-4)).* Spectrum is made available and licensed in these bands for the provision of various wireless communications services.⁹⁰ Wireless Telecommunications Carriers (except Satellite)⁹¹ is the closest industry with a SBA small business size standard applicable to these services. The SBA small business size standard for this

⁸⁵ *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard.

⁸⁶ Based on a FCC Universal Licensing System search on December 14, 2021, <https://wireless2.fcc.gov/UlsApp/UlsSearch/searchAdvanced.jsp>. Search parameters: Service Group = All, "Match only the following radio service(s)", Radio Service = WX; Authorization Type = All; Status = Active. We note that the number of active licenses does not equate to the number of licensees. A licensee can have one or more licenses.

⁸⁷ See 47 CFR § 27.502(a).

⁸⁸ See Federal Communications Commission, Economics and Analytics, Auctions, Auction 33: Upper 700 MHz Guard Bands, Summary, Closing Charts, Licenses by Bidder, <https://www.fcc.gov/sites/default/files/wireless/auctions/33/charts/33cls2.pdf>, Auction 38: Upper 700 MHz Guard Bands, Summary, Closing Charts, Licenses by Bidder, <https://www.fcc.gov/sites/default/files/wireless/auctions/38/charts/38cls2.pdf>.

⁸⁹ Based on a FCC Universal Licensing System search on December 14, 2021, <https://wireless2.fcc.gov/UlsApp/UlsSearch/searchAdvanced.jsp>. Search parameters: Service Group = All, "Match only the following radio service(s)", Radio Service = WX; Authorization Type = All; Status = Active. We note that the number of active licenses does not equate to the number of licensees. A licensee can have one or more licenses.

⁹⁰ See 47 CFR § 27.1(b).

⁹¹ See U.S. Census Bureau, 2017 NAICS Definition, "517312 Wireless Telecommunications Carriers (except Satellite)," <https://www.census.gov/naics/?input=517312&year=2017&details=517312>.

industry classifies a business as small if it has 1,500 or fewer employees.⁹² U.S. Census Bureau data for 2017 show that there were 2,893 firms that operated in this industry for the entire year.⁹³ Of this number, 2,837 firms employed fewer than 250 employees.⁹⁴ Thus, under the SBA size standard, the Commission estimates that a majority of licensees in this industry can be considered small.

34. According to Commission data as of December 2021, there were approximately 4,472 active AWS licenses.⁹⁵ The Commission's small business size standards with respect to AWS involve eligibility for bidding credits and installment payments in the auction of licenses for these services. For the auction of AWS licenses, the Commission defined a "small business" as an entity with average annual gross revenues for the preceding three years not exceeding \$40 million, and a "very small business" as an entity with average annual gross revenues for the preceding three years not exceeding \$15 million.⁹⁶ Pursuant to these definitions, 57 winning bidders claiming status as small or very small businesses won 215 of 1,087 licenses.⁹⁷ In the most recent auction of AWS licenses 15 of 37 bidders qualifying for status as small or very small businesses won licenses.⁹⁸

35. In frequency bands where licenses were subject to auction, the Commission notes that as a general matter, the number of winning bidders that qualify as small businesses at the close of an auction does not necessarily represent the number of small businesses currently in service. Further, the Commission does not generally track subsequent business size unless, in the context of assignments or transfers, unjust enrichment issues are implicated. Additionally, since the Commission does not collect data on the number of employees for licensees providing these services, at this time we are not able to estimate the number of licensees with active licenses that would qualify as small under the SBA's small business size standard.

36. *Air-Ground Radiotelephone Service.* Air-Ground Radiotelephone Service is a wireless service in which licensees are authorized to offer and provide radio telecommunications service for hire to subscribers in aircraft.⁹⁹ A licensee may provide any type of air-ground service (i.e., voice telephony, broadband Internet, data, etc.) to aircraft of any type, and serve any or all aviation markets (commercial,

⁹² See 13 CFR § 121.201, NAICS Code 517312 (as of 10/1/22, NAICS Code 517112).

⁹³ See U.S. Census Bureau, *2017 Economic Census of the United States, Employment Size of Firms for the U.S.: 2017*, Table ID: EC1700SIZEEMPFIEM, NAICS Code 517312, <https://data.census.gov/cedsci/table?y=2017&n=517312&tid=ECNSIZE2017.EC1700SIZEEMPFIEM&hidePreview=false>.

⁹⁴ *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard.

⁹⁵ Based on a FCC Universal Licensing System search on December 10, 2021, <https://wireless2.fcc.gov/UlsApp/UlsSearch/searchAdvanced.jsp>. Search parameters: Service Group = All, "Match only the following radio service(s)", Radio Service = AD, AH, AT, AW; Authorization Type = All; Status = Active. We note that the number of active licenses does not equate to the number of licensees. A licensee can have one or more licenses.

⁹⁶ See 47 CFR §§ 27.1002, 27.1102, 27.1104, 27.1106.

⁹⁷ See Federal Communications Commission, Economics and Analytics, Auctions, Auction 66: Advanced Wireless Services (AWS-1), Summary, Spreadsheets, <https://www.fcc.gov/sites/default/files/wireless/auctions/66/charts/66cls2.pdf>.

⁹⁸ See *Auction of Advanced Wireless Services (AWS-3) Licenses Closes; Winning Bidders Announced for Auction 97*, Public Notice, DA-15-131, Attachments A-B, (Auction No. 97) (January 30, 2015).

⁹⁹ 47 CFR § 22.99.

government, and general). A licensee must provide service to aircraft and may not provide ancillary land mobile or fixed services in the 800 MHz air-ground spectrum.¹⁰⁰

37. The closest industry with an SBA small business size standard applicable to these services is Wireless Telecommunications Carriers (*except Satellite*).¹⁰¹ The SBA small business size standard for this industry classifies a business as small if it has 1,500 or fewer employees.¹⁰² U.S. Census Bureau data for 2017 show that there were 2,893 firms that operated in this industry for the entire year.¹⁰³ Of this number, 2,837 firms employed fewer than 250 employees.¹⁰⁴ Thus under the SBA size standard, the Commission estimates that a majority of licensees in this industry can be considered small.

38. Based on Commission data as of December 2021, there were approximately four licensees with 110 active licenses in the Air-Ground Radiotelephone Service.¹⁰⁵ The Commission's small business size standards with respect to Air-Ground Radiotelephone Service involve eligibility for bidding credits and installment payments in the auction of licenses. For purposes of auctions, the Commission defined "small business" as an entity that, together with its affiliates and controlling interests, has average gross revenues not exceeding \$40 million for the preceding three years, and a "very small business" as an entity that, together with its affiliates and controlling interests, has had average annual gross revenues not exceeding \$15 million for the preceding three years.¹⁰⁶ In the auction of Air-Ground Radiotelephone Service licenses in the 800 MHz band, neither of the two winning bidders claimed small business status.¹⁰⁷

39. In frequency bands where licenses were subject to auction, the Commission notes that as a general matter, the number of winning bidders that qualify as small businesses at the close of an auction does not necessarily represent the number of small businesses currently in service. Further, the Commission does not generally track subsequent business size unless, in the context of assignments or transfers, unjust enrichment issues are implicated. Additionally, the Commission does not collect data on the number of employees for licensees providing these services therefore, at this time we are not able to estimate the number of licensees with active licenses that would qualify as small under the SBA's small business size standard.

¹⁰⁰ See Federal Communications Commission, Economics and Analytics, Auctions, Auction 65: 800 MHz Air-Ground Radiotelephone Service, Fact Sheet, Permissible Operations, <https://www.fcc.gov/auction/65/factsheet>.

¹⁰¹ See U.S. Census Bureau, 2017 NAICS Definition, "517312 Wireless Telecommunications Carriers (*except Satellite*)," <https://www.census.gov/naics/?input=517312&year=2017&details=517312>.

¹⁰² See 13 CFR § 121.201, NAICS Code 517312 (as of 10/1/22, NAICS Code 517112).

¹⁰³ See U.S. Census Bureau, 2017 *Economic Census of the United States, Employment Size of Firms for the U.S.: 2017*, Table ID: EC1700SIZEEMPFI, NAICS Code 517312, <https://data.census.gov/cedsci/table?y=2017&n=517312&tid=ECNSIZE2017.EC1700SIZEEMPFI&hidePreview=false>. At this time, the 2022 Economic Census data is not available.

¹⁰⁴ *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard.

¹⁰⁵ Based on a FCC Universal Licensing System search on December 20, 2021, <https://wireless2.fcc.gov/UlsApp/UlsSearch/searchAdvanced.jsp>. Search parameters: Service Group = All, "Match only the following radio service(s)", Radio Service = CG, CJ; Authorization Type = All; Status = Active. We note that the number of active licenses does not equate to the number of licensees. A licensee can have one or more licenses.

¹⁰⁶ See 47 CFR § 22.223(b).

¹⁰⁷ See Federal Communications Commission, Economics and Analytics, Auctions, Auction 65: 800 MHz Air-Ground Radiotelephone Service, Summary, Closing Charts, Licenses by Bidder, <https://www.fcc.gov/sites/default/files/wireless/auctions/65/charts/65cls2.pdf>.

40. *Aviation and Marine Radio Services.* Maritime mobile service is a mobile service between coast stations and ship stations, or between ship stations, or between associated on-board communication stations. Survival craft stations and emergency position indicating radio beacon (EPIRB) stations also participate in this service.¹⁰⁸ Small businesses in the aviation and marine radio services use a marine very high frequency (VHF), medium frequency (MF), or high frequency (HF) radio, any type of EPIRB and/or radar, an aircraft radio, and/or any type of emergency locator transmitter (ELT) and may provide fixed, mobile, or hybrid voice or data communications. *Aviation services* are radio-communication services for the operation of aircraft. These services include aeronautical fixed service, aeronautical mobile service, aeronautical radiodetermination service, and secondarily, the handling of public correspondence on frequencies in the maritime mobile and maritime mobile satellite services to and from aircraft.¹⁰⁹

41. Wireless Telecommunications Carriers (*except Satellite*)¹¹⁰ is the closest industry with a SBA small business size standard applicable to these services. The SBA small business size standard for this industry classifies a business as small if it has 1,500 or fewer employees.¹¹¹ U.S. Census Bureau data for 2017 show that there were 2,893 firms that operated in this industry for the entire year.¹¹² Of this number, 2,837 firms employed fewer than 250 employees.¹¹³ Thus under the SBA size standard, the Commission estimates that a majority of licensees in this industry can be considered small. Additionally, according to Commission data as December 2021, there were 14, 532 active licenses in the Aviation and Marine Radio Services.¹¹⁴ However, since the Commission does not collect data on the number of employees for licensees providing these services, at this time we are not able to estimate the number of licensees with active licenses that would qualify as small under the SBA's small business size standard.

42. *Broadband Personal Communications Service.* The broadband personal communications services (PCS) spectrum encompasses services in the 1850-1910 and 1930-1990 MHz bands.¹¹⁵ The closest industry with a SBA small business size standard applicable to these services is Wireless Telecommunications Carriers (*except Satellite*).¹¹⁶ The SBA small business size standard for this industry classifies a business as small if it has 1,500 or fewer employees.¹¹⁷ U.S. Census Bureau data for 2017

¹⁰⁸ See 47 CFR § 80.5.

¹⁰⁹ See *id.* § 87.5.

¹¹⁰ See U.S. Census Bureau, 2017 NAICS Definition, "517312 Wireless Telecommunications Carriers (*except Satellite*)," <https://www.census.gov/naics/?input=517312&year=2017&details=517312>.

¹¹¹ See 13 CFR § 121.201, NAICS Code 517312 (as of 10/1/22, NAICS Code 517112).

¹¹² See U.S. Census Bureau, 2017 Economic Census of the United States, Employment Size of Firms for the U.S.: 2017, Table ID: EC1700SIZEEMPFIIRM, NAICS Code 517312, <https://data.census.gov/cedsci/table?y=2017&n=517312&tid=ECNSIZE2017.EC1700SIZEEMPFIIRM&hidePrevious=false>. At this time, the 2022 Economic Census data is not available.

¹¹³ *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard.

¹¹⁴ Based on a FCC Universal Licensing System search on December 21, 2021, <https://wireless2.fcc.gov/UlsApp/UlsSearch/searchAdvanced.jsp>. Search parameters: Service Group = All, "Match only the following radio service(s)", Radio Service = AA, AF, AR, MA, MC, Mk, MR; Authorization Type = All; Status = Active. We note that the number of active licenses does not equate to the number of licensees. A licensee can have one or more licenses.

¹¹⁵ See 47 CFR § 24.200.

¹¹⁶ See U.S. Census Bureau, 2017 NAICS Definition, "517312 Wireless Telecommunications Carriers (*except Satellite*)," <https://www.census.gov/naics/?input=517312&year=2017&details=517312>.

¹¹⁷ See 13 CFR § 121.201, NAICS Code 517312 (as of 10/1/22, NAICS Code 517112).

show that there were 2,893 firms that operated in this industry for the entire year.¹¹⁸ Of this number, 2,837 firms employed fewer than 250 employees.¹¹⁹ Thus under the SBA size standard, the Commission estimates that a majority of licensees in this industry can be considered small.

43. Based on Commission data as of November 2021, there were approximately 5,060 active licenses in the Broadband PCS service.¹²⁰ The Commission's small business size standards with respect to Broadband PCS involve eligibility for bidding credits and installment payments in the auction of licenses for these services. In auctions for these licenses, the Commission defined "small business" as an entity that, together with its affiliates and controlling interests, has average gross revenues not exceeding \$40 million for the preceding three years, and a "very small business" as an entity that, together with its affiliates and controlling interests, has had average annual gross revenues not exceeding \$15 million for the preceding three years.¹²¹ Winning bidders claiming small business credits won Broadband PCS licenses in C, D, E, and F Blocks.¹²²

44. In frequency bands where licenses were subject to auction, the Commission notes that as a general matter, the number of winning bidders that qualify as small businesses at the close of an auction does not necessarily represent the number of small businesses currently in service. Further, the Commission does not generally track subsequent business size unless, in the context of assignments or transfers, unjust enrichment issues are implicated. Additionally, since the Commission does not collect data on the number of employees for licensees providing these, at this time we are not able to estimate the number of licensees with active licenses that would qualify as small under the SBA's small business size standard.

45. *Broadband Radio Service and Educational Broadband Service.* Broadband Radio Service systems, previously referred to as Multipoint Distribution Service (MDS) and Multichannel Multipoint Distribution Service (MMDS) systems, and "wireless cable,"¹²³ transmit video programming to subscribers and provide two-way high speed data operations using the microwave frequencies of the Broadband Radio Service (BRS) and Educational Broadband Service (EBS) (previously referred to as the Instructional Television Fixed Service (ITFS)).¹²⁴ Wireless cable operators that use spectrum in the BRS often supplemented with leased channels from the EBS, provide a competitive alternative to wired cable

¹¹⁸ See U.S. Census Bureau, *2017 Economic Census of the United States, Employment Size of Firms for the U.S.: 2017*, Table ID: EC1700SIZEEMPFIEM, NAICS Code 517312, <https://data.census.gov/cedsci/table?y=2017&n=517312&tid=ECNSIZE2017.EC1700SIZEEMPFIEM&hidePreview=false>. At this time, the 2022 Economic Census data is not available.

¹¹⁹ *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard.

¹²⁰ Based on a FCC Universal Licensing System search on November 16, 2021, <https://wireless2.fcc.gov/UlsApp/UlsSearch/searchAdvanced.jsp>. Search parameters: Service Group = All, "Match only the following radio service(s)", Radio Service = CW; Authorization Type = All; Status = Active. We note that the number of active licenses does not equate to the number of licensees. A licensee can have one or more licenses.

