

(3) Attribution of ownership interests in a DBS licensee or permittee that are held indirectly by any party through one or more intervening corporations will be determined by successive multiplication of the ownership percentages for each link in the vertical ownership chain and application of the relevant attribution benchmark to the resulting product, except that wherever the ownership percentage for any link in the chain exceeds 50%, it shall not be included for purposes of this multiplication. [For example, if A owns 10% of company X, which owns 60% of company Y, which owns 25% of "Licensee," then X's interest in "Licensee" would be 25% (the same as Y's interest since X's interest in Y exceeds 50%), and A's interest in "Licensee" would be 2.5% (0.10×0.25). Under the 5% attribution benchmark, X's interest in "Licensee" would be cognizable, while A's interest would not be cognizable.]

(4) Voting stock interests held in trust shall be attributed to any person who holds or shares the power to vote such stock, to any person who has the sole power to sell such stock, and to any person who has the right to revoke the trust at will or to replace the trustee at will. If the trustee has a familial, personal or extra-trust business relationship to the grantor or the beneficiary, the grantor or beneficiary, as appropriate, will be attributed with the stock interests held in trust. An otherwise qualified trust will be ineffective to insulate the grantor or beneficiary from attribution with the trust's assets unless all voting stock interests held by the grantor or beneficiary in the relevant DBS licensee or permittee are subject to said trust.

(5) Holders of non-voting stock shall not be attributed an interest in the issuing entity. Holders of debt and instruments such as warrants, convertible debentures, options or other non-voting interests with rights of conversion to voting interests shall not be attributed unless and until conversion is effected.

(6)(A) A limited partnership interest shall be attributed to a limited partner unless that partner is not materially involved, directly or indirectly, in the management or operation of the media-related activities of the partnership and the licensee or system so certifies.

(B) In order for a licensee or system to make the certification set forth in paragraph (6)(A) of this section, it must verify that the partnership agreement or certificate of limited partnership, with respect to the particular limited partner exempt from attribution, establishes that the exempt limited partner has no material involvement, directly or indirectly, in the management or operation of the media activities of the partnership. The criteria which would assume adequate insulation for purposes of this certification are described in the Memorandum Opinion and Order in MM Docket No. 83-46, FCC 85-252 (released June 24, 1985), as modified on reconsideration in the Memorandum Opinion and Order in MM Docket No. 83-46, FCC 86-410 (released November 28, 1986). Irrespective of the terms of the certificate of limited partnership or partnership agreement, however, no such certification shall be made if the individual or entity making the certification has actual knowledge of any material involvement of the limited partners in the management or operation of the media-related businesses of the partnership.

(7) Officers and directors of a direct broadcast satellite licensee or permittee are considered to have a cognizable interest in the entity with which they are so associated. If any such entity engages in businesses in addition to its primary business of direct broadcast satellite service, it may request the Commission to waive attribution for any officer or director whose duties and responsibilities are wholly unrelated to its primary business. The officers

and directors of a parent company of a direct broadcast satellite licensee or permittee, with an attributable interest in any such subsidiary entity, shall be deemed to have a cognizable interest in the subsidiary unless the duties and responsibilities of the officer or director involved are wholly unrelated to the direct broadcast satellite subsidiary, and a statement properly documenting this fact is submitted to the Commission. The officers and directors of a sister corporation of a direct broadcast satellite licensee or permittee shall not be attributed with ownership of the entity by virtue of such status.

(8) Discrete ownership interests will be aggregated in determining whether or not an interest is cognizable under this section. An individual or entity will be deemed to have a cognizable investment if:

(A) The sum of the interests held by or through "passive investors" is equal to or exceeds 10 percent; or

(B) The sum of the interests other than those held by or through "passive investors" is equal to or exceeds 5 percent; or

(C) The sum of the interests computed under paragraph (8)(A) of this section plus the sum of the interests computed under paragraph (8)(B) of this section is equal to or exceeds 10 percent.

(b) The word "control" as used herein is not limited to majority stock ownership, but includes actual working control in whatever manner exercised.

(c) In cases where record and beneficial ownership of voting stock is not identical (e.g., bank nominees holding stock as record owners for the benefit of mutual funds, brokerage houses holding stock in street names for the benefit of customers, investment advisors holding stock in their own names for the benefit of clients, and insurance companies holding stock), the party having the right to determine how the stock will be voted will be considered to own it for purposes of these rules.

APPENDIX D

Final Regulatory Flexibility Analysis

Pursuant to Section 603 of the Regulatory Flexibility Act, 5 U.S.C. § 603, an initial Regulatory Flexibility Analysis was incorporated in the Notice of Proposed Rulemaking in IB Docket No. 95-168/PP Docket No. 93-253. Written comments on the proposals in the Notice, including the Regulatory Flexibility Analysis, were requested.

A. Need and Purpose of Rules

This rulemaking proceeding modifies the licensing and service rules for the Direct Broadcast Satellite ("DBS") service. It also adopts rules for competitive bidding in the DBS service based on Section 309(j) of the Communications Act, 47 U.S.C. § 309(j), which authorizes the Commission to use auctions to select among mutually exclusive applications for authorizations under certain circumstances. Our objectives have been to promote efficiency and innovation in the licensing and use of the electromagnetic spectrum, to develop competitive and innovative communications systems, and to promote effective and adaptive regulations.

B. Issues Raised by the Public in Response to the Initial Analysis

No comments were received specifically in response to the Initial Regulatory Flexibility Analