

DEBEVOISE & PLIMPTON

875 THIRD AVENUE
NEW YORK, NY 10022
(212) 909-6000

CABLE: DEBSTEVE NEW YORK
TELEX: 234400 DEBS UR
TELECOPIER: (212) 909-6836

555 13TH STREET, N.W.
WASHINGTON, DC 20004
TELEPHONE: (202) 383-8000
TELEX: 405586 DPDC WJUD
TELECOPIER: (202) 383-8118

333 SOUTH GRAND AVENUE
LOS ANGELES, CA 90071
TELEPHONE: (213) 680-8000
TELEX: 401527 DPLA
TELECOPIER: (213) 680-8100

12 AVENUE D'EYLAU
75116 PARIS
TELEPHONE: (33-1) 47 04 46 04
TELEX: 648141F DPPAR
TELECOPIER: (33-1) 47 55 15 95

1 CREED COURT, 5 LUDGATE HILL
LONDON EC4M 7AA
TELEPHONE: (44-71) 329-0779
TELEX: 88 4569
TELECOPIER: (44-71) 329-0860

ELJ WHITNEY DEBEVOISE
GEORGEN LINDSAY
ROSWELL B. PERKINS
ROBERT B. VON MEHREN
MICHAEL HARPER GOFF
WILLIAM B. MATTESON
BARRY R. BRYAN
RICHARD D. KAHN
ASA ROUNTREE
GEORGE B. ADAMS
ROBERT J. GENESSE
ANDREW C. HARTZELL, JR.
PHILIP S. WINTERER
LOUIS BEGLAY
GUY PASCHAL
DAVID V. SMALLER
CECIL WRAY, JR.
JAMES C. GOODALE
JUDAH BEST
JOHN F. JOHNSTON 2ND
ROBERT L. KING
BEVIS LONGSTRETH
MEREDITH M. BROWN
BRUCE D. HAIMS
STANDISH FORDE MEDINA, JR.
EDWARD A. PERELL
THEODORE A. KURZ
HUGH ROWLAND, JR.
ROBERT J. GIBBONS
BARBARA PAUL ROBINSON
JONATHAN A. SMALL
VINCENT M. SMITH
PAUL H. WILSON, JR.

RICHARD GOODYEAR
WOLCOTT B. DUNHAM, JR.
JEFFREY S. WOOD
STEVEN M. ALDEN
JOHN H. HALL
JOHN G. KOELTL
RALPH C. FERRARA
JAMES A. KIERNAN III
ROBERT R. BRUCE
HANS BERTRAM-NOTHNAGEL
MARTIN FREDERIC EVANS
STEVEN R. GROSS
ROGER E. PODESTA
MARIO L. BAEZA
WOODROW W. CAMPBELL, JR.
MARCUS H. STROCK
RALPH R. ARDITI
DAVID A. DUFF
LOREN KIEVE
BRUCE G. MERRITT
JONATHAN R. BELL
ALAN H. PALEY
ROBERT J. CUBITTO
ERIC D. ROITER
ROBERT N. SHWARTZ
ROBERT J. STAFFARONI
DARIUS TENCZA
JOHN M. ALLEN, JR.
FRANCI J. BLASSBERG
JOHN B. BRADY, JR.
STEVEN KLUGMAN
RICHARD D. BOHM
PETER L. BOROWITZ

* NOT ADMITTED IN NEW YORK

ORIGINAL FILE *Orig*

BARRY MILLS
DEBORAH F. STILES
ANDREW N. BERG
MARCIA L. MAC HARG
STEVEN OSTNER
ROBERT F. QUAINANCE, JR.
MICHAEL E. WILES
DANIEL M. ABUHOFF
BRUCE P. KELLER
JOHN S. KIERNAN
DAVID W. RIVKIN
BURT ROSEN
CHRISTOPHER SMEALL
WILLIAM B. BEEKMAN
MICHAEL W. BLAIR
JEFFREY P. CUNARD
JOHN T. CURRY, III
SETH L. ROSEN
EDWIN G. SCHALLERT

FRANCIS T.P. PLIMPTON
1900-1983

STANLEY R. RESOR
JOSEPH BARBASH
HAROLD H. HEALY, JR.
STEPHEN BENJAMIN
JAMES B. WELLES, JR.
OF COUNSEL

MM DKt. 92-51

June 1, 1990

RECEIVED

JUN 1 1990

Federal Communications Commission
Office of the Secretary

Office of the Secretary
Federal Communications Commission
1919 M Street, N.W.
Washington, D.C. 20554