¹²¹ See 47 CFR § 24.720(b).

¹²² See Federal Communications Commission, Office of Economics and Analytics, Auctions, Auctions 4, 5, 10, 11, 22, 35, 58, 71 and 78, <https://www.fcc.gov/auctions>.

¹²³ The use of the term "wireless cable" does not imply that it constitutes cable television for statutory or regulatory purposes.

¹²⁴ See 47 CFR § 27.4; see also *Amendment of Parts 21 and 74 of the Commission's Rules with Regard to Filing Procedures in the Multipoint Distribution Service and in the Instructional Television Fixed Service and Implementation of Section 309(j) of the Communications Act—Competitive Bidding*, Report and Order, 10 FCC Rcd 9589, 9593, para. 7 (1995).

and other multichannel video programming distributors. Wireless cable programming to subscribers resembles cable television, but instead of coaxial cable, wireless cable uses microwave channels.¹²⁵

46. In light of the use of wireless frequencies by BRS and EBS services, the closest industry with a SBA small business size standard applicable to these services is Wireless Telecommunications Carriers (*except* Satellite).¹²⁶ The SBA small business size standard for this industry classifies a business as small if it has 1,500 or fewer employees.¹²⁷ U.S. Census Bureau data for 2017 show that there were 2,893 firms that operated in this industry for the entire year.¹²⁸ Of this number, 2,837 firms employed fewer than 250 employees.¹²⁹ Thus under the SBA size standard, the Commission estimates that a majority of licensees in this industry can be considered small.

47. According to Commission data as of December 2021, there were approximately 5,869 active BRS and EBS licenses.¹³⁰ The Commission's small business size standards with respect to BRS involves eligibility for bidding credits and installment payments in the auction of licenses for these services. For the auction of BRS licenses, the Commission adopted criteria for three groups of small businesses. A very small business is an entity that, together with its affiliates and controlling interests, has average annual gross revenues exceed \$3 million and did not exceed \$15 million for the preceding three years, a small business is an entity that, together with its affiliates and controlling interests, has average gross revenues exceed \$15 million and did not exceed \$40 million for the preceding three years, and an entrepreneur is an entity that, together with its affiliates and controlling interests, has average gross revenues not exceeding \$3 million for the preceding three years.¹³¹ Of the ten winning bidders for BRS licenses, two bidders claiming the small business status won 4 licenses, one bidder claiming the very small business status won three licenses and two bidders claiming entrepreneur status won six licenses.¹³²

¹²⁵ Generally, a wireless cable system may be described as a microwave station transmitting on a combination of BRS and EBS channels to numerous receivers with antennas, such as single-family residences, apartment complexes, hotels, educational institutions, business entities and governmental offices. The range of the transmission depends upon the transmitter power, the type of receiving antenna and the existence of a line-of-sight path between the transmitter or signal booster and the receiving antenna.

¹²⁶ See U.S. Census Bureau, 2017 NAICS Definition, "517312 Wireless Telecommunications Carriers (*except* Satellite)," <https://www.census.gov/naics/?input=517312&year=2017&details=517312>.

¹²⁷ See 13 CFR § 121.201, NAICS Code 517312 (as of 10/1/22, NAICS Code 517112).

¹²⁸ See U.S. Census Bureau, 2017 Economic Census of the United States, Employment Size of Firms for the U.S.: 2017, Table ID: EC1700SIZEEMPFI, NAICS Code 517312, <https://data.census.gov/cedsci/table?y=2017&n=517312&tid=ECNSIZE2017.EC1700SIZEEMPFI&hidePreview=false>. At this time, the 2022 Economic Census data is not available.

¹²⁹ *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard.

¹³⁰ Based on a FCC Universal Licensing System search on December 10, 2021, <https://wireless2.fcc.gov/UlsApp/UlsSearch/searchAdvanced.jsp>. Search parameters: Service Group = All, "Match only the following radio service(s)", Radio Service =BR, ED; Authorization Type = All; Status = Active. We note that the number of active licenses does not equate to the number of licensees. A licensee can have one or more licenses.

¹³¹ See 47 CFR § 27.1218(a).

¹³² See Federal Communications Commission, Economics and Analytics, Auctions, Auction 86: Broadband Radio Service, Summary, Reports, All Bidders, <https://www.fcc.gov/sites/default/files/wireless/auctions/86/charts/86bidder.xls>.

One of the winning bidders claiming a small business status classification in the BRS license auction has an active licenses as of December 2021.¹³³

48. The Commission's small business size standards for EBS define a small business as an entity that, together with its affiliates, its controlling interests and the affiliates of its controlling interests, has average gross revenues that are not more than \$55 million for the preceding five (5) years, and a very small business is an entity that, together with its affiliates, its controlling interests and the affiliates of its controlling interests, has average gross revenues that are not more than \$20 million for the preceding five (5) years.¹³⁴ In frequency bands where licenses were subject to auction, the Commission notes that as a general matter, the number of winning bidders that qualify as small businesses at the close of an auction does not necessarily represent the number of small businesses currently in service. Further, the Commission does not generally track subsequent business size unless, in the context of assignments or transfers, unjust enrichment issues are implicated. Additionally, since the Commission does not collect data on the number of employees for licensees providing these services, at this time we are not able to estimate the number of licensees with active licenses that would qualify as small under the SBA's small business size standard.

49. *Cellular Radiotelephone Service.* This service is radio service in which licensees are authorized to offer and provide cellular service for hire to the general public and was formerly titled Domestic Public Cellular Radio Telecommunications Service.¹³⁵ Cellular Radiotelephone Service falls within the scope the Wireless Telecommunications Carriers (except Satellite)¹³⁶ industry, where the SBA small business size standard classifies a business as small if it has 1,500 or fewer employees.¹³⁷ U.S. Census Bureau data for 2017 show that there were 2,893 firms that operated in this industry for the entire year.¹³⁸ Of this number, 2,837 firms employed fewer than 250 employees.¹³⁹ Thus under the SBA size standard, the Commission estimates that a majority of licensees in this industry can be considered small.

50. Based on Commission data, as of November 2021, there were approximately 1,908 active licenses in this service.¹⁴⁰ The Commission's small business size standards with respect to Cellular Radiotelephone Services involve eligibility for bidding credits and installment payments in the auction of licenses for these services. For purposes of bidding credits, the Commission has defined "small business" as an entity that either (1) together with its affiliates and controlling interests has average gross revenues

¹³³ Based on a FCC Universal Licensing System search on December 10, 2021, <https://wireless2.fcc.gov/UlsApp/UlsSearch/searchAdvanced.jsp>. Search parameters: Service Group = All, "Match only the following radio service(s)", Radio Service = BR; Authorization Type = All; Status = Active. We note that the number of active licenses does not equate to the number of licensees. A licensee can have one or more licenses.

¹³⁴ See 47 CFR § 27.1219(a).

¹³⁵ See 47 CFR § 22.99.

¹³⁶ See U.S. Census Bureau, 2017 NAICS Definition, "517312 Wireless Telecommunications Carriers (except Satellite)," <https://www.census.gov/naics/?input=517312&year=2017&details=517312>.

¹³⁷ See 13 CFR § 121.201, NAICS Code 517312 (as of 10/1/22, NAICS Code 517112).

¹³⁸ See U.S. Census Bureau, 2017 Economic Census of the United States, Employment Size of Firms for the U.S.: 2017, Table ID: EC1700SIZEEMPFIEM, NAICS Code 517312, <https://data.census.gov/cedsci/table?y=2017&n=517312&tid=ECNSIZE2017.EC1700SIZEEMPFIEM&hidePrevious=false>. At this time, the 2022 Economic Census data is not available.

¹³⁹ *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard.

¹⁴⁰ Based on a FCC Universal Licensing System search on November 12, 2021, <https://wireless2.fcc.gov/UlsApp/UlsSearch/searchAdvanced.jsp>. Search parameters: Service Group = All, "Match only the following radio service(s)", Radio Service = CL; Authorization Type = All; Status = Active. We note that the number of active licenses does not equate to the number of licensees. A licensee can have one or more licenses.

of not more than \$3 million for each of the three preceding years, or (2) together with its affiliates and controlling interests has average gross revenues of not more \$15 million for each of the three preceding years.¹⁴¹

51. In frequency bands where licenses were subject to auction, the Commission notes that as a general matter, the number of winning bidders that qualify as small businesses at the close of an auction does not necessarily represent the number of small businesses currently in service. Further, the Commission does not generally track subsequent business size unless, in the context of assignments or transfers, unjust enrichment issues are implicated. Additionally, since the Commission does not collect data on the number of employees for licensees providing these services, at this time we are not able to estimate the number of licensees with active licenses that would qualify as small under the SBA's small business size standard.

52. *Fixed Microwave Services.* Fixed microwave services include common carrier,¹⁴² private-operational fixed,¹⁴³ and broadcast auxiliary radio services.¹⁴⁴ They also include the Upper Microwave Flexible Use Service (UMFUS),¹⁴⁵ Millimeter Wave Service (70/80/90 GHz),¹⁴⁶ Local Multipoint Distribution Service (LMDS),¹⁴⁷ the Digital Electronic Message Service (DEMS),¹⁴⁸ 24 GHz Service,¹⁴⁹ Multiple Address Systems (MAS),¹⁵⁰ and Multichannel Video Distribution and Data Service (MVDDS),¹⁵¹ where in some bands licensees can choose between common carrier and non-common carrier status.¹⁵² Wireless Telecommunications Carriers (*except* Satellite)¹⁵³ is the closest industry with a SBA small business size standard applicable to these services. The SBA small size standard for this industry classifies a business as small if it has 1,500 or fewer employees.¹⁵⁴ U.S. Census Bureau data for 2017 show that there were 2,893 firms that operated in this industry for the entire year.¹⁵⁵ Of this number,

¹⁴¹ See 47 CFR § 22.223(b).

¹⁴² See 47 CFR Part 101, Subparts C and I.

¹⁴³ See *id.* Subparts C and H.

¹⁴⁴ Auxiliary Microwave Service is governed by Part 74 of Title 47 of the Commission's Rules. See 47 CFR Part 74. Available to licensees of broadcast stations and to broadcast and cable network entities, broadcast auxiliary microwave stations are used for relaying broadcast television signals from the studio to the transmitter, or between two points such as a main studio and an auxiliary studio. The service also includes mobile TV pickups, which relay signals from a remote location back to the studio.

¹⁴⁵ See 47 CFR Part 30.

¹⁴⁶ See 47 CFR Part 101, Subpart Q.

¹⁴⁷ See *id.* Subpart L.

¹⁴⁸ See *id.* Subpart G.

¹⁴⁹ See *id.*

¹⁵⁰ See *id.* Subpart O.

¹⁵¹ See *id.* Subpart P.

¹⁵² See 47 CFR §§ 101.533, 101.1017.

¹⁵³ See U.S. Census Bureau, 2017 NAICS Definition, "517312 Wireless Telecommunications Carriers (*except* Satellite)," <https://www.census.gov/naics/?input=517312&year=2017&details=517312>.

¹⁵⁴ See 13 CFR § 121.201, NAICS Code 517312 (as of 10/1/22, NAICS Code 517112).

¹⁵⁵ See U.S. Census Bureau, 2017 Economic Census of the United States, Employment Size of Firms for the U.S.: 2017, Table ID: EC1700SIZEEMPFI, NAICS Code 517312, <https://data.census.gov/cedsci/table?y=2017&n=517312&tid=ECNSIZE2017.EC1700SIZEEMPFI&hidePrevious=false>. At this time, the 2022 Economic Census data is not available.

2,837 firms employed fewer than 250 employees.¹⁵⁶ Thus under the SBA size standard, the Commission estimates that a majority of fixed microwave service licensees can be considered small.

53. The Commission's small business size standards with respect to fixed microwave services involve eligibility for bidding credits and installment payments in the auction of licenses for the various frequency bands included in fixed microwave services. When bidding credits are adopted for the auction of licenses in fixed microwave services frequency bands, such credits may be available to several types of small businesses based average gross revenues (small, very small and entrepreneur) pursuant to the competitive bidding rules adopted in conjunction with the requirements for the auction and/or as identified in Part 101 of the Commission's rules for the specific fixed microwave services frequency bands.¹⁵⁷

54. In frequency bands where licenses were subject to auction, the Commission notes that as a general matter, the number of winning bidders that qualify as small businesses at the close of an auction does not necessarily represent the number of small businesses currently in service. Further, the Commission does not generally track subsequent business size unless, in the context of assignments or transfers, unjust enrichment issues are implicated. Additionally, since the Commission does not collect data on the number of employees for licensees providing these services, at this time we are not able to estimate the number of licensees with active licenses that would qualify as small under the SBA's small business size standard.

55. *FM Translator Stations and Low Power FM Stations.* FM translators and Low Power FM Stations are classified in the industry for Radio Stations.¹⁵⁸ The Radio Stations industry comprises establishments primarily engaged in broadcasting aural programs by radio to the public.¹⁵⁹ Programming may originate in their own studio, from an affiliated network, or from external sources.¹⁶⁰ The SBA small business size standard for this industry classifies firms having \$47 million or less in annual receipts as small.¹⁶¹ U.S. Census Bureau data for 2017 show that 2,963 firms operated during that year.¹⁶² Of that number, 1,879 firms operated with revenue of less than \$25 million per year.¹⁶³ Therefore, based on the SBA's size standard we conclude that the majority of FM Translator stations and Low Power FM Stations are small. Additionally, according to Commission data, as of December 31, 2024, there were 8,880 FM

¹⁵⁶ *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard.

¹⁵⁷ See 47 CFR §§ 101.538(a)(1)-(3), 101.1112(b)-(d), 101.1319(a)(1)-(2), and 101.1429(a)(1)-(3).

¹⁵⁸ See U.S. Census Bureau, 2017 NAICS Definition, "515112 Radio Stations," <https://www.census.gov/naics/?input=515112&year=2017&details=515112>.

¹⁵⁹ *Id.*

¹⁶⁰ *Id.*

¹⁶¹ See 13 CFR § 121.201, NAICS Code 515112 (as of 10/1/22 NAICS Code 516110).

¹⁶² See U.S. Census Bureau, 2017 *Economic Census of the United States, Selected Sectors: Sales, Value of Shipments, or Revenue Size of Firms for the U.S.: 2017*, Table ID: EC1700SIZEREVFIRM, NAICS Code 515112, <https://data.census.gov/cedsci/table?y=2017&n=515112&tid=ECNSIZE2017.EC1700SIZEREVFIRM&hidePrevious=false>. We note that the US Census Bureau withheld publication of the number of firms that operated for the entire year. At this time, the 2022 Economic Census data is not available.

¹⁶³ *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard. We note that the U.S. Census Bureau withheld publication of the number of firms that operated with sales/value of shipments/revenue in the individual categories for less than \$100,000, and \$100,000 to \$249,999 to avoid disclosing data for individual companies (see Cell Notes for the sales/value of shipments/revenue in these categories). Therefore, the number of firms with annual receipts that meet the SBA size standard would be higher than noted herein. We also note that according to the U.S. Census Bureau glossary, the terms receipts and revenues are used interchangeably, see https://www.census.gov/glossary/#term_ReceiptsRevenueServices.

Translator Stations and 1,968 Low Power FM licensed broadcast stations.¹⁶⁴ The Commission however does not compile and otherwise does not have access to information on the revenue of these stations that would permit it to determine how many of the stations would qualify as small entities. For purposes of this regulatory flexibility analysis, we presume the majority of these stations are small entities.

56. *Future 24 GHz Licensees.* 24 GHz spectrum services in the 24.25 – 24.45 GHz and 24.75 – 25.25 GHz bands involve a fixed point-to-point, point-to-multipoint, and multipoint-to-multipoint radio system in the 24.25-24.45 GHz band and in the 25.05-25.25 GHz band consisting of a fixed main (nodal) station and a number of fixed user terminals.¹⁶⁵ These services are flexible-use wireless service that may encompass any digital fixed service. Wireless Telecommunications Carriers (except Satellite)¹⁶⁶ is the closest industry with a SBA small business size standard applicable to these services. The SBA size standard for this industry classifies a business as small if it has 1,500 or fewer employees.¹⁶⁷ U.S. Census Bureau data for 2017 show that there were 2,893 firms that operated in this industry for the entire year.¹⁶⁸ Of this total, 2,837 firms employed fewer than 250 employees.¹⁶⁹ Thus under the SBA size standard, the Commission estimates that a majority of licensees in this industry can be considered small.

57. The Commission's small business size standards with respect to 24 GHz licensees involve eligibility for bidding credits and installment payments in the auction of licenses for 24 GHz services. In 2019 in Auction 102, 2,909 licenses in the 24 GHz band were auctioned as part of the Commission's auction of Upper Microwave Flexible Use Service licenses.¹⁷⁰ For purposes of bidding credits, the Commission defined "small business" as an entity with average annual gross revenues that did not exceed \$55 million for the preceding three years average, and a "very small business" as an entity with average annual gross revenues that did not exceed \$20 million for the preceding three years.¹⁷¹ Of the 2,909 licenses auctioned in the 24 GHz band in Auction 102, 7 bidders claimed small business status winning 34 licenses.¹⁷²

58. For those services subject to auctions, the Commission notes that as a general matter, the number of winning bidders that qualify as small businesses at the close of an auction does not necessarily represent the number of small businesses currently in service. Further, the Commission does not generally track subsequent business size unless, in the context of assignments or transfers, unjust enrichment issues are implicated. Additionally, since the Commission does not collect data on the

¹⁶⁴ *Broadcast Station Totals as of December 31, 2024*, Public Notice, DA 25-11 (rel. Jan. 7, 2025) (*January 2025 Broadcast Station Totals PN*), <https://docs.fcc.gov/public/attachments/DA-25-11A1.pdf>.

¹⁶⁵ See 47 CFR § 101.3.

¹⁶⁶ See U.S. Census Bureau, *2017 NAICS Definition*, "517312 Wireless Telecommunications Carriers (except Satellite)," <https://www.census.gov/naics/?input=517312&year=2017&details=517312>.

¹⁶⁷ See 13 CFR § 121.201, NAICS Code 517312 (as of 10/1/22, NAICS Code 517112).

¹⁶⁸ See U.S. Census Bureau, *2017 Economic Census of the United States, Employment Size of Firms for the U.S.: 2017*, Table ID: EC1700SIZEEMPFI, NAICS Code 517312, <https://data.census.gov/cedsci/table?y=2017&n=517312&tid=ECNSIZE2017.EC1700SIZEEMPFI&hidePreview=false>. At this time, the 2022 Economic Census data is not available.

¹⁶⁹ *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard.

¹⁷⁰ See Federal Communications Commission, Office of Economics and Analytics, Auctions, Auction 102: Spectrum Frontiers – 24 GHz, Fact Sheet, <https://www.fcc.gov/auction/102/factsheet>.

¹⁷¹ See 47 CFR § 30.302(a).

¹⁷² See *Auction of 24 GHz Upper Microwave Flexible Use Service Licenses Closes; Winning Bidders Announced for Auction 102*, Public Notice, DA-19-485, Attachment A, 34 FCC Rcd 4294 (WTB/OEA 2019); see also <https://www.fcc.gov/document/auction-102-closing-public-notice/attachment-a>.

number of employees for licensees providing these services, at this time we are not able to estimate the number of licensees with active licenses that would qualify as small under the SBA's small business size standard.

59. *Government Transfer Bands.* Licenses for wireless services in the government transfer bands include the unpaired 1390-1392 MHz band, the paired 1392-1395 MHz and 1432-1435 MHz bands (1.4 GHz band) and the 1670-1675 MHz band. Licensees in these bands are authorized to provide fixed or mobile service, except aeronautical mobile service.¹⁷³ Wireless Telecommunications Carriers (except Satellite)¹⁷⁴ is the closest industry with a SBA small business size standard applicable to these services. The SBA size standard for this industry classifies a business as small if it has 1,500 or fewer employees.¹⁷⁵ U.S. Census Bureau data for 2017 show that there were 2,893 firms that operated in this industry for the entire year.¹⁷⁶ Of this number, 2,837 firms employed fewer than 250 employees.¹⁷⁷ Thus under the SBA size standard, the Commission estimates that a majority of licensees in this industry can be considered small.

60. According to Commission data as of November 2021, there were four licensees with sixty-seven active licenses in these service bands.¹⁷⁸ The Commission's small business size standards with respect to services in government transfer bands involve eligibility for bidding credits and installment payments in the auction of licenses for these services. For the unpaired 1390-1392 MHz, 1670-1675 MHz, and the paired 1392-1395 MHz and 1432-1435 MHz bands, an entity with average annual gross revenues for the three preceding years not exceeding \$40 million is defined as a "small business," and an entity with average annual gross revenues for the three preceding years not exceeding \$15 million is defined as a "very small business."¹⁷⁹ For licenses in the 1670-1675 MHz service band, a "small business" is defined as an entity that, together with its affiliates and controlling interests, has average gross revenues not exceeding \$40 million for the preceding three years, and a "very small business" is defined as an entity that, together with its affiliates and controlling interests, has had average annual gross revenues not exceeding \$15 million for the preceding three years.¹⁸⁰

61. In frequency bands where licenses were subject to auction, the Commission notes that as a general matter, the number of winning bidders that qualify as small businesses at the close of an auction does not necessarily represent the number of small businesses currently in service. Further, the Commission does not generally track subsequent business size unless, in the context of assignments or transfers, unjust enrichment issues are implicated. Additionally, since the Commission does not collect

¹⁷³ See 47 CFR §§ 27.802, 27.902.

¹⁷⁴ See U.S. Census Bureau, *2017 NAICS Definition*, "517312 Wireless Telecommunications Carriers (except Satellite)," <https://www.census.gov/naics/?input=517312&year=2017&details=517312>.

¹⁷⁵ See 13 CFR § 121.201, NAICS Code 517312 (as of 10/1/22, NAICS Code 517112).

¹⁷⁶ See U.S. Census Bureau, *2017 Economic Census of the United States, Employment Size of Firms for the U.S.: 2017*, Table ID: EC1700SIZEEMPFIIRM, NAICS Code 517312, <https://data.census.gov/cedsci/table?y=2017&n=517312&tid=ECNSIZE2017.EC1700SIZEEMPFIIRM&hidePreview=false>. At this time, the 2022 Economic Census data is not available.

¹⁷⁷ *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard.

¹⁷⁸ Based on a FCC Universal Licensing System search on November 29, 2021, <https://wireless2.fcc.gov/UlsApp/UlsSearch/searchAdvanced.jsp>. Search parameters: Service Group = All, "Match only the following radio service(s)", Radio Service = BA, BB, BC; Authorization Type = All; Status = Active. We note that the number of active licenses does not equate to the number of licensees. A licensee can have one or more licenses.

¹⁷⁹ See 47 CFR § 27.807(a).

¹⁸⁰ See *id.* § 27.906(a).

data on the number of employees for licensees providing these services, at this time we are not able to estimate the number of licensees with active licenses that would qualify as small under the SBA's small business size standard.

62. *Incumbent 24 GHz Licensees.* Neither the Commission nor the SBA have developed a small business size standard specifically for Incumbent 24 GHz licensees. Incumbent licensees who were relocated to the 24 GHz band from the 18 GHz band and applicants who wish to provide services in the 24 GHz band fall in this category. Wireless Telecommunications Carriers (except Satellite)¹⁸¹ is the closest industry with a SBA small business size standard. The SBA small business size standard classifies businesses having 1,500 or fewer employees as small.¹⁸² For this industry, U.S. Census Bureau data for 2017 show that there were 2,893 firms that operated for the entire year.¹⁸³ Of this total, 2,837 firms employed fewer than 250 employees.¹⁸⁴ Thus, under this category and the associated small business size standard, the majority of firms can be considered small. The Commission notes that the U.S. Census Bureau's use of the classification "firms" does not track the number of "licenses" or "licensees". The Commission believes that there are only two licensees in the 24 GHz band that were relocated from the 18 GHz band, Teligent¹⁸⁵ and TRW, Inc. It is our understanding that Teligent and its related companies have less than 1,500 employees, although this may change in the future. TRW is not a small entity. Thus, only one incumbent licensee in the 24 GHz band is a small business.

63. *Local Multipoint Distribution Service.* A Local Multipoint Distribution Service (LMDS) System is a fixed point-to-point or point-to-multipoint radio system consisting of Local Multipoint Distribution Service Hub Stations and their associated Local Multipoint Distribution Service Subscriber Stations.¹⁸⁶ LMDS is capable of offering subscribers a variety of one and two-way broadband services, such as video programming distribution; video teleconferencing; wireless local loop telephony; and high speed data transmission, e.g. Internet access.¹⁸⁷ Wireless Telecommunications Carriers (except Satellite)¹⁸⁸ is the closest industry with a SBA small business size standard applicable to these services. The SBA small business size standard for this industry classifies a business as small if it has 1,500 or fewer employees.¹⁸⁹ U.S. Census Bureau data for 2017 show that there were 2,893 firms that operated in

¹⁸¹ See U.S. Census Bureau, 2017 NAICS Definition, "517312 Wireless Telecommunications Carriers (except Satellite)," <https://www.census.gov/naics/?input=517312&year=2017&details=517312>.

¹⁸² See 13 CFR § 121.201, NAICS Code 517312 (as of 10/1/22, NAICS Code 517112).

¹⁸³ See U.S. Census Bureau, 2017 Economic Census of the United States, Employment Size of Firms for the U.S.: 2017, Table ID: EC1700SIZEEMPFI, NAICS Code 517312, <https://data.census.gov/cedsci/table?y=2017&n=517312&tid=ECNSIZE2017.EC1700SIZEEMPFI&hidePreview=false>. At this time, the 2022 Economic Census data is not available.

¹⁸⁴ *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard.

¹⁸⁵ Teligent acquired the DEMS licenses of FirstMark, the only licensee other than TRW in the 24 GHz band whose license has been modified to require relocation to the 24 GHz band.

¹⁸⁶ See 47 CFR § 101.3.

¹⁸⁷ See Federal Communications Commission, Economics and Analytics, Auctions, Auction 17: Local Multipoint Distribution System (LMDS), Fact Sheet, Permissible Operations, <https://www.fcc.gov/auction/17/factsheet>; see also Auction 23: Local Multipoint Distribution System (LMDS) Re-Auction, Fact Sheet, Permissible Operations, <https://www.fcc.gov/auction/23/factsheet>.

¹⁸⁸ See U.S. Census Bureau, 2017 NAICS Definition, "517312 Wireless Telecommunications Carriers (except Satellite)," <https://www.census.gov/naics/?input=517312&year=2017&details=517312>.

¹⁸⁹ See 13 CFR § 121.201, NAICS Code 517312 (as of 10/1/22, NAICS Code 517112).

this industry for the entire year.¹⁹⁰ Of this number, 2,837 firms employed fewer than 250 employees.¹⁹¹ Thus under the SBA size standard, the Commission estimates that a majority of licensees in this industry can be considered small.

64. According to Commission data as of December 2021, there were approximately 524 active LMDS licenses.¹⁹² The Commission's small business size standards with respect to LMDS involve eligibility for bidding credits and installment payments in the auction of licenses for these services. For the auction of LMDS licenses, the Commission defined a "small business" as an entity that, together with its affiliates and controlling interests, has average gross revenues for the three preceding years of more than \$15 million but not more than \$40 million, and a very small business as an entity that, together with its affiliates and controlling interests, has average gross revenues for the three preceding years of not more than \$15 million.¹⁹³ Pursuant to these definitions, 93 small and very small businesses won approximately 277 A Block licenses and 387 B Block licenses.¹⁹⁴ In the re-auction of LDMS licenses 74% of the licenses were won by small businesses.¹⁹⁵

65. In frequency bands where licenses were subject to auction, the Commission notes that as a general matter, the number of winning bidders that qualify as small businesses at the close of an auction does not necessarily represent the number of small businesses currently in service. Further, the Commission does not generally track subsequent business size unless, in the context of assignments or transfers, unjust enrichment issues are implicated. Additionally, since the Commission does not collect data on the number of employees for licensees providing these services, at this time we are not able to estimate the number of licensees with active licenses that would qualify as small under the SBA's small business size standard.

66. *Local Resellers.* Neither the Commission nor the SBA have developed a small business size standard specifically for Local Resellers. Telecommunications Resellers is the closest industry with a SBA small business size standard.¹⁹⁶ The Telecommunications Resellers industry comprises establishments engaged in purchasing access and network capacity from owners and operators of telecommunications networks and reselling wired and wireless telecommunications services (except

¹⁹⁰ See U.S. Census Bureau, *2017 Economic Census of the United States, Employment Size of Firms for the U.S.: 2017*, Table ID: EC1700SIZEEMPFIEM, NAICS Code 517312, <https://data.census.gov/cedsci/table?y=2017&n=517312&tid=ECNSIZE2017.EC1700SIZEEMPFIEM&hidePreview=false>. At this time, the 2022 Economic Census data is not available.

¹⁹¹ *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard.

¹⁹² Based on a FCC Universal Licensing System search on December 8, 2021, <https://wireless2.fcc.gov/UlsApp/UlsSearch/searchAdvanced.jsp>. Search parameters: Service Group = All, "Match only the following radio service(s)", Radio Service = LD; Authorization Type = All; Status = Active. We note that the number of active licenses does not equate to the number of licensees. A licensee can have one or more licenses.

¹⁹³ See 47 CFR § 101.1112(b)-(c).

¹⁹⁴ See *LMDS Auction Closes; Winning Bidders in the Auction of 986 Licenses in the Local Multipoint Distribution Service (LMDS)*, Public Notice, DA-98-572, Attachment A, Report No. AUC-17-I (Auction No. 17) (March 26, 1998).

¹⁹⁵ See Press Release, FCC, *LMDS Re-Auction Closes, Auction of Wireless Communications Licenses Raises \$45,064,450* (May 12, 1999), <https://wireless.fcc.gov/auctions/23/releases/lmdscls.pdf>; see also *Local Multipoint Distribution Service Auction Closes; Winning Bidders in the Auction of 161 Licenses in the Local Multipoint Distribution Service (LMDS)*, DA-99-927, Attachment A, Report No. AUC-23-E (Auction No. 23) (May 14, 1999).

¹⁹⁶ See U.S. Census Bureau, *2017 NAICS Definition, "517911 Telecommunications Resellers,"* <https://www.census.gov/naics/?input=517911&year=2017&details=517911>.

satellite) to businesses and households.¹⁹⁷ Establishments in this industry resell telecommunications; they do not operate transmission facilities and infrastructure.¹⁹⁸ Mobile virtual network operators (MVNOs) are included in this industry.¹⁹⁹ The SBA small business size standard for Telecommunications Resellers classifies a business as small if it has 1,500 or fewer employees.²⁰⁰ U.S. Census Bureau data for 2017 show that 1,386 firms in this industry provided resale services for the entire year.²⁰¹ Of that number, 1,375 firms operated with fewer than 250 employees.²⁰² Additionally, based on Commission data in the 2022 Universal Service Monitoring Report, as of December 31, 2021, there were 207 providers that reported they were engaged in the provision of local resale services.²⁰³ Of these providers, the Commission estimates that 202 providers have 1,500 or fewer employees.²⁰⁴ Consequently, using the SBA's small business size standard, most of these providers can be considered small entities.