**EQUITABLE CAPITAL MANAGEMENT CORPORATION:
Request for a Declaratory Ruling
Concerning Sections 310(b)(3) and (4) of
the Communications Act of 1934**

Dear Sirs:

On behalf of Equitable Capital Management Corporation, in its capacity as managing general partner of each of Equitable Capital Partners, L.P., Equitable Capital Partners (Retirement Fund), L.P., Equitable Capital Partners II, L.P. and Equitable Capital Partners (Retirement Fund) II, L.P. (the "Applicants"), we submit for filing with the Federal Communications Commission five copies (one of which is manually signed) of Applicants' Request for a Declaratory Ruling Concerning Sections 310(b)(3) and (4) of the Communications Act of 1934 ("Request for Declaratory Ruling").

Applicants request that Exhibit A to the Request for Declaratory Ruling be kept confidential and not be

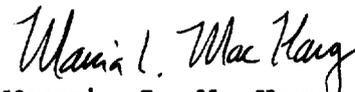
June 1, 1990

made available to the public. Exhibit A is a nonpublic communication from the staff of the Division of Investment Management of the Securities and Exchange Commission addressed to the undersigned in response to a request by certain Applicants for exemptive relief from provisions of the Investment Company Act of 1940, as amended. This document is not otherwise available to the public. Certain portions of Exhibit A, not relevant to the Request for Declaratory Ruling submitted hereby, have been redacted. Accordingly, copies of Exhibit A have been placed in five separate envelopes clearly marked "Not for Public Inspection."

Please telephone the undersigned at (202) 383-8058 or Jeffrey P. Cunard at (202) 383-8043 if we may be of assistance in answering any questions that may arise in connection with your review of the enclosed documents.

Please acknowledge receipt of this letter and the enclosed documents by stamping the enclosed copy of this letter and returning it to the messenger who has been instructed to wait.

Very truly yours,


Marcia L. MacHarg

cc: Robert L. Pettit
General Counsel

Roy J. Stewart
Chief, Mass Media Bureau

James J. Brown
Assistant Chief, Mass Media Bureau

Stephen F. Sewell
Assistant Chief, Mass Media Bureau

MM Dkt. 92-51

RECEIVED

JUN 1 1990

Federal Communications Commission
Office of the Secretary

FEDERAL COMMUNICATIONS COMMISSION

Washington, D.C.

MMB File No:
900924A

Request for a Declaratory Ruling
Concerning Sections 310(b)(3) and (4) of
the Communications Act of 1934

EQUITABLE CAPITAL MANAGEMENT CORPORATION

1285 Avenue of the Americas
New York, New York 10019

Summary

Equitable Capital Management Corporation ("ECMC"), in its capacity as managing general partner of four substantially identical public limited partnerships (the "Partnerships") designed to provide individuals with the ability to invest primarily in subordinated debt and/or preferred stock and related equity securities issued in conjunction with the "mezzanine financing" of certain privately-structured, friendly leveraged transactions, seeks a declaratory ruling from the Federal Communications Commission (the "Commission") holding that the limited partners of each such Partnership are adequately insulated from involvement in the management or operation of such Partnership's media investments so that the "multiplier" can be used in order to determine compliance by each Partnership with the alien ownership limitations contained in Section 310(b) of the Communications Act of 1934, as amended (the "Communications Act"). Without such a ruling, ECMC believes that the Partnerships, which are designed to coinvest with each other, generally will be unable to participate in transactions involving media companies.

The Partnerships are regulated under the Investment Company Act of 1940, as amended. In addition, as publicly offered partnerships, they are subject to the

securities laws of each state in which interests in the Partnerships are offered or sold. Under both federal and state regulatory systems, the limited partners of the Partnerships must have certain voting rights pertaining to the election and removal of ECMC, which serves as the managing general partner of, and investment adviser to, each Partnership. ECMC is aware that the Commission previously has stated that the absence of such voting rights, in conjunction with other "insulating" provisions, supports a presumption that limited partners are "insulated" from the management or operation of a partnership's media activities so that the partnership can use the "multiplier" to calculate its alien ownership.* However, the Commission also has stated its policy of allowing partnerships substantial flexibility to determine how to insulate their limited partners.**

* Reexamination of the Commission's Rules and Policies Regarding the Attribution of Ownership Interests in Broadcast, Cable Television and Newspaper Entities, 97 F.C.C.2d 997, 1023 (1984) [hereinafter the "Attribution Order"], on reconsideration, 58 Rad. Reg. 2d (P&F) 604, 618 (1985) [hereinafter the "Attribution Reconsideration Order"], on further reconsideration, 61 Rad. Reg. 2d (P&F) 739 (1987) [hereinafter the "Attribution Further Reconsideration Order"].