67. *Location and Monitoring Service (LMS).* LMS operates in the 902-928 MHz frequency band.²⁰⁵ The band is allocated for primary use by Federal Government radiolocation systems. Next in order of priority are uses for industrial, scientific, and medical devices. Federal Government fixed and mobile and LMS systems are secondary to both of these uses. The remaining uses of the 902-928 MHz band include licensed amateur radio operations and unlicensed Part 15 equipment, both of which are secondary to all other uses of the band. LMS systems use non-voice radio techniques to determine the location and status of mobile radio units, and may transmit and receive voice and non-voice status and instructional information related to such units.²⁰⁶ Wireless Telecommunications Carriers (*except Satellite*)²⁰⁷ is the closest industry with a SBA small business size standard applicable to these services. The SBA small business size standard for this industry classifies a business as small if it has 1,500 or fewer employees.²⁰⁸ U.S. Census Bureau data for 2017 show that there were 2,893 firms that operated in

¹⁹⁷ *Id.*

¹⁹⁸ *Id.*

¹⁹⁹ *Id.*

²⁰⁰ See 13 CFR § 121.201, NAICS Code 517911 (as of 10/1/22, NAICS Code 517121).

²⁰¹ See U.S. Census Bureau, *2017 Economic Census of the United States, Selected Sectors: Employment Size of Firms for the U.S.: 2017*, Table ID: EC1700SIZEEMPfirm, NAICS Code 517911, <https://data.census.gov/cedsci/table?y=2017&n=517911&tid=ECNSIZE2017.EC1700SIZEEMPfirm&hidePreview=false>. At this time, the 2022 Economic Census data is not available.

²⁰² *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard.

²⁰³ Federal-State Joint Board on Universal Service, Universal Service Monitoring Report at 26, Table 1.12 (2022), <https://docs.fcc.gov/public/attachments/DOC-391070A1.pdf>.

²⁰⁴ *Id.*

²⁰⁵ See Federal Communications Commission, Economics and Analytics, Auctions, Auction 21: Location and Monitoring Services (LMS), Fact Sheet, Incumbents, <https://www.fcc.gov/auction/21/factsheet>.

²⁰⁶ See 47 CFR § 90.7.

²⁰⁷ See U.S. Census Bureau, *2017 NAICS Definition*, “517312 Wireless Telecommunications Carriers (*except Satellite*),” <https://www.census.gov/naics/?input=517312&year=2017&details=517312>.

²⁰⁸ See 13 CFR § 121.201, NAICS Code 517312 (as of 10/1/22, NAICS Code 517112).

this industry for the entire year.²⁰⁹ Of this number, 2,837 firms employed fewer than 250 employees.²¹⁰ Thus under the SBA size standard, the Commission estimates that a majority of licensees in this industry can be considered small.

68. According to Commission data as of November 2021, there were two licensees with approximately 354 active LMS licenses.²¹¹ The Commission's small business size standards with respect to LMS involve eligibility for bidding credits and installment payments in the auction of licenses for these services. For the auction of LMS licenses, the Commission defined a "small business" as an entity that, together with controlling interests and affiliates with average annual gross revenues for the preceding three years not to exceed \$15 million, and a "very small business" as an entity that, together with controlling interests and affiliates with average annual gross revenues for the preceding three years not to exceed \$3 million.²¹² Pursuant to these definitions, four winning bidders that claimed small business credits won 289 licenses in Auction 21,²¹³ and four winning bidders that claimed small business credits won 201 LMS licenses in Auction 43.²¹⁴ Of these winning bidders, only one had active licenses in November 2021.²¹⁵

69. In frequency bands where licenses were subject to auction, the Commission notes that as a general matter, the number of winning bidders that qualify as small businesses at the close of an auction does not necessarily represent the number of small businesses currently in service. Further, the Commission does not generally track subsequent business size unless, in the context of assignments or transfers, unjust enrichment issues are implicated. Additionally, since the Commission does not collect data on the number of employees for licensees providing these services, at this time we are not able to estimate the number of licensees with active licenses that would qualify as small under the SBA's small business size standard.

70. *Low Power FM Stations.* The SBA small business size standard for Radio Stations²¹⁶ applies to low power FM stations. The Radio Stations industry comprises establishments primarily

²⁰⁹ See U.S. Census Bureau, *2017 Economic Census of the United States, Employment Size of Firms for the U.S.: 2017*, Table ID: EC1700SIZEEMPFIEM, NAICS Code 517312, <https://data.census.gov/cedsci/table?y=2017&n=517312&tid=ECNSIZE2017.EC1700SIZEEMPFIEM&hidePreview=false>. At this time, the 2022 Economic Census data is not available.

²¹⁰ *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard.

²¹¹ Based on a FCC Universal Licensing System search on November 29, 2021, <https://wireless2.fcc.gov/UlsApp/UlsSearch/searchAdvanced.jsp>. Search parameters: Service Group = All, "Match only the following radio service(s)", Radio Service = LS; Authorization Type = All; Status = Active. We note that the number of active licenses does not equate to the number of licensees. A licensee can have one or more licenses.

²¹² See 47 CFR § 90.1103(b).

²¹³ See Federal Communications Commission, Economics and Analytics, Auctions, Auction 21: Location and Monitoring Services (LMS), <https://www.fcc.gov/sites/default/files/wireless/auctions/21/charts/21cls2.pdf>.

²¹⁴ See Federal Communications Commission, Office of Economics and Analytics, Auctions, Auction 39: VHF Public Coast and Location and Monitoring Service, <https://www.fcc.gov/sites/default/files/wireless/auctions/39/charts/39cls2.pdf>.

²¹⁵ Based on an FCC Universal Licensing System search on November 29, 2021, <https://wireless2.fcc.gov/UlsApp/UlsSearch/searchAdvanced.jsp>. Search parameters: Service Group = All, "Match only the following radio service(s)", Radio Service = LS; Authorization Type = All; Status = Active. We note that the number of active licenses does not equate to the number of licensees. A licensee can have one or more licenses.

²¹⁶ See U.S. Census Bureau, *2017 NAICS Definition, "515112 Radio Stations,"* <https://www.census.gov/naics/?input=515112&year=2017&details=515112>.

engaged in broadcasting aural programs by radio to the public.²¹⁷ Programming may originate in their own studio, from an affiliated network, or from external sources.²¹⁸ The SBA small business size standard for this industry classifies firms having \$47 million or less in annual receipts as small.²¹⁹ U.S. Census Bureau data for 2017 show that 2,963 firms in this industry operated during that year.²²⁰ Of this number, 1,879 firms operated with revenue of less than \$25 million per year.²²¹ Therefore, based on the SBA's size standard we conclude that the majority low power FM stations are small.

71. Additionally, according to Commission data as of December 31, 2024, there were 1,968 Low Power FM licensed broadcast stations and 8,880 FM Translator Stations.²²² The Commission does not compile and otherwise does not have access to financial information for these stations that would permit it to determine how many of the stations would qualify as small entities under the SBA size standard. However, given that low power FM stations and FM translators and boosters are very small and limited in their operations and unlikely to have annual receipts anywhere near the SBA small size standard, we will presume that these licensees qualify as small entities under the SBA size standard.

72. *Lower 700 MHz Band Licenses.* The lower 700 MHz band encompasses spectrum in the 698-746 MHz frequency bands. Permissible operations in these bands include flexible fixed, mobile, and broadcast uses, including mobile and other digital new broadcast operation; fixed and mobile wireless commercial services (including FDD- and TDD-based services); as well as fixed and mobile wireless uses for private, internal radio needs, two-way interactive, cellular, and mobile television broadcasting services.²²³ Wireless Telecommunications Carriers (*except* Satellite)²²⁴ is the closest industry with a SBA small business size standard applicable to licenses providing services in these bands. The SBA small business size standard for this industry classifies a business as small if it has 1,500 or fewer employees.²²⁵ U.S. Census Bureau data for 2017 show that there were 2,893 firms that operated in this industry for the

²¹⁷ *Id.*

²¹⁸ *Id.*

²¹⁹ See 13 CFR § 121.201, NAICS Code 515112 (as of 10/1/22 NAICS Code 516110).

²²⁰ See U.S. Census Bureau, *2017 Economic Census of the United States, Selected Sectors: Sales, Value of Shipments, or Revenue Size of Firms for the U.S.: 2017*, Table ID: EC1700SIZEREVFIRM, NAICS Code 515112, <https://data.census.gov/cedsci/table?y=2017&n=515112&tid=ECNSIZE2017.EC1700SIZEREVFIRM&hidePreview=false>. We note that the US Census Bureau withheld publication of the number of firms that operated for the entire year. At this time, the 2022 Economic Census data is not available.

²²¹ *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard. We note that the U.S. Census Bureau withheld publication of the number of firms that operated with sales/value of shipments/revenue in the individual categories for less than \$100,000, and \$100,000 to \$249,999 to avoid disclosing data for individual companies (see Cell Notes for the sales/value of shipments/revenue in these categories). Therefore, the number of firms with revenue that meet the SBA size standard would be higher than noted herein. We also note that according to the U.S. Census Bureau glossary, the terms receipts and revenues are used interchangeably, see https://www.census.gov/glossary/#term_ReceiptsRevenueServices.

²²² *Broadcast Station Totals as of December 31, 2024*, Public Notice, DA 25-11 (rel. Jan. 7, 2025) (*January 2025 Broadcast Station Totals PN*), <https://docs.fcc.gov/public/attachments/DA-25-11A1.pdf>.

²²³ See Federal Communications Commission, Economics and Analytics, Auctions, Auctions 44, 49, 60: Lower 700 MHz Band, Fact Sheet, Permissible Operations, <https://www.fcc.gov/auction/44>, <https://www.fcc.gov/auction/49>, and <https://www.fcc.gov/auction/60>.

²²⁴ See U.S. Census Bureau, *2017 NAICS Definition*, "517312 Wireless Telecommunications Carriers (*except* Satellite)," <https://www.census.gov/naics/?input=517312&year=2017&details=517312>.

²²⁵ See 13 CFR § 121.201, NAICS Code 517312 (as of 10/1/22, NAICS Code 517112).

entire year.²²⁶ Of this number, 2,837 firms employed fewer than 250 employees.²²⁷ Thus under the SBA size standard, the Commission estimates that a majority of licensees in this industry can be considered small.

73. According to Commission data as of December 2021, there were approximately 2,824 active Lower 700 MHz Band licenses.²²⁸ The Commission's small business size standards with respect to Lower 700 MHz Band licensees involve eligibility for bidding credits and installment payments in the auction of licenses. For auctions of Lower 700 MHz Band licenses the Commission adopted criteria for three groups of small businesses. A very small business was defined as an entity that, together with its affiliates and controlling interests, has average annual gross revenues not exceeding \$15 million for the preceding three years, a small business was defined as an entity that, together with its affiliates and controlling interests, has average gross revenues not exceeding \$40 million for the preceding three years, and an entrepreneur was defined as an entity that, together with its affiliates and controlling interests, has average gross revenues not exceeding \$3 million for the preceding three years.²²⁹ In auctions for Lower 700 MHz Band licenses seventy-two winning bidders claiming a small business classification won 329 licenses,²³⁰ twenty-six winning bidders claiming a small business classification won 214 licenses,²³¹ and three winning bidders claiming a small business classification won all five auctioned licenses.²³²

74. In frequency bands where licenses were subject to auction, the Commission notes that as a general matter, the number of winning bidders that qualify as small businesses at the close of an auction does not necessarily represent the number of small businesses currently in service. Further, the Commission does not generally track subsequent business size unless, in the context of assignments or transfers, unjust enrichment issues are implicated. Additionally, since the Commission does not collect data on the number of employees for licensees providing these services, at this time we are not able to estimate the number of licensees with active licenses that would qualify as small under the SBA's small business size standard.

75. *Marine Radio Services.* Maritime mobile service is a mobile service between coast stations and ship stations, or between ship stations, or between associated on-board communication stations. Survival craft stations and emergency position indicating radio beacon (EPIRB) stations also

²²⁶ See U.S. Census Bureau, *2017 Economic Census of the United States, Employment Size of Firms for the U.S.: 2017*, Table ID: EC1700SIZEEMPFIIRM, NAICS Code 517312, <https://data.census.gov/cedsci/table?y=2017&n=517312&tid=ECNSIZE2017.EC1700SIZEEMPFIIRM&hidePreview=false>. At this time, the 2022 Economic Census data is not available.

²²⁷ *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard.

²²⁸ Based on a FCC Universal Licensing System search on December 14, 2021, <https://wireless2.fcc.gov/UlsApp/UlsSearch/searchAdvanced.jsp>. Search parameters: Service Group = All, "Match only the following radio service(s)", Radio Service = WY, WZ; Authorization Type = All; Status = Active. We note that the number of active licenses does not equate to the number of licensees. A licensee can have one or more licenses.

²²⁹ See 47 CFR § 27.702(a)(1)-(3).

²³⁰ See Federal Communications Commission, Economics and Analytics, Auctions, Auction 44: Lower 700 MHz Guard Bands, Summary, Closing Charts, Licenses by Bidder, <https://www.fcc.gov/sites/default/files/wireless/auctions/44/charts/44cls2.pdf>.

²³¹ See Federal Communications Commission, Economics and Analytics, Auctions, Auction 49: Lower 700 MHz Guard Bands, Summary, Closing Charts, Licenses by Bidder, <https://www.fcc.gov/sites/default/files/wireless/auctions/49/charts/49cls2.pdf>.

²³² See Federal Communications Commission, Economics and Analytics, Auctions, Auction 60: Lower 700 MHz Guard Bands, Summary, Closing Charts, Licenses by Bidder, <https://www.fcc.gov/sites/default/files/wireless/auctions/60/charts/60cls2.pdf>.

participate in this service.²³³ Small businesses in the aviation and marine radio services use a marine very high frequency (VHF), medium frequency (MF), or high frequency (HF) radio, any type of EPIRB and/or radar, an aircraft radio, and/or any type of emergency locator transmitter (ELT) and may provide fixed, mobile, or hybrid voice or data communications. Wireless Telecommunications Carriers (*except Satellite*)²³⁴ is the closest industry with a SBA small business size standard applicable to these services. The SBA small business size standard for this industry classifies a business as small if it has 1,500 or fewer employees.²³⁵ U.S. Census Bureau data for 2017 show that there were 2,893 firms that operated in this industry for the entire year.²³⁶ Of this number, 2,837 firms employed fewer than 250 employees.²³⁷ Thus under the SBA size standard, the Commission estimates that a majority of licensees in this industry can be considered small.

76. The Commission's small business size standards with respect to Marine Radio Services involve eligibility for bidding credits and installment payments in the auction of VHF Public Coast licenses in the 157.1875-157.4500 MHz (ship transmit) and 161.775-162.0125 MHz (coast transmit) bands.²³⁸ According to Commission data as December 2021, there were approximately 262 active Public Coast licenses²³⁹ and 3,753 active Maritime Coast licenses.²⁴⁰ For Public Coast license auction purposes, the Commission defined a "small" business as an entity that, together with controlling interests and affiliates, has average gross revenues for the preceding three years not to exceed \$15 million dollars, and a "very small" business as an entity that, together with controlling interests and affiliates, has average gross revenues for the preceding three years not to exceed \$3 million dollars.²⁴¹ Pursuant to these definitions, 3 small business bidders won 17 licenses,²⁴² and 3 winning bidders claiming a small business

²³³ See 47 CFR § 80.5.

²³⁴ See U.S. Census Bureau, 2017 NAICS Definition, "517312 Wireless Telecommunications Carriers (except Satellite)," <https://www.census.gov/naics/?input=517312&year=2017&details=517312>.

²³⁵ See 13 CFR § 121.201, NAICS Code 517312 (as of 10/1/22, NAICS Code 517112).

²³⁶ See U.S. Census Bureau, 2017 Economic Census of the United States, Employment Size of Firms for the U.S.: 2017, Table ID: EC1700SIZEEMPFIEM, NAICS Code 517312, <https://data.census.gov/cedsci/table?y=2017&n=517312&tid=ECNSIZE2017.EC1700SIZEEMPFIEM&hidePrevious=false>. At this time, the 2022 Economic Census data is not available.

²³⁷ *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard.

²³⁸ Public coast stations provide ship/shore radiotelephone and radiotelegraph services. See 47 CFR § 80.453.

²³⁹ Based on a FCC Universal Licensing System search on December 21 2021, <https://wireless2.fcc.gov/UlsApp/UlsSearch/searchAdvanced.jsp>. Search parameters: Service Group = All, "Match only the following radio service(s)", Radio Service = MA, MC, MK, MR; Authorization Type = All; Status = Active. We note that the number of active licenses does not equate to the number of licensees. A licensee can have one or more licenses.

²⁴⁰ Based on a FCC Universal Licensing System search on December 21, 2021, <https://wireless2.fcc.gov/UlsApp/UlsSearch/searchAdvanced.jsp>. Search parameters: Service Group = All, "Match only the following radio service(s)", Radio Service = PC; Authorization Type = All; Status = Active. We note that the number of active licenses does not equate to the number of licensees. A licensee can have one or more licenses.

²⁴¹ See 47 CFR § 80.1252(b)(1)-(2).

²⁴² See Federal Communications Commission, Economics and Analytics, Auctions, Auction 20: VHF Public Coast, Summary, Winning Bidders, <https://www.fcc.gov/auction/20>; see also <https://www.fcc.gov/sites/default/files/wireless/auctions/20/charts/20press5.pdf>.

qualification won 9 licenses.²⁴³ As of December 2021, two of the winning bidders in these auctions claiming small business credits had active licenses.²⁴⁴

77. In frequency bands where licenses were subject to auction, the Commission notes that as a general matter, the number of winning bidders that qualify as small businesses at the close of an auction does not necessarily represent the number of small businesses currently in service. Further, the Commission does not generally track subsequent business size unless, in the context of assignments or transfers, unjust enrichment issues are implicated. Additionally, since the Commission does not collect data on the number of employees for licensees providing these services, at this time we are not able to estimate the number of licensees with active licenses that would qualify as small under the SBA's small business size standard.

78. *Multichannel Video Distribution and Data Service (MVDDS)*. MVDDS is a fixed microwave service operating in the 12.2-12.7 GHz band that can be used to provide various wireless services.²⁴⁵ Mobile and aeronautical operations are prohibited.²⁴⁶ Wireless Telecommunications Carriers (*except Satellite*)²⁴⁷ is the closest industry with a SBA small business size standard applicable to these services. The SBA small business size standard for this industry classifies a business as small if it has 1,500 or fewer employees.²⁴⁸ U.S. Census Bureau data for 2017 show that there were 2,893 firms that operated in this industry for the entire year.²⁴⁹ Of this number, 2,837 firms employed fewer than 250 employees.²⁵⁰ Thus under the SBA size standard, the Commission estimates that a majority of licensees in this industry can be considered small.

79. According to Commission data as of December 2021, there were 9 licensees with 250 active licenses in this service.²⁵¹ The Commission's small business size standards with respect MVDDS involve eligibility for bidding credits and installment payments in the auction of licenses for these services. For auctions of MVDDS licenses the Commission adopted criteria for three groups of small businesses. A very small business is an entity that, together with its affiliates and controlling interests, has average annual gross revenues not exceeding \$3 million for the preceding three years, a small

²⁴³ See Federal Communications Commission, Economics and Analytics, Auctions, Auction 39: VHF Public Coast and Location Monitoring Services, Summary, Closing Charts, License Winners, Sorted by License, <https://www.fcc.gov/sites/default/files/wireless/auctions/39/charts/39cls3.pdf>.

²⁴⁴ Based on a FCC Universal Licensing System search on December 21, 2021, <https://wireless2.fcc.gov/UlsApp/UlsSearch/searchAdvanced.jsp>. Search parameters: Service Group = All, "Match only the following radio service(s)", Radio Service = PC; Authorization Type = All; Status = Active. We note that the number of active licenses does not equate to the number of licensees. A licensee can have one or more licenses.

²⁴⁵ See 47 CFR 101.3.

²⁴⁶ *Id.*

²⁴⁷ See U.S. Census Bureau, 2017 NAICS Definition, "517312 Wireless Telecommunications Carriers (*except Satellite*)", <https://www.census.gov/naics/?input=517312&year=2017&details=517312>.

²⁴⁸ See 13 CFR § 121.201, NAICS Code 517312 (as of 10/1/22, NAICS Code 517112).

²⁴⁹ See U.S. Census Bureau, 2017 Economic Census of the United States, Employment Size of Firms for the U.S.: 2017, Table ID: EC1700SIZEEMPFIEM, NAICS Code 517312, <https://data.census.gov/cedsci/table?y=2017&n=517312&tid=ECNSIZE2017.EC1700SIZEEMPFIEM&hidePrevious=false>. At this time, the 2022 Economic Census data is not available.

²⁵⁰ *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard.

²⁵¹ Based on a FCC Universal Licensing System search on December 9, 2021, <https://wireless2.fcc.gov/UlsApp/UlsSearch/searchAdvanced.jsp>. Search parameters: Service Group = All, "Match only the following radio service(s)", Radio Service = DV; Authorization Type = All; Status = Active. We note that the number of active licenses does not equate to the number of licensees. A licensee can have one or more licenses.

business is an entity that, together with its affiliates and controlling interests, has average gross revenues not exceeding \$15 million for the preceding three years, and an entrepreneur is an entity that, together with its affiliates and controlling interests, has average gross revenues not exceeding \$40 million for the preceding three years.²⁵² In two auctions for MVDDS licenses, eight of the ten winning bidders who won 144 licenses claimed one of the small business status classifications, and two of the three winning bidders who won 21 of 22 licenses, claimed one of the small business status classifications.²⁵³ Five of the winning bidders claiming a small business status classification in these auctions had active licenses as of December 2021.²⁵⁴

80. In frequency bands where licenses were subject to auction, the Commission notes that as a general matter, the number of winning bidders that qualify as small businesses at the close of an auction does not necessarily represent the number of small businesses currently in service. Further, the Commission does not generally track subsequent business size unless, in the context of assignments or transfers, unjust enrichment issues are implicated. Additionally, since the Commission does not collect data on the number of employees for licensees providing these services, at this time we are not able to estimate the number of licensees with active licenses that would qualify as small under the SBA's small business size standard.

81. *Multiple Address Systems (MAS)*. MAS are point-to-multipoint or point-to-point radio communications systems used for either one-way or two-way transmissions that operates in the 928/952/956 MHz, the 928/959 MHz or the 932/941 MHz bands.²⁵⁵ Entities using MAS spectrum, in general, fall into two categories: (1) those using the spectrum for profit-based uses, and (2) those using the spectrum for private internal uses to accommodate internal communications needs. MAS serves an essential role in a range of industrial, safety, business, and land transportation activities and are used by companies of all sizes operating in virtually all U.S. business categories, and by all types of public safety entities. Wireless Telecommunications Carriers (*except Satellite*)²⁵⁶ is the closest industry with a SBA small business size standard applicable to these services. The SBA small business size standard for this industry classifies a business as small if it has 1,500 or fewer employees.²⁵⁷ U.S. Census Bureau data for 2017 show that there were 2,893 firms that operated in this industry for the entire year.²⁵⁸ Of this number,

²⁵² See 47 CFR §§ 101.1429(a)(1)-(3).

²⁵³ See Federal Communications Commission, Economics and Analytics, Auctions, Auction 53: Multichannel Video Distribution and Data Service Licenses (MVDDS), <https://www.fcc.gov/sites/default/files/wireless/auctions/53/charts/53cls2.pdf>, and Auction 63: Multichannel Video Distribution and Data Service Licenses (MVDDS), <https://www.fcc.gov/sites/default/files/wireless/auctions/63/charts/63cls2.pdf>.

²⁵⁴ Based on a FCC Universal Licensing System search on December 9, 2021, <https://wireless2.fcc.gov/UlsApp/UlsSearch/searchAdvanced.jsp>. Search parameters: Service Group = All, "Match only the following radio service(s)", Radio Service = DV; Authorization Type = All; Status = Active. We note that the number of active licenses does not equate to the number of licensees. A licensee can have one or more licenses.

²⁵⁵ See 47 CFR § 101.3.

²⁵⁶ See U.S. Census Bureau, 2017 NAICS Definition, "517312 Wireless Telecommunications Carriers (*except Satellite*)", <https://www.census.gov/naics/?input=517312&year=2017&details=517312>.

²⁵⁷ See 13 CFR § 121.201, NAICS Code 517312 (as of 10/1/22, NAICS Code 517112).

²⁵⁸ See U.S. Census Bureau, 2017 Economic Census of the United States, Employment Size of Firms for the U.S.: 2017, Table ID: EC1700SIZEEMPFIEM, NAICS Code 517312, <https://data.census.gov/cedsci/table?y=2017&n=517312&tid=ECNSIZE2017.EC1700SIZEEMPFIEM&hidePreview=false>. At this time, the 2022 Economic Census data is not available.

2,837 firms employed fewer than 250 employees.²⁵⁹ Thus under the SBA size standard, the Commission estimates that a majority of licensees in this industry can be considered small.

82. According to Commission data as December 2021, there were approximately 9,798 active MAS licenses.²⁶⁰ The Commission's small business size standards with respect to MAS involve eligibility for bidding credits and installment payments in the auction of licenses for these services. For the auction of MAS licenses, the Commission defined "small business" as an entity that has average annual gross revenues of less than \$15 million over the three previous calendar years, and a "very small business" is defined as an entity that, together with its affiliates, has average annual gross revenues of not more than \$3 million over the preceding three calendar years.²⁶¹ In auctions for MAS licenses, 7 winning bidders claimed status as small or very small businesses and won 611 of 5,104 licenses,²⁶² and 5 of 26 winning bidders claimed status as small or very small businesses and won 1,891 of 4,226 licenses.²⁶³

83. In frequency bands where licenses were subject to auction, the Commission notes that as a general matter, the number of winning bidders that qualify as small businesses at the close of an auction does not necessarily represent the number of small businesses currently in service. Further, the Commission does not generally track subsequent business size unless, in the context of assignments or transfers, unjust enrichment issues are implicated. Additionally, since the Commission does not collect data on the number of employees for licensees providing these services, at this time we are not able to estimate the number of licensees with active licenses that would qualify as small under the SBA's small business size standard.

84. *Narrowband Personal Communications Services.* Narrowband Personal Communications Services (*Narrowband PCS*) are PCS services operating in the 901-902 MHz, 930-931 MHz, and 940-941 MHz bands.²⁶⁴ PCS services are radio communications that encompass mobile and ancillary fixed communication that provide services to individuals and businesses and can be integrated with a variety of competing networks.²⁶⁵ Wireless Telecommunications Carriers (*except Satellite*)²⁶⁶ is the closest industry with a SBA small business size standard applicable to these services. The SBA small business size standard for this industry classifies a business as small if it has 1,500 or fewer employees.²⁶⁷ U.S. Census Bureau data for 2017 show that there were 2,893 firms that operated in this industry for the

²⁵⁹ *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard.

²⁶⁰ Based on a FCC Universal Licensing System search on December 9, 2021, <https://wireless2.fcc.gov/UlsApp/UlsSearch/searchAdvanced.jsp>. Search parameters: Service Group = All, "Match only the following radio service(s)", Radio Service = MS; Authorization Type = All; Status = Active. We note that the number of active licenses does not equate to the number of licensees. A licensee can have one or more licenses.

²⁶¹ See 47 CFR § 101.1319(a).

²⁶² See Federal Communications Commission, Economics and Analytics, Auctions, Auction 42: Multiple Address Systems Spectrum, <https://www.fcc.gov/sites/default/files/wireless/auctions/42/charts/42cls2.pdf>.

²⁶³ See Federal Communications Commission, Economics and Analytics, Auctions, Auction 59: Multiple Address Systems Spectrum, <https://www.fcc.gov/sites/default/files/wireless/auctions/59/charts/59cls3.pdf>.

²⁶⁴ See 47 CFR § 24.5.

²⁶⁵ *Id.*

²⁶⁶ See U.S. Census Bureau, 2017 NAICS Definition, "517312 Wireless Telecommunications Carriers (except Satellite)," <https://www.census.gov/naics/?input=517312&year=2017&details=517312>.

²⁶⁷ See 13 CFR § 121.201, NAICS Code 517312 (as of 10/1/22, NAICS Code 517112).

entire year.²⁶⁸ Of this number, 2,837 firms employed fewer than 250 employees.²⁶⁹ Thus under the SBA size standard, the Commission estimates that a majority of licensees in this industry can be considered small.

85. According to Commission data as of December 2021, there were approximately 4,211 active *Narrowband PCS* licenses.²⁷⁰ The Commission's small business size standards with respect to *Narrowband PCS* involve eligibility for bidding credits and installment payments in the auction of licenses for these services. For the auction of these licenses, the Commission defined a "small business" as an entity that, together with affiliates and controlling interests, has average gross revenues for the three preceding years of not more than \$40 million.²⁷¹ A "very small business" is defined as an entity that, together with affiliates and controlling interests, has average gross revenues for the three preceding years of not more than \$15 million.²⁷² Pursuant to these definitions, 7 winning bidders claiming small and very small bidding credits won approximately 359 licenses.²⁷³ One of the winning bidders claiming a small business status classification in these *Narrowband PCS* license auctions had an active license as of December 2021.²⁷⁴

86. In frequency bands where licenses were subject to auction, the Commission notes that as a general matter, the number of winning bidders that qualify as small businesses at the close of an auction does not necessarily represent the number of small businesses currently in service. Further, the Commission does not generally track subsequent business size unless, in the context of assignments or transfers, unjust enrichment issues are implicated. Additionally, since the Commission does not collect data on the number of employees for licensees providing these services, at this time we are not able to estimate the number of licensees with active licenses that would qualify as small under the SBA's small business size standard.

87. *Noncommercial Educational (NCE) and Public Broadcast Stations.* Noncommercial educational broadcast stations and public broadcast stations are television or radio broadcast stations which under the Commission's rules are eligible to be licensed by the Commission as a noncommercial educational radio or television broadcast station and are owned and operated by a public agency or

²⁶⁸ See U.S. Census Bureau, *2017 Economic Census of the United States, Employment Size of Firms for the U.S.: 2017*, Table ID: EC1700SIZEEMPFIEM, NAICS Code 517312, <https://data.census.gov/cedsci/table?y=2017&n=517312&tid=ECNSIZE2017.EC1700SIZEEMPFIEM&hidePreview=false>. At this time, the 2022 Economic Census data is not available.

²⁶⁹ *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard.

²⁷⁰ Based on a FCC Universal Licensing System search on December 10, 2021, <https://wireless2.fcc.gov/UlsApp/UlsSearch/searchAdvanced.jsp>. Search parameters: Service Group = All, "Match only the following radio service(s)", Radio Service = CN; Authorization Type = All; Status = Active. We note that the number of active licenses does not equate to the number of licensees. A licensee can have one or more licenses.