** E.g., Attribution Reconsideration Order, supra, 58 Rad. Reg. 2d (P&F) at 619.

As described in this Petition, ECMC believes that the requested ruling is warranted in view of the management and operational structure of the Partnerships, the extremely small actual percentage of alien limited partners, the restrictions imposed on the involvement of limited partners in any of the Partnerships' media activities (consistent with the Commission's insulation policies), and the manner in which the Partnerships make and manage their investments.

ECMC submits that granting the requested ruling will serve the public interest because the Partnerships will be able to provide important sources of capital for media companies on the same basis as investors organized in corporate form. ECMC further submits that the ruling requested will not contravene the policy concerns underlying Section 310(b) of the Communications Act and the Commission's policies thereunder because there is no risk of alien control over any U.S. media outlets.

Table of Contents

	<u>Page</u>
I. Introduction	1
II. Background	7
A. The Partnerships.	7
B. Management Arrangements	13
C. Investment Advisory Arrangements.	19
III. Relevant Securities Law Requirements	19
A. The 1940 Act.	20
B. State "Blue Sky" Requirements	28
IV. The Structure and Organization of the Partnerships Are Consistent With Applicable FCC Policies.	30
A. The Requested Ruling Would Recognize the Restricted Role of the Limited Partners.	31
B. The Requested Ruling Would Accommodate Other Important Regulatory Policies.	37
V. The Requested Ruling Should Apply to All Four Partnerships	39
VI. Conclusion	40

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C.

In the Matter of)	
)	
EQUITABLE CAPITAL MANAGEMENT)	
CORPORATION,)	
)	
As Managing General Partner of)	Request for a
)	Declaratory Ruling
Equitable Capital Partners II, L.P.,)	Concerning Sections
Equitable Capital Partners)	310(b)(3) and (4) of
(Retirement Fund) II, L.P.,)	the Communications
Equitable Capital Partners, L.P.,)	Act of 1934
and Equitable Capital Partners)	
(Retirement Fund), L.P.)	

REQUEST FOR DECLARATORY RULING

I. Introduction

Equitable Capital Management Corporation ("ECMC"), in its capacity as managing general partner of Equitable Capital Partners, L.P., Equitable Capital Partners (Retirement Fund), L.P. (together, the "Equitable Capital Partners I Partnerships"), Equitable Capital Partners II, L.P. and Equitable Capital Partners (Retirement Fund) II, L.P. (together, the "Equitable Capital Partners II Partnerships," and collectively with the Equitable Capital Partners I Partnerships, the "Partnerships"), hereby seeks a declaratory ruling, pursuant to Section 1.2 of the rules and regulations of the Federal Communications Commission (the "Commission"), that the

limited partners of each such Partnership are adequately insulated from the management and operations of the media investments of each such Partnership so that the "multiplier" can be used to determine compliance by such Partnership with the alien ownership limits in Section 310(b) of the Communications Act of 1934, as amended (the "Communications Act").

When an alien has a non-controlling stock interest in a corporation that, in turn has a non-controlling ownership interest in a media outlet such as a broadcast station, the alien stockholder is permitted to use a "multiplier" to calculate its percentage of ownership of the media outlet for purposes of determining compliance with Section 310(b)(3) of the Communications Act.¹ By contrast, where an alien has an interest in a media outlet through an intervening partnership, the Commission's published policy does not permit a similarly automatic use of the multiplier. The multiplier may be used in that case only if the alien is a limited partner and it can be demonstrated that such alien limited partner is adequately insulated from material involvement in the management or operation of the media activities of the partnership --