²⁷¹ See 47 CFR § 24.321(a)(1)-(2).

²⁷² *Id.*

²⁷³ See Federal Communications Commission, Economics and Analytics, Auctions, Auction 41: Narrowband PCS, Summary, Closing Charts, License By Bidder, <https://www.fcc.gov/sites/default/files/wireless/auctions/41/charts/41cls2.pdf>; Auction 50: Narrowband PCS, Summary, Closing Charts, License By Bidder, <https://www.fcc.gov/sites/default/files/wireless/auctions/50/charts/50cls2.pdf>.

²⁷⁴ Based on a FCC Universal Licensing System search on December 10, 2021, <https://wireless2.fcc.gov/UlsApp/UlsSearch/searchAdvanced.jsp>. Search parameters: Service Group = All, "Match only the following radio service(s)", Radio Service = CN; Authorization Type = All; Status = Active. We note that the number of active licenses does not equate to the number of licensees. A licensee can have one or more licenses.

nonprofit private foundation, corporation, or association; or are owned and operated by a municipality which transmits only noncommercial programs for education purposes.

88. The SBA small business size standards and U.S. Census Bureau data classify radio stations²⁷⁵ and television broadcasting²⁷⁶ separately and both categories may include both noncommercial and commercial stations. The SBA small business size standard for both radio stations and television broadcasting classify firms having \$47 million or less in annual receipts as small.²⁷⁷ For Radio Stations, U.S. Census Bureau data for 2017 show that 1,879 of the 2,963 firms that operated during that year had revenue of less than \$25 million per year.²⁷⁸ For Television Broadcasting, U.S. Census Bureau data for 2017 show that 657 of the 744 firms that operated for the entire year had revenue of less than \$25 million per year.²⁷⁹ While the U.S. Census Bureau data does not indicate the number of non-commercial stations, we estimate that under the applicable SBA size standard the majority of noncommercial educational broadcast stations and public broadcast stations are small entities.

89. According to Commission data as of December 31, 2024, there were 4,859 licensed noncommercial educational radio and television stations²⁸⁰. In addition, the Commission estimates as of December 31, 2024, there were 382 licensed noncommercial educational (NCE) television stations, 381 Class A TV stations, 1,801 LPTV stations and 3,091 TV translator stations.²⁸¹ The Commission does not compile and otherwise does not have access to financial information for these stations that permit it to determine how many stations qualify as small entities under the SBA small business size standards.

²⁷⁵ See U.S. Census Bureau, *2017 NAICS Definition*, “515112 Radio Stations,” <https://www.census.gov/naics/?input=515112&year=2017&details=515112>.

²⁷⁶ See U.S. Census Bureau, *2017 NAICS Definition*, “515120 Television Broadcasting,” <https://www.census.gov/naics/?input=515120&year=2017&details=515120>.

²⁷⁷ See 13 CFR § 121.201, NAICS Code 515112 (Radio Stations) (as of 10/1/22 NAICS Code 516110); NAICS Code 515120 (Television Broadcasting) (as of 10/1/22 NAICS Code 516120).

²⁷⁸ See U.S. Census Bureau, *2017 Economic Census of the United States, Selected Sectors: Sales, Value of Shipments, or Revenue Size of Firms for the U.S.: 2017*, Table ID: EC1700SIZEREVFIRM, NAICS Code 515112, <https://data.census.gov/cedsci/table?y=2017&n=515112&tid=ECNSIZE2017.EC1700SIZEREVFIRM&hidePreview=false>. At this time, the 2022 Economic Census data is not available. The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard. We note that the U.S. Census Bureau withheld publication of the number of firms that operated for the entire year. We also note that the U.S. Census Bureau withheld publication of the number of firms that operated with sales/value of shipments/revenue in the individual categories for less than \$100,000, and \$100,000 to \$249,999 to avoid disclosing data for individual companies (see Cell Notes for the sales/value of shipments/revenue in these categories). Therefore, the number of firms with revenue that meet the SBA size standard would be higher than noted herein. We further note that according to the U.S. Census Bureau glossary, the terms receipts and revenues are used interchangeably, see https://www.census.gov/glossary/#term_ReceiptsRevenueServices.

²⁷⁹ See U.S. Census Bureau, *2017 Economic Census of the United States, Selected Sectors: Sales, Value of Shipments, or Revenue Size of Firms for the U.S.: 2017*, Table ID: EC1700SIZEREVFIRM, NAICS Code 515120, <https://data.census.gov/cedsci/table?y=2017&n=515120&tid=ECNSIZE2017.EC1700SIZEREVFIRM&hidePreview=false>. At this time, the 2022 Economic Census data is not available. The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard. We also note that according to the U.S. Census Bureau glossary, the terms receipts and revenues are used interchangeably, see https://www.census.gov/glossary/#term_ReceiptsRevenueServices.

²⁸⁰ *Broadcast Station Totals as of December 31, 2024*, Public Notice, DA 25-11 (rel. Jan. 7, 2025) (*January 2025 Broadcast Station Totals PN*), <https://docs.fcc.gov/public/attachments/DA-25-11A1.pdf>.

²⁸¹ *Id.*

However, given the nature of these services, we will presume that all noncommercial educational and public broadcast stations qualify as small entities under the above SBA small business size standards.

90. *Offshore Radiotelephone Service.* This service operates on several UHF television broadcast channels that are not used for television broadcasting in the coastal areas of states bordering the Gulf of America,²⁸² and is governed by subpart I of Part 22 of the Commission's Rules.²⁸³ Wireless Telecommunications Carriers (*except* Satellite)²⁸⁴ is the closest industry with a SBA small business size standard applicable to this service. The SBA small business size standard for this industry classifies a business as small if it has 1,500 or fewer employees.²⁸⁵ U.S. Census Bureau data for 2017 show that there were 2,893 firms that operated in this industry for the entire year.²⁸⁶ Of this number, 2,837 firms employed fewer than 250 employees.²⁸⁷ Thus, under the SBA size standard, the Commission estimates that a majority of licensees in this industry can be considered small. Additionally, based on Commission data, as of December 2021, there was one licensee with an active license in this service.²⁸⁸ However, since the Commission does not collect data on the number of employees for this service, at this time we are not able to estimate the number of licensees that would qualify as small under the SBA's small business size standard.

91. *Paging Services.*²⁸⁹ Paging services encompass spectrum in the lower paging bands (35-36 MHz, 43-44 MHz, 152-159 MHz, 454-460 MHz) and in the upper paging bands (929-931 MHz), and includes services provided by both private and common carriers. These services fall in the Wireless Telecommunications Carriers (*except* Satellite) industry.²⁹⁰ Illustrative examples of services in this industry include paging services, except satellite; two-way paging communications carriers, except satellite; and radio paging services communications carriers.²⁹¹ The SBA small business size standard classifies a business in this industry as small if it has 1,500 or fewer employees.²⁹² U.S. Census Bureau

²⁸² Exec. Order No. 14172, 90 Fed. Reg. 8630, 2025 WL 343885 (Jan. 20, 2025). The Gulf of America, formerly known as the Gulf of Mexico.

²⁸³ 47 CFR §§ 22.1001-22.1037.

²⁸⁴ See U.S. Census Bureau, 2017 NAICS Definition, "517312 Wireless Telecommunications Carriers (*except* Satellite)," <https://www.census.gov/naics/?input=517312&year=2017&details=517312>.

²⁸⁵ See 13 CFR § 121.201, NAICS Code 517312 (as of 10/1/22, NAICS Code 517112).

²⁸⁶ See U.S. Census Bureau, 2017 Economic Census of the United States, Employment Size of Firms for the U.S.: 2017, Table ID: EC1700SIZEEMPFI, NAICS Code 517312, <https://data.census.gov/cedsci/table?y=2017&n=517312&tid=ECNSIZE2017.EC1700SIZEEMPFI&hidePreview=false>. At this time, the 2022 Economic Census data is not available.

²⁸⁷ *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard.

²⁸⁸ Based on a FCC Universal Licensing System search on December 10, 2021, <https://wireless2.fcc.gov/UlsApp/UlsSearch/searchAdvanced.jsp>. Search parameters: Service Group = All, "Match only the following radio service(s)", Radio Service = CO; Authorization Type = All; Status = Active. We note that the number of active licenses does not equate to the number of licensees. A licensee can have one or more licenses.

²⁸⁹ Formerly Common Carrier Paging.

²⁹⁰ See U.S. Census Bureau, 2017 NAICS Definition, "517312 Wireless Telecommunications Carriers (*except* Satellite)," <https://www.census.gov/naics/?input=517312&year=2017&details=517312>.

²⁹¹ *Id.*

²⁹² See 13 CFR § 121.201, NAICS Code 517312 (as of 10/1/22, NAICS Code 517112).

data for 2017 show that there were 2,893 firms that operated in this industry for the entire year.²⁹³ Of this number, 2,837 firms employed fewer than 250 employees.²⁹⁴ Additionally, based on Commission data in the 2022 Universal Service Monitoring Report, as of December 31, 2021, there were 76 providers that reported they were engaged in the provision of paging and messaging services.²⁹⁵ Of these providers, the Commission estimates that all 76 providers have 1,500 or fewer employees.²⁹⁶ Consequently, using the SBA's small business size standard, most of these providers can be considered small entities.

92. *Payphone Service Providers (PSPs)*. Neither the Commission nor the SBA have developed a small business size standard specifically for payphone service providers. Telecommunications Resellers²⁹⁷ is the closest industry with a SBA small business size standard. The Telecommunications Resellers industry comprises establishments engaged in purchasing access and network capacity from owners and operators of telecommunications networks and reselling wired and wireless telecommunications services (except satellite) to businesses and households. Establishments in this industry resell telecommunications; they do not operate transmission facilities and infrastructure.²⁹⁸ Mobile virtual network operators (MVNOs) are included in this industry.²⁹⁹ The SBA small business size standard for Telecommunications Resellers classifies a business as small if it has 1,500 or fewer employees.³⁰⁰ U.S. Census Bureau data for 2017 show that 1,386 firms in this industry provided resale services for the entire year.³⁰¹ Of that number, 1,375 firms operated with fewer than 250 employees.³⁰² Additionally, based on Commission data in the 2022 Universal Service Monitoring Report, as of December 31, 2021, there were 36 providers that reported they were engaged in the provision of payphone services.³⁰³ Of these providers, the Commission estimates that 32 providers have 1,500 or fewer employees.³⁰⁴ Consequently, using the SBA's small business size standard, most of these providers can be considered small entities.

²⁹³ See U.S. Census Bureau, *2017 Economic Census of the United States, Employment Size of Firms for the U.S.: 2017*, Table ID: EC1700SIZEEMPFI, NAICS Code 517312, <https://data.census.gov/cedsci/table?y=2017&n=517312&tid=ECNSIZE2017.EC1700SIZEEMPFI&hidePreview=false>. At this time, the 2022 Economic Census data is not available.

²⁹⁴ *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard.

²⁹⁵ Federal-State Joint Board on Universal Service, Universal Service Monitoring Report at 26, Table 1.12 (2022), <https://docs.fcc.gov/public/attachments/DOC-391070A1.pdf>.

²⁹⁶ *Id.*

²⁹⁷ See U.S. Census Bureau, *2017 NAICS Definition, "517911 Telecommunications Resellers,"* <https://www.census.gov/naics/?input=517911&year=2017&details=517911>.

²⁹⁸ *Id.*

²⁹⁹ *Id.*

³⁰⁰ See 13 CFR § 121.201, NAICS Code 517911 (as of 10/1/22, NAICS Code 517121).

³⁰¹ See U.S. Census Bureau, *2017 Economic Census of the United States, Selected Sectors: Employment Size of Firms for the U.S.: 2017*, Table ID: EC1700SIZEEMPFI, NAICS Code 517911, <https://data.census.gov/cedsci/table?y=2017&n=517911&tid=ECNSIZE2017.EC1700SIZEEMPFI&hidePreview=false>. At this time, the 2022 Economic Census data is not available.

³⁰² *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard.

³⁰³ Federal-State Joint Board on Universal Service, Universal Service Monitoring Report at 26, Table 1.12 (2022), <https://docs.fcc.gov/public/attachments/DOC-391070A1.pdf>.

³⁰⁴ *Id.*

93. *Public Safety Radio Licensees.* As a general matter, Public Safety Radio Pool licensees include police, fire, local government, forestry conservation, highway maintenance, and emergency medical services.³⁰⁵ Because of the vast array of public safety licensees, the Commission has not developed a small business size standard specifically applicable to public safety licensees. Wireless Telecommunications Carriers (*except Satellite*)³⁰⁶ is the closest industry with a SBA small business size standard applicable to these services. The SBA small business size standard for this industry classifies a business as small if it has 1,500 or fewer employees.³⁰⁷ U.S. Census Bureau data for 2017 show that there were 2,893 firms that operated in this industry for the entire year.³⁰⁸ Of this number, 2,837 firms employed fewer than 250 employees.³⁰⁹ Thus under the SBA size standard, the Commission estimates that a majority of licensees in this industry can be considered small.

94. With respect to local governments, in particular, since many governmental entities comprise the licensees for these services, we include under public safety services the number of government entities affected. According to Commission records as of December 2021, there were approximately 127,019 active licenses within these services.³¹⁰ Included in this number were 3,577 active licenses in the Public Safety 4.9 GHz band.³¹¹ Since the Commission does not collect data on the number of employees for licensees providing these services, at this time we are therefore not able to estimate the number of licensees with active licenses that would qualify as small under the SBA's small business size standard.

³⁰⁵ See subparts A and B of Part 90 of the Commission's Rules, 47 CFR §§ 90.1-90.22. Police licensees serve state, county, and municipal enforcement through telephony (voice), telegraphy (code), and teletype and facsimile (printed material). Fire licensees are comprised of private volunteer or professional fire companies, as well as units under governmental control. Public Safety Radio Pool licensees also include state, county, or municipal entities that use radio for official purposes. State departments of conservation and private forest organizations comprise forestry service licensees that set up communications networks among fire lookout towers and ground crews. State and local governments are highway maintenance licensees that provide emergency and routine communications to aid other public safety services to keep main roads safe for vehicular traffic. Emergency medical licensees use these channels for emergency medical service communications related to the delivery of emergency medical treatment. Additional licensees include medical services, rescue organizations, veterinarians, persons with disabilities, disaster relief organizations, school buses, beach patrols, establishments in isolated areas, communications standby facilities, and emergency repair of public communications facilities.

³⁰⁶ See U.S. Census Bureau, *2017 NAICS Definition*, "517312 Wireless Telecommunications Carriers (*except Satellite*)," <https://www.census.gov/naics/?input=517312&year=2017&details=517312>.

³⁰⁷ See 13 CFR § 121.201, NAICS Code 517312 (as of 10/1/22, NAICS Code 517112).

³⁰⁸ See U.S. Census Bureau, *2017 Economic Census of the United States, Employment Size of Firms for the U.S.: 2017*, Table ID: EC1700SIZEEMPFIEM, NAICS Code 517312, <https://data.census.gov/cedsci/table?y=2017&n=517312&tid=ECNSIZE2017.EC1700SIZEEMPFIEM&hidePrevious=false>. At this time, the 2022 Economic Census data is not available.

³⁰⁹ *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard.

³¹⁰ Based on a FCC Universal Licensing System search on December 13, 2021. <https://wireless2.fcc.gov/UlsApp/UlsSearch/searchAdvanced.jsp>. Search parameters: Service Group = All, "Match only the following radio service(s)", Radio Service = GE, GF, GP, PA, PW, YE, YF, YP, YW; Authorization Type = All; Status = Active. We note that the number of active licenses does not equate to the number of licensees. A licensee can have one or more licenses.