1. Attribution Order, supra, 97 F.C.C.2d at 1018-19.

regardless of the size of the limited partnership interest held by the alien.²

This policy on the use of the multiplier in connection with certain alien limited partners apparently was adopted in response to concerns that even a limited partner, regardless of the size of its partnership interest, could, under certain circumstances, exercise control over the management or operation of a broadcast facility in which the partnership invests. Under its policy, the Commission has said that if limited partnerships include certain specified insulating provisions in their partnership agreements, such provisions will give rise to a presumption that the limited partners are properly insulated. Among other things, these insulating provisions limit the rights of limited partners to elect or remove the general partners, who control the management and operation of the partnership.³

-
2. Request for a Declaratory Ruling Concerning the Citizenship Requirements of Sections 310(b)(3) and (4) of the Communications Act of 1934, as amended, 58 Rad. Reg. 2d (P&F) 531 (1985) [hereinafter the "Wilner & Scheiner Ruling"], on reconsideration, 1 F.C.C. Rcd. 12 (1986) [hereinafter the "TA Associates Ruling"].
 3. The insulating provisions also would prohibit limited partners from being materially involved in a partnership's media business or enterprises through employment, independent contractor, or service
(continued...)

As described below in Part III, the Partnerships are regulated as "business development companies" under the Investment Company Act of 1940, as amended (the "1940 Act"). It has been the position of the staff of the United States Securities and Exchange Commission (the "SEC") that, as a condition to the granting of a type of exemptive order necessary for the Partnerships to operate⁴, a limited partnership regulated as a "business development company" must undertake that the limited partners will be afforded all of the voting rights required by the 1940 Act. The SEC staff has recently stated in a letter to counsel for the Partnerships that it is attempting to "standardize the conditions to which [the staff] believes a business development company should agree" in order to receive such an exemptive order. A copy of the letter is attached as Exhibit A. The standard conditions specifically include a statement that the

3. (...continued)

provider relationships, or as a result of communications with a general partner. Attribution Reconsideration Order, supra 58 Rad. Reg. 2d (P&F) at 618-20, further modified in part, 61 Rad. Reg. 2d (P&F) at 744-47.

4. As discussed below, a Partnership cannot commence a public offering without receiving an exemptive order from the SEC permitting certain natural persons to serve as independent general partners of the Partnership.

"Limited Partners will be afforded all of the voting rights required by the [1940] Act."

Moreover, the public offerings of units of limited partnership interest in the Partnerships (the "Units") are subject to the regulations of the state securities (or "blue sky") commissions governing the offer and sale of such securities; these regulations generally require that limited partners have rights to elect or remove general partners. As a result of these federal and state regulatory requirements, the limited partnership agreements of the Partnerships cannot incorporate the specific restrictions on voting rights suggested by the Commission in its insulation policy.

For the reasons set forth below, ECMC submits that the limited partners of the Partnerships are adequately insulated from the investments of the Partnerships (particularly any media investments), and that, accordingly, the "multiplier" should be applicable to the limited partnership interests for purposes of determining compliance with Section 310(b) of the Communications Act.⁵ The requested ruling is consistent with the

5. To the extent the Commission finds that the limited partners are insulated for purposes of the alien ownership rules, the limited partners also would not have attributable interests, for purposes of the
(continued...)

Commission's policy of exercising its discretion and flexibility in applying the alien ownership limitations of the Communications Act to particular ownership arrangements. On numerous occasions, the Commission has demonstrated its desire to avoid applying the statutory ownership limits in a manner that would result in undue hardship or injustice, particularly in circumstances where the ownership arrangement is subject to the discretionary limits set forth in Section 310(b)(4).⁶ The Commission's Mass Media Bureau has issued several orders that implement this flexible

5. (...continued)

multiple- and cross-ownership rules, in media outlets in which the Partnerships acquire attributable interests. The insulation standards for alien ownership and attribution are identical. Wilner & Scheiner Ruling, supra, 53 Rad. Reg. 2d (P&F) at 538-40.

6. ECMC expects that, based on its investing experience, most of the Partnerships' investments in media companies would be made at the holding company level and, therefore, would be subject to the limits of Section 310(b)(4). It is expected that the Partnerships themselves would not acquire control, directly or indirectly, of any Commission licensees. If the Partnerships were to acquire control of a licensee, however, ECMC would ensure that, absent grant of a waiver from the Commission, aggregate alien ownership of the Partnerships remained below 25%, to ensure compliance with the limits of Section 310(b)(4). The Commission has treated non-insulated limited partners of partnerships that control Commission licensees as if they were stockholders of a corporation, applying the 25% limit to their aggregate limited partnership interests.