³¹¹ Based on a FCC Universal Licensing System search on December 13, 2021. <https://wireless2.fcc.gov/UlsApp/UlsSearch/searchAdvanced.jsp>. Search parameters: Service Group = All, "Match only the following radio service(s)", Radio Service = PA; Authorization Type = All; Status = Active. We note that the number of active licenses does not equate to the number of licensees. A licensee can have one or more licenses.

95. *Radio Stations.* This industry is comprised of “establishments primarily engaged in broadcasting aural programs by radio to the public.”³¹² Programming may originate in their own studio, from an affiliated network, or from external sources.³¹³ The SBA small business size standard for this industry classifies firms having \$47 million or less in annual receipts as small.³¹⁴ U.S. Census Bureau data for 2017 show that 2,963 firms operated in this industry during that year.³¹⁵ Of this number, 1,879 firms operated with revenue of less than \$25 million per year.³¹⁶ Based on this data and the SBA’s small business size standard, we estimate a majority of such entities are small entities.

96. The Commission estimates that as of December 31, 2024, there were 4,383 licensed commercial AM radio stations and 6,625 licensed commercial FM radio stations, for a combined total of 11,008 commercial radio stations.³¹⁷ Of this total, 11,017 stations (or 99.99 %) had revenues of \$47 million or less in 2023, according to Commission staff review of the BIA Kelsey Inc. Media Access Pro Database (BIA) on January 7, 2025, and therefore these licensees qualify as small entities under the SBA definition. In addition, the Commission estimates that as of December 31, 2024, there were 4,477 licensed noncommercial (NCE) FM radio stations, 1,968 low power FM (LPFM) stations, and 8,880 FM translators and boosters.³¹⁸ The Commission however does not compile, and otherwise does not have access to financial information for these radio stations that would permit it to determine how many of these stations qualify as small entities under the SBA small business size standard. Nevertheless, given the SBA’s large annual receipts threshold for this industry and the nature of radio station licensees, we presume that all of these entities qualify as small entities under the above SBA small business size standard.

97. We note, however, that in assessing whether a business concern qualifies as “small” under the above definition, business (control) affiliations³¹⁹ must be included. Our estimate, therefore, likely overstates the number of small entities that might be affected by our action, because the revenue figure on which it is based does not include or aggregate revenues from affiliated companies. In addition, another element of the definition of “small business” requires that an entity not be dominant in its field of operation. We are unable at this time to define or quantify the criteria that would establish whether a

³¹² See U.S. Census Bureau, *2017 NAICS Definition*, “515112 Radio Stations,” <https://www.census.gov/naics/?input=515112&year=2017&details=515112>.

³¹³ *Id.*

³¹⁴ See 13 CFR § 121.201, NAICS Code 515112 (as of 10/1/22 NAICS Code 516110).

³¹⁵ See U.S. Census Bureau, *2017 Economic Census of the United States, Selected Sectors: Sales, Value of Shipments, or Revenue Size of Firms for the U.S.: 2017*, Table ID: EC1700SIZEREVFIRM, NAICS Code 515112, <https://data.census.gov/cedsci/table?y=2017&n=515112&tid=ECNSIZE2017.EC1700SIZEREVFIRM&hidePreview=false>. We note that the US Census Bureau withheld publication of the number of firms that operated for the entire year. At this time, the 2022 Economic Census data is not available.

³¹⁶ *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard. We note that the U.S. Census Bureau withheld publication of the number of firms that operated with sales/value of shipments/revenue in the individual categories for less than \$100,000, and \$100,000 to \$249,999 to avoid disclosing data for individual companies (see Cell Notes for the sales/value of shipments/revenue in these categories). Therefore, the number of firms with revenue that meet the SBA size standard would be higher than noted herein. We also note that according to the U.S. Census Bureau glossary, the terms receipts and revenues are used interchangeably, see https://www.census.gov/glossary/#term_ReceiptsRevenueServices.

³¹⁷ *Broadcast Station Totals as of December 31, 2024*, Public Notice, DA 25-11 (rel. Jan. 7, 2025) (*January 2025 Broadcast Station Totals PN*), <https://docs.fcc.gov/public/attachments/DA-25-11A1.pdf>.

³¹⁸ *Id.*

³¹⁹ “[Business concerns] are affiliates of each other when one concern controls or has the power to control the other or a third party or parties controls or has the power to control both.” 13 CFR § 21.103(a)(1).

specific radio or television broadcast station is dominant in its field of operation. Accordingly, the estimate of small businesses to which the rules may apply does not exclude any radio or television station from the definition of a small business on this basis and is therefore possibly over-inclusive. An additional element of the definition of “small business” is that the entity must be independently owned and operated. Because it is difficult to assess these criteria in the context of media entities, the estimate of small businesses to which the rules may apply does not exclude any radio or television station from the definition of a small business on this basis and similarly may be over-inclusive.

98. *Rural Radiotelephone Service.* Neither the Commission nor the SBA have developed a small business size standard specifically for small businesses providing Rural Radiotelephone Service. Rural Radiotelephone Service is radio service in which licensees are authorized to offer and provide radio telecommunication services for hire to subscribers in areas where it is not feasible to provide communication services by wire or other means.³²⁰ A significant subset of the Rural Radiotelephone Service is the Basic Exchange Telephone Radio System (BETRS).³²¹ Wireless Telecommunications Carriers (*except* Satellite),³²² is the closest applicable industry with a SBA small business size standard. The SBA small business size standard for Wireless Telecommunications Carriers (*except* Satellite) classifies firms having 1,500 or fewer employees as small.³²³ For this industry, U.S. Census Bureau data for 2017 show that there were 2,893 firms that operated for the entire year.³²⁴ Of this total, 2,837 firms employed fewer than 250 employees.³²⁵ Thus under the SBA size standard, the Commission estimates that the majority of Rural Radiotelephone Services firm are small entities. Based on Commission data as of December 27, 2021, there were approximately 119 active licenses in the Rural Radiotelephone Service.³²⁶ The Commission does not collect employment data from these entities holding these licenses and therefore we cannot estimate how many of these entities meet the SBA small business size standard.

99. *Specialized Mobile Radio Licenses.* Special Mobile Radio (SMR) licenses allow licensees to provide land mobile communications services (other than radiolocation services) in the 800 MHz and 900 MHz spectrum bands on a commercial basis including but not limited to services used for voice and data communications, paging, and facsimile services, to individuals, Federal Government entities, and other entities licensed under Part 90 of the Commission’s rules. Wireless Telecommunications Carriers (*except* Satellite)³²⁷ is the closest industry with a SBA small business size standard applicable to these services. The SBA size standard for this industry classifies a business as

³²⁰ 47 CFR § 22.99.

³²¹ BETRS is defined in 47 CFR §§ 22.757, 22.759.

³²² See U.S. Census Bureau, 2017 NAICS Definition, “517312 Wireless Telecommunications Carriers (*except* Satellite),” <https://www.census.gov/naics/?input=517312&year=2017&details=517312>.

³²³ See 13 CFR § 121.201, NAICS Code 517312 (as of 10/1/22, NAICS Code 517112).

³²⁴ See U.S. Census Bureau, 2017 Economic Census of the United States, Employment Size of Firms for the U.S.: 2017, Table ID: EC1700SIZEEMPFIEM, NAICS Code 517312, <https://data.census.gov/cedsci/table?y=2017&n=517312&tid=ECNSIZE2017.EC1700SIZEEMPFIEM&hidePreview=false>. At this time, the 2022 Economic Census data is not available.

³²⁵ *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard.

³²⁶ Based on a FCC Universal Licensing System search on December 27, 2021. <https://wireless2.fcc.gov/UlsApp/UlsSearch/searchAdvanced.jsp>. Search parameters: Service Group = All, “Match only the following radio service(s)”, Radio Service = CR; Authorization Type = All; Status = Active. We note that the number of active licenses does not equate to the number of licensees. A licensee can have one or more licenses.

³²⁷ See U.S. Census Bureau, 2017 NAICS Definition, “517312 Wireless Telecommunications Carriers (*except* Satellite),” <https://www.census.gov/naics/?input=517312&year=2017&details=517312>.

small if it has 1,500 or fewer employees.³²⁸ For this industry, U.S. Census Bureau data for 2017 show that there were 2,893 firms in this industry that operated for the entire year.³²⁹ Of this number, 2,837 firms employed fewer than 250 employees.³³⁰ Additionally, based on Commission data in the 2022 Universal Service Monitoring Report, as of December 31, 2021, there were 95 providers that reported they were of SMR (dispatch) providers.³³¹ Of this number, the Commission estimates that all 95 providers have 1,500 or fewer employees.³³² Consequently, using the SBA's small business size standard, these 119 SMR licensees can be considered small entities.³³³

100. Based on Commission data as of December 2021, there were 3,924 active SMR licenses.³³⁴ However, since the Commission does not collect data on the number of employees for licensees providing SMR services, at this time we are not able to estimate the number of licensees with active licenses that would qualify as small under the SBA's small business size standard. Nevertheless, for purposes of this analysis the Commission estimates that the majority of SMR licensees can be considered small entities using the SBA's small business size standard.

101. *Television Broadcasting.* This industry is comprised of "establishments primarily engaged in broadcasting images together with sound."³³⁵ These establishments operate television broadcast studios and facilities for the programming and transmission of programs to the public.³³⁶ These establishments also produce or transmit visual programming to affiliated broadcast television stations, which in turn broadcast the programs to the public on a predetermined schedule. Programming may originate in their own studio, from an affiliated network, or from external sources. The SBA small business size standard for this industry classifies businesses having \$47 million or less in annual receipts as small.³³⁷ 2017 U.S. Census Bureau data indicate that 744 firms in this industry operated for the entire

³²⁸ See 13 CFR § 121.201, NAICS Code 517312 (as of 10/1/22, NAICS Code 517112).

³²⁹ See U.S. Census Bureau, *2017 Economic Census of the United States, Employment Size of Firms for the U.S.: 2017*, Table ID: EC1700SIZEEMPFIEM, NAICS Code 517312, <https://data.census.gov/cedsci/table?y=2017&n=517312&tid=ECNSIZE2017.EC1700SIZEEMPFIEM&hidePrevious=false>. At this time, the 2022 Economic Census data is not available.

³³⁰ *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard.

³³¹ Federal-State Joint Board on Universal Service, Universal Service Monitoring Report at 26, Table 1.12 (2022), <https://docs.fcc.gov/public/attachments/DOC-391070A1.pdf>. <https://docs.fcc.gov/public/attachments/DOC-379181A1.pdf>

³³² *Id.*

³³³ We note that there were also SMR providers reporting in the "Cellular/PCS/SMR" classification, therefore there are maybe additional SMR providers that have not been accounted for in the SMR (dispatch) classification.

³³⁴ Based on a FCC Universal Licensing System search on December 15, 2021, <https://wireless2.fcc.gov/UlsApp/UlsSearch/searchAdvanced.jsp>. Search parameters: Service Group = All, "Match radio services within this group", Radio Service = SMR; Authorization Type = All; Status = Active. We note that the number of active licenses does not equate to the number of licensees. A licensee can have one or more licenses.

³³⁵ See U.S. Census Bureau, *2017 NAICS Definition, "515120 Television Broadcasting,"* <https://www.census.gov/naics/?input=515120&year=2017&details=515120>.

³³⁶ *Id.*

³³⁷ See 13 CFR § 121.201, NAICS Code 515120 (as of 10/1/22 NAICS Code 516120).

year.³³⁸ Of that number, 657 firms had revenue of less than \$25 million per year.³³⁹ Based on this data we estimate that the majority of television broadcasters are small entities under the SBA small business size standard.

102. As of December 31, 2024, there were 1,385 licensed commercial television stations.³⁴⁰ Of this total, 1,308 stations (or 94.4%) had revenues of \$47 million or less in 2023, according to Commission staff review of the BIA Kelsey Inc. Media Access Pro Television Database (BIA) on January 7, 2025, and therefore these licensees qualify as small entities under the SBA definition. In addition, the Commission estimates as of December 31, 2024, there were 382 licensed noncommercial educational (NCE) television stations, 381 Class A TV stations, 1,801 LPTV stations and 3,091 TV translator stations.³⁴¹ The Commission, however, does not compile and otherwise does not have access to financial information for these television broadcast stations that would permit it to determine how many of these stations qualify as small entities under the SBA small business size standard. Nevertheless, given the SBA's large annual receipts threshold for this industry and the nature of these television station licensees, we presume that all of these entities qualify as small entities under the above SBA small business size standard.

103. *Toll Resellers.* Neither the Commission nor the SBA have developed a small business size standard specifically for Toll Resellers. Telecommunications Resellers³⁴² is the closest industry with a SBA small business size standard. The Telecommunications Resellers industry comprises establishments engaged in purchasing access and network capacity from owners and operators of telecommunications networks and reselling wired and wireless telecommunications services (except satellite) to businesses and households. Establishments in this industry resell telecommunications; they do not operate transmission facilities and infrastructure.³⁴³ Mobile virtual network operators (MVNOs) are included in this industry.³⁴⁴ The SBA small business size standard for Telecommunications Resellers classifies a business as small if it has 1,500 or fewer employees.³⁴⁵ U.S. Census Bureau data for 2017 show that 1,386 firms in this industry provided resale services for the entire year.³⁴⁶ Of that number, 1,375 firms operated with fewer than 250 employees.³⁴⁷ Additionally, based on Commission data in the

³³⁸ See U.S. Census Bureau, *2017 Economic Census of the United States, Selected Sectors: Sales, Value of Shipments, or Revenue Size of Firms for the U.S.: 2017*, Table ID: EC1700SIZEREVFIRM, NAICS Code 515120, <https://data.census.gov/cedsci/table?y=2017&n=515120&tid=ECNSIZE2017.EC1700SIZEREVFIRM&hidePreview=false>. At this time, the 2022 Economic Census data is not available.

³³⁹ *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard. We also note that according to the U.S. Census Bureau glossary, the terms receipts and revenues are used interchangeably, see https://www.census.gov/glossary/#term_ReceiptsRevenueServices.

³⁴⁰ *Broadcast Station Totals as of December 31, 2024*, Public Notice, DA 25-11 (rel. Jan. 7, 2025) (*January 2025 Broadcast Station Totals PN*), <https://docs.fcc.gov/public/attachments/DA-25-11A1.pdf>.

³⁴¹ *Id.*

³⁴² See U.S. Census Bureau, *2017 NAICS Definition, "517911 Telecommunications Resellers,"* <https://www.census.gov/naics/?input=517911&year=2017&details=517911>.

³⁴³ *Id.*

³⁴⁴ *Id.*

³⁴⁵ See 13 CFR § 121.201, NAICS Code 517911 (as of 10/1/22, NAICS Code 517121).

³⁴⁶ See U.S. Census Bureau, *2017 Economic Census of the United States, Selected Sectors: Employment Size of Firms for the U.S.: 2017*, Table ID: EC1700SIZEEMPfirm, NAICS Code 517911, <https://data.census.gov/cedsci/table?y=2017&n=517911&tid=ECNSIZE2017.EC1700SIZEEMPfirm&hidePreview=false>. At this time, the 2022 Economic Census data is not available.

³⁴⁷ *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard.

2022 Universal Service Monitoring Report, as of December 31, 2021, there were 457 providers that reported they were engaged in the provision of toll services.³⁴⁸ Of these providers, the Commission estimates that 438 providers have 1,500 or fewer employees.³⁴⁹ Consequently, using the SBA's small business size standard, most of these providers can be considered small entities.