approach.⁷ Most recently, for example, the Commission decided under Section 310(b)(4) to permit aliens to hold a 25%, non-insulated limited partnership interest in a limited partnership acquiring control of a Commission licensee and to be involved in the operation, maintenance, and use of the licensee's microwave facilities pursuant to contracts between the aliens and the licensee.⁸

II. Background.

A. The Partnerships. Each Partnership is a limited partnership organized under Delaware law. Each Equitable Capital Partners I Partnership is governed by a separate Amended and Restated Agreement of Limited

-
7. E.g., Millicom Inc., 4 F.C.C. Rcd. 4846 (1989) (permitting one-third of the directors of the parent company of common carrier and private radio licensees to be aliens); LCI Communications, Inc., Mimeo No. 3491 (released March 31, 1986) (permitting aliens to hold 28% of the outstanding stock and one-third of the directorships); A Plus Communications of Puerto Rico, Inc., File No. 22913-DC-TC-(2)-82 (released May 11, 1982) (Memorandum Opinion and Order by the Common Carrier Bureau) (permitting more than 20%, but less than 50%, of the stock of a public mobile radio licensee to be held by aliens); GRC Cablevision, Inc., 47 F.C.C.2d 467 (1974) (permitting 60% of the stock of the parent of a CARS licensee to be held by aliens).
8. In re Licensee, Limited Partnership, FCC No. DA 90-405 (released March 14, 1990) (Decision of the Domestic Facilities Division of the Common Carrier Bureau).

Partnership, a copy of which is attached as Exhibit B. The Equitable Capital Partners II Partnerships will be governed by substantially identical limited partnership agreements, a form of which is contained in the prospectus for such offering, which is attached as Exhibit C. (A limited partnership agreement is sometimes referred to herein as a "Partnership Agreement.")

The Equitable Capital Partners I Partnerships were offered to the public pursuant to a joint registration statement on Form N-2 under the Securities Act of 1933, as amended. The prospectus for that offering is attached as Exhibit D. Such registration statement was declared effective by the SEC on July 15, 1988. The Equitable Capital Partners II Partnerships filed a joint registration statement on Form N-2 with the SEC on November 13, 1989, which was amended by Pre-Effective Amendment No. 1, filed on March 2, 1990. The prospectus included in such registration statement, as so amended, is attached as Exhibit C. The Equitable Capital Partners II Partnerships are substantially identical to the Equitable Capital Partners I Partnerships.

Units of the Equitable Capital Partners I Partnerships were offered to the public by Merrill Lynch, Pierce, Fenner & Smith, Inc. ("MLPF&S") in a best efforts

underwriting. It is expected that Units of the Equitable Capital Partners II Partnerships will also be offered to the public by MLPF&S in a best efforts underwriting.

The initial public offering price of Units in each Partnership is \$1,000 per Unit. The closing of the offering of the Equitable Capital Partners I Partnerships was held on October 13, 1988. At the closing, 44,592 limited partners were admitted: 18,288 to the non-retirement partnership and 26,304 to the retirement partnership. Approximately 2.24% of the aggregate Units were purchased by aliens. An aggregate of \$504.7 million in gross proceeds (net of discounts) was raised in such offering.

The Equitable Capital Partners II Partnerships, the closing of which is expected to occur during the third quarter of 1990, are expected to be of a similar size. Based on its experience and that of MLPF&S, ECMC believes that the number of aliens who might be interested in purchasing Units of the Equitable Capital Partners II Partnerships will be similar, in proportion, to the number who invested in the Equitable Capital Partners I Partnerships. The subscription agreements for the Equitable Capital Partners II Partnerships attached at pages B-1 through B-19 of Exhibit C require information

about the alien/non-alien status of each purchaser of Units. Importantly, as described below, the Partnership Agreements of the Equitable Capital Partners II Partnerships (although not those of the earlier Equitable Capital Partners I Partnerships) contain specific restrictions on the ability of additional aliens to become limited partners and on the ability of any limited partner to participate in the management or operations of a Partnership or of its portfolio companies engaged in media businesses. These restrictions are fully consistent with the approach articulated by the Commission in its insulation policy. Moreover, ECMC, in its role as managing general partner of each of the Partnerships, including the Equitable Capital Partners I Partnerships, has authority under the relevant Partnership Agreements to restrict the future admission of aliens as limited partners and to prevent any limited partner from having any involvement in the management or operation of any media business in which the Partnership invests.

Each Partnership has been designed to provide individuals with the ability to invest in privately-structured, friendly leveraged acquisitions, leveraged recapitalizations, and other leveraged financings. The Partnerships will not provide financing for hostile tender

offers or proxy contests. The investment objective of each Partnership is to provide current income and capital appreciation by investing primarily in such leveraged transactions. The non-retirement Partnerships and the retirement Partnerships have the same investment objective, policies, and restrictions, except that the non-retirement Partnerships can borrow to provide a source of funds for the purchase or refinancing of portfolio investments of such non-retirement Partnership; the retirement Partnerships cannot borrow.

Each Partnership intends to achieve its investment objective by investing primarily in subordinated debt and/or preferred stock and related equity securities issued in conjunction with the "mezzanine financing" of private, friendly leveraged transactions. ECMC believes that these investments, which generally are not available to individuals, provide an attractive investment opportunity when pooled in an investment vehicle that offers professional management. Each Partnership will terminate approximately ten years from the final closing of the sale of Units in such Partnership.

Each Partnership has elected to be regulated as

a "business development company"⁹ under the 1940 Act, pursuant to the provisions added to the 1940 Act by the Small Business Investment Incentive Act of 1980.¹⁰ The Partnerships have been organized as limited partnerships, rather than as corporations or business trusts, to take advantage of the pass-through tax treatment made available to partnerships under the Internal Revenue Code; the Partnerships may not be able to qualify for pass-through tax treatment under the provisions of the Internal Revenue Code applicable to other types of investment companies.¹¹

9. The term "business development company" is defined in Section 2(a)(48) of the 1940 Act, 15 U.S.C. § 80a-2(a)(48). A "business development company" is any issuer that is (a) a domestic company, (b) operated for the purpose of investing in securities of certain companies described in Section 55(a) of the 1940 Act, 15 U.S.C. § 80a-55(a), and (c) that makes available significant managerial assistance to such companies. The restrictions on investments by business development companies are designed to ensure that they provide capital and assistance to developing companies or financially troubled companies seeking to expand. Investments in most leveraged buyout transactions can be made by business development companies.

10. In the 1980 legislation, Congress addressed the "venture capital" activity of business development companies. The applicable legislative history states that business development companies can serve a valuable function in the capital formation process. See H.R. Rep. No. 1341, 96th Cong., 2d Sess., at 21-22 (1980).

11. See, infra, Part III.A.

B. Management Arrangements. The management arrangements of each Partnership are substantially identical. ECMC is the managing general partner of each Partnership. Each Partnership has or will have four "independent general partners" (defined to be individuals who are not "interested persons" of the Partnerships within the meaning given to that term in Section 2(a)(19) of the 1940 Act).¹² The same individuals serve as the independent general partners of each of the Equitable Capital Partners I Partnerships. Subject to SEC approval, it is expected that these same individuals also will serve as the independent general partners of each of the Equitable Capital Partners II Partnerships. All of the persons presently serving as independent general partners of the Equitable Capital Partners I Partnerships are natural persons who are U.S. citizens and the Applicants undertake that the independent general partners of the Equitable Capital Partners II Partnerships will also be natural persons who are U.S. citizens.¹³ This arrangement is consistent with the 1940 Act requirement that a

12. 15 U.S.C. § 80a-2(a)(19).

13. In addition, Section 3.1F of the Partnership Agreements of the Equitable Capital Partners II Partnerships prohibits an alien from serving as an independent general partner.

majority of the general partners of each Partnership not be "interested persons."¹⁴

ECMC, an indirect wholly-owned subsidiary of The Equitable Life Assurance Society of the United States ("Equitable Life"), is a Delaware corporation and a registered investment adviser under the Investment Advisers Act of 1940, as amended.¹⁵ Each Partnership considers its relationship with ECMC as managing general partner to be an investment advisory arrangement subject to the requirements of the 1940 Act. ECMC, as managing general partner, is responsible for purchasing investments for a Partnership that have been approved by the independent general partners, for providing administrative services to the Partnership, and for supervising the admission of additional limited partners.¹⁶

14. 15 U.S.C. § 80a-56(a).

15. Equitable Life is one of the nation's largest life insurance companies. It has no alien directors or executive officers, and no other officers with direct or indirect responsibility for investments of the Partnerships are aliens. Its policyholders, a small number of whom are aliens, have certain limited voting rights. In advising the Partnerships, ECMC will take into account the decision in Farragut Television Corp., 4 Rad. Reg. 2d (P&F) 350 (1965) (concerning the ownership of a mutual insurance company) in determining compliance with Section 310(b).