104. *Upper 700 MHz Band Licenses.* The upper 700 MHz band encompasses spectrum in the 746-806 MHz bands. Upper 700 MHz D Block licenses are nationwide licenses associated with the 758-763 MHz and 788-793 MHz bands.³⁵⁰ Permissible operations in these bands include flexible fixed, mobile, and broadcast uses, including mobile and other digital new broadcast operation; fixed and mobile wireless commercial services (including FDD- and TDD-based services); as well as fixed and mobile wireless uses for private, internal radio needs, two-way interactive, cellular, and mobile television broadcasting services.³⁵¹ Wireless Telecommunications Carriers (*except* Satellite)³⁵² is the closest industry with a SBA small business size standard applicable to licenses providing services in these bands. The SBA small business size standard for this industry classifies a business as small if it has 1,500 or fewer employees.³⁵³ U.S. Census Bureau data for 2017 show that there were 2,893 firms that operated in this industry for the entire year.³⁵⁴ Of that number, 2,837 firms employed fewer than 250 employees.³⁵⁵ Thus, under the SBA size standard, the Commission estimates that a majority of licensees in this industry can be considered small.

105. According to Commission data as of December 2021, there were approximately 152 active Upper 700 MHz Band licenses.³⁵⁶ The Commission's small business size standards with respect to Upper 700 MHz Band licensees involve eligibility for bidding credits and installment payments in the auction of licenses. For the auction of these licenses, the Commission defined a "small business" as an entity that, together with its affiliates and controlling principals, has average gross revenues not exceeding \$40 million for the preceding three years, and a "very small business" an entity that, together with its affiliates and controlling principals, has average gross revenues that are not more than \$15 million for the

³⁴⁸ Federal-State Joint Board on Universal Service, Universal Service Monitoring Report at 26, Table 1.12 (2022), <https://docs.fcc.gov/public/attachments/DOC-391070A1.pdf>.

³⁴⁹ *Id.*

³⁵⁰ See 47 CFR § 27.4.

³⁵¹ See Federal Communications Commission, Economics and Analytics, Auctions, Auction 73: 700 MHz Band, Fact Sheet, Permissible Operations, <https://www.fcc.gov/auction/73>. We note that in Auction 73, Upper 700 MHz Band C and D Blocks as well as Lower 700 MHz Band A, B, and E Blocks were auctioned.

³⁵² See U.S. Census Bureau, 2017 NAICS Definition, "517312 Wireless Telecommunications Carriers (*except* Satellite)," <https://www.census.gov/naics/?input=517312&year=2017&details=517312>.

³⁵³ See 13 CFR § 121.201, NAICS Code 517312 (as of 10/1/22, NAICS Code 517112).

³⁵⁴ See U.S. Census Bureau, 2017 Economic Census of the United States, Employment Size of Firms for the U.S.: 2017, Table ID: EC1700SIZEEMPFIEM, NAICS Code 517312, <https://data.census.gov/cedsci/table?y=2017&n=517312&tid=ECNSIZE2017.EC1700SIZEEMPFIEM&hidePrevious=false>. At this time, the 2022 Economic Census data is not available.

³⁵⁵ *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard.

³⁵⁶ Based on a FCC Universal Licensing System search on December 14, 2021, <https://wireless2.fcc.gov/UlsApp/UlsSearch/searchAdvanced.jsp>. Search parameters: Service Group = All, "Match only the following radio service(s)", Radio Service = WP, WU; Authorization Type = All; Status = Active. We note that the number of active licenses does not equate to the number of licensees. A licensee can have one or more licenses.

preceding three years.³⁵⁷ Pursuant to these definitions, three winning bidders claiming very small business status won five of the twelve available licenses.³⁵⁸

106. In frequency bands where licenses were subject to auction, the Commission notes that as a general matter, the number of winning bidders that qualify as small businesses at the close of an auction does not necessarily represent the number of small businesses currently in service. Further, the Commission does not generally track subsequent business size unless, in the context of assignments or transfers, unjust enrichment issues are implicated. Additionally, since the Commission does not collect data on the number of employees for licensees providing these services, at this time we are not able to estimate the number of licensees with active licenses that would qualify as small under the SBA's small business size standard.

107. *Wireless Broadband Internet Access Service Providers (Wireless ISPs or WISPs)*.³⁵⁹ Providers of wireless broadband Internet access service include fixed and mobile wireless providers. The Commission defines a WISP as "[a] company that provides end-users with wireless access to the Internet[.]"³⁶⁰ Wireless service that terminates at an end user location or mobile device and enables the end user to receive information from and/or send information to the Internet at information transfer rates exceeding 200 kilobits per second (kbps) in at least one direction is classified as a broadband connection under the Commission's rules.³⁶¹ Neither the SBA nor the Commission have developed a size standard specifically applicable to Wireless Broadband Internet Access Service Providers. The closest applicable industry with an SBA small business size standard is Wireless Telecommunications Carriers (except Satellite).³⁶² The SBA size standard for this industry classifies a business as small if it has 1,500 or fewer employees.³⁶³ U.S. Census Bureau data for 2017 show that there were 2,893 firms in this industry that operated for the entire year.³⁶⁴ Of that number, 2,837 firms employed fewer than 250 employees.³⁶⁵

108. Additionally, according to Commission data on Internet access services as of June 30, 2019, nationwide there were approximately 1,237 fixed wireless and 70 mobile wireless providers of connections over 200 kbps in at least one direction.³⁶⁶ The Commission does not collect data on the number of employees for providers of these services, therefore, at this time we are not able to estimate the

³⁵⁷ See 47 CFR § 27.502(a).

³⁵⁸ See *Auction of 700 MHz Band Licenses Closes; Winning Bidders Announced for Auction 73*, Public Notice, DA-08-595, Attachment A, Report No. AUC-08-73-I (Auction 73) (March 20, 2008). The results for Upper 700 MHz Band C Block can be found on pp. 62-63.

³⁵⁹ Formerly included in the scope of the Internet Service Providers (Broadband), Wireless Telecommunications Carriers (except Satellite) and All Other Telecommunications small entity industry descriptions.

³⁶⁰ Federal Communications Commission, *Internet Access Services: Status as of June 30, 2019* at 27, Fig. 30 (*IAS Status 2019*), Industry Analysis Division, Office of Economics & Analytics (March 2022). The report can be accessed at <https://www.fcc.gov/economics-analytics/industry-analysis-division/iad-data-statistical-reports>.

³⁶¹ See 47 CFR § 1.7001(a)(1).

³⁶² See U.S. Census Bureau, *2017 NAICS Definition*, "517312 Wireless Telecommunications Carriers (except Satellite)," <https://www.census.gov/naics/?input=517312&year=2017&details=517312>.

³⁶³ See 13 CFR § 121.201, NAICS Code 517312 (as of 10/1/22, NAICS Code 517112).

³⁶⁴ See U.S. Census Bureau, *2017 Economic Census of the United States, Employment Size of Firms for the U.S.: 2017*, Table ID: EC1700SIZEEMPFIIRM, NAICS Code 517312, <https://data.census.gov/cedsci/table?y=2017&n=517312&tid=ECNSIZE2017.EC1700SIZEEMPFIIRM&hidePrevious=false>. At this time, the 2022 Economic Census data is not available.

³⁶⁵ *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard.

³⁶⁶ See *IAS Status 2019*, Fig. 30.

number of providers that would qualify as small under the SBA's small business size standard. However, based on data in the Commission's 2022 *Communications Marketplace Report* on the small number of large mobile wireless nationwide and regional facilities-based providers, the dozens of small regional facilities-based providers and the number of wireless mobile virtual network providers in general,³⁶⁷ as well as on terrestrial fixed wireless broadband providers in general,³⁶⁸ we believe that the majority of wireless Internet access service providers can be considered small entities.

109. *Wireless Telecommunications Carriers (except Satellite)*. This industry comprises establishments engaged in operating and maintaining switching and transmission facilities to provide communications via the airwaves.³⁶⁹ Establishments in this industry have spectrum licenses and provide services using that spectrum, such as cellular services, paging services, wireless Internet access, and wireless video services.³⁷⁰ The SBA size standard for this industry classifies a business as small if it has 1,500 or fewer employees.³⁷¹ U.S. Census Bureau data for 2017 show that there were 2,893 firms in this industry that operated for the entire year.³⁷² Of that number, 2,837 firms employed fewer than 250 employees.³⁷³ Additionally, based on Commission data in the 2022 Universal Service Monitoring Report, as of December 31, 2021, there were 594 providers that reported they were engaged in the provision of wireless services.³⁷⁴ Of these providers, the Commission estimates that 511 providers have 1,500 or fewer employees.³⁷⁵ Consequently, using the SBA's small business size standard, most of these providers can be considered small entities.

D. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements for Small Entities

110. The RFA directs agencies to describe the economic impact proposed rules on small entities, as well as projected reporting, recordkeeping and other compliance requirements, including an estimate of the classes of small entities which will be subject to the requirement and the type of professional skills necessary for preparation of the report or record.³⁷⁶

111. The *NPRM* proposes to amend existing rules to better reflect current policies and practice and to clarify and harmonize certain rule provisions. We estimate that the rule changes discussed in this *NPRM*, if adopted, would result in a reduction in the time and expense associated with filing Section 310(b)(4) petitions for declaratory ruling as well as no significant material changes to reporting,

³⁶⁷ See *Communications Marketplace Report*, GN Docket No. 22-203, 2022 WL 18110553 at 27, paras. 64-68. (2022) (2022 *Communications Marketplace Report*).

³⁶⁸ *Id.* at 8, para. 22.

³⁶⁹ See U.S. Census Bureau, 2017 NAICS Definition, "517312 Wireless Telecommunications Carriers (except Satellite)," <https://www.census.gov/naics/?input=517312&year=2017&details=517312>.

³⁷⁰ *Id.*

³⁷¹ See 13 CFR § 121.201, NAICS Code 517312 (as of 10/1/22, NAICS Code 517112).

³⁷² See U.S. Census Bureau, 2017 *Economic Census of the United States, Employment Size of Firms for the U.S.: 2017*, Table ID: EC1700SIZEEMPFIIRM, NAICS Code 517312, <https://data.census.gov/cedsci/table?y=2017&n=517312&tid=ECNSIZE2017.EC1700SIZEEMPFIIRM&hidePreview=false>. At this time, the 2022 Economic Census data is not available.

³⁷³ *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard.

³⁷⁴ Federal-State Joint Board on Universal Service, Universal Service Monitoring Report at 26, Table 1.12 (2022), <https://docs.fcc.gov/public/attachments/DOC-391070A1.pdf>.

³⁷⁵ *Id.*

³⁷⁶ 5 U.S.C. § 603(b)(4).

recordkeeping, or compliance obligations for small and other Commission licensees. For example, the *NPRM* proposes to clarify and streamline the Section 310 foreign ownership rules as applied to both broadcast and common carrier licensees by defining the terms “controlling U.S. parent” to make our rules consistent with our longstanding practices without disturbing or contradicting the substantive requirements in Section 310(b)(4). Other proposals would, if adopted, clarify the requirements for trusts and trustees and the treatment of deemed voting interests for specific and advance approval requests to avoid duplicative filings and reduce the burdens imposed on petitioners’ subjection to Section 310(b). This *NPRM* also seeks comment on the expected benefits of the proposals, whether the proposals offer sufficient predictability to Commission licensees, whether the proposals offer licensees flexibility in structuring their ownership chains, and whether the proposals would result in more streamlined Commission processes.

112. In addition, for all services subject to Section 310(b), the *NPRM* proposes to add text in our rules to state the existing requirement that remedial petitions for declaratory ruling contain all of the information required for an initial petition for declaratory ruling and not just the information related to the newly discovered non-compliant interest(s). The proposed rule amendments may result in a modest paperwork obligation for small businesses and other entities that are not already aware of the existing requirement. The minimal burdens would be offset by the benefit of promoting a more efficient processing, avoiding confusion, and promoting regulatory consistency. In addition, the *NPRM* proposes to clarify that, with respect to petitions for declaratory ruling that request approval for certain foreign investors to increase their equity and/or voting interests in the U.S. parent for all services subject to Section 310(b), there is no Commission requirement that such foreign investor must reside within the U.S., which would have no regulatory burden on small entities. Although U.S. residency status has not previously been required or expected under the foreign ownership rules, this clarifies that a foreign investor’s lack of a U.S. residence is not a factor in the Commission’s assessment of whether a petition for declaratory ruling is in the public interest. We believe that this rule clarification will not have an impact on a small business entity.

113. The *NPRM* seeks comment on extending the Commission’s methodology for determining foreign ownership levels and the remedial process for inadvertent violations of the foreign ownership benchmarks to privately held entities for all services subject to Section 310(b), which, if adopted, we believe would ease the regulatory burden on small entities. The *NPRM* also seeks comment on codifying the requirement that any amendments to a petition for declaratory ruling must be filed as a complete restatement of the initial petition, which may result in a modest paperwork obligation for small and other entities.

114. With respect to broadcast licensees only, the *NPRM* seeks comment on how the Commission, including the Media Bureau pursuant to delegated authority, should process applications, or certain types of applications, filed by a broadcast licensee during the remedial process set forth in Section 1.5004(f) of the Commission’s rules, which would promote regulatory certainty and consistency for small and other entities. Similarly, the *NPRM* seeks comment on changes to the Commission’s foreign ownership rules that would assess the foreign ownership levels of NCE stations, including full-service FM radio and television stations, and LPFM stations, by considering their unique structures. Similarly, the Commission’s current rules do not address various procedural issues that might arise in the context of a filing window for noncommercial authorizations in the context of companies with foreign ownership that are eligible to apply for new construction permits. Considering how to best incorporate the structures of these stations and revising these processes would promote regulatory certainty for small entities and overall transparency of the process.

115. The Commission believes that the streamlining proposals and other options on which the Commission seeks comment in this *NPRM* will reduce costs and burdens currently imposed on licensees, including those licensees that are small entities, and accelerate the foreign ownership review process, while continuing to ensure that the Commission has the information needed to carry out our statutory duties. We believe that these revisions will make the rules more transparent and accessible to small

entities and thus reduce the need for professional services such as expert engineering or legal assistance with compliance and reporting requirements. We anticipate the information we receive in comments, including where requested, information on costs and benefits, will help the Commission identify and evaluate relevant compliance issues impacting small entities, including costs to hire professionals to comply with these rules, and other burdens that may result from the proposed revisions in the *NPRM*.

E. Steps Taken to Minimize the Significant Economic Impact on Small Entities and Significant Alternatives Considered

116. The RFA directs agencies to provide a description of any significant alternatives to the proposed rules that would accomplish the stated objectives of applicable statutes, and minimize any significant economic impact on small entities.³⁷⁷ The discussion is required to include alternatives such as: “(1) the establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance and reporting requirements under the rule for such small entities; (3) the use of performance rather than design standards; and (4) an exemption from coverage of the rule, or any part thereof, for such small entities.”³⁷⁸

117. In the *NPRM*, the Commission considered alternatives such as amending rules to provide a clearer path for foreign investment in licensees by aligning Commission procedures with developments in the market, while continuing to protect important interests related to national security, law enforcement, foreign policy, trade policy, and other public policy goals, many of which may minimize the impact of the regulations on small entities.

118. The Commission seeks comment on whether any of the burdens associated the filing, recordkeeping and reporting requirements described in the *NPRM* can be minimized for small entities. The Commission is open to considering alternatives to the rules proposed in the *NPRM*, including but not limited to alternatives that will minimize significant economic burdens on small and other licensee entities.

F. Federal Rules that May Duplicate, Overlap, or Conflict with the Proposed Rules

119. None.

³⁷⁷ *Id.* § 603(c).

³⁷⁸ *Id.* § 603(c)(1) - (4).