16. A more complete description of the management responsibilities of ECMC is set forth at pages 90-91 of the prospectus included in Exhibit C.

The independent general partners of a Partnership have overall responsibility for the management of the Partnership. ECMC, in its capacity as managing general partner, carries out the responsibilities summarized above. In addition, in its capacity as investment adviser, ECMC provides the services described below under the caption "Investment Advisory Arrangements." The independent general partners act by majority vote and perform the same functions as directors of a corporation. As independent general partners, they also assume the responsibilities and obligations imposed by the 1940 Act and the regulations thereunder on the non-interested directors of a business development company. Accordingly, in addition to their general fiduciary duties, the independent general partners have responsibility with respect to the management and underwriting arrangements of the Partnerships, custody arrangements with respect to portfolio securities, fidelity bonding and transactions with affiliates.

Each Partnership Agreement provides that any of the independent general partners may be removed either (i) for cause by the action of two-thirds of the remaining independent general partners or (ii) by a majority vote of the limited partners.¹⁷ Each Partnership Agreement also

17. Section 6.3.A of each Partnership Agreement.

provides that the managing general partner can be removed either (i) by a majority of the independent general partners or (ii) by a majority vote of the limited partners.¹⁸

The limited partners of a Partnership have no right to control such Partnership's business and are not permitted to take any part in the management or control of such business.¹⁹ Limited partners are accorded rights to vote on certain matters, including -- to the extent required by the 1940 Act -- the election or removal of general partners,²⁰ approval or termination of the investment management arrangements,²¹ and amendments of the Partnership Agreements to the extent that such amendments do not conflict with the 1940 Act (other than amendments to admit additional or substitute limited partners or to return or reduce the amount of capital contributions of the partners).²² It is the opinion of Debevoise & Plimpton, which is relying on the opinion of Richards, Layton & Finger acting as Delaware counsel for

18. Section 6.3.A of each Partnership Agreement.

19. Section 7.1 of each Partnership Agreement.

20. Section 7.3.A (1) of each Partnership Agreement.

21. Section 7.3.A (3) of each Partnership Agreement.

22. Section 7.3.A (5) of each Partnership Agreement.

the Partnerships, that the existence or exercise of these voting rights does not subject the limited partners to liability as general partners under The Revised Uniform Limited Partnership Act of the State of Delaware.

The Partnerships do not hold annual meetings. To the extent that the limited partners seek to exercise their voting rights, they must do so at a special meeting called by the independent general partners or by at least 10% in interest of the limited partners.

The Partnership Agreements of the Equitable Capital Partners II Partnerships contain additional limitations on the rights of limited partners, consistent with the FCC's insulation policy, intended to guard against the potential for any significant alien involvement in the Partnerships. In accordance with the insulation policy, no limited partner may provide services materially relating to a Partnership's media activities or serve as an employee of, or independent contractor or agent for, a Partnership if the functions involved relate to the Partnership's media enterprises.²³ These Partnership Agreements also expressly prohibit a limited partner from

23. Section 7.4 of the Partnership Agreement of each Equitable Capital Partners II Partnership.

becoming actively involved in a Partnership's media businesses.²⁴

Furthermore, such Partnership Agreements give ECMC the authority to prohibit transfers of Units and to prevent admissions of additional or substitute limited partners that would result in a violation of Section 310(b) of the Communications Act or any of the Commission's rules, regulations, or policies adopted thereunder.²⁵ In addition, ECMC has been given authority to require limited partners to take certain actions (including selling Units or ceasing outside relationships with media companies in which the Partnerships invest) to cure any violations of Section 310(b) or any of the Commission's rules, regulations, or policies adopted thereunder.²⁶ These Partnership Agreements also guard against the possibility that an alien could become, or take control of, a successor general partner.²⁷

24. Id.

25. See generally Article 8 of the Partnership Agreement of each Equitable Capital Partners II Partnership.

26. Section 7.4.B of the Partnership Agreement of each Equitable Capital Partners II Partnership.

27. See generally Article 6 of the Partnership Agreement of each Equitable Capital Partners II Partnership. At the time of their formation, the Equitable Capital Partners I Partnerships did not anticipate investing
(continued...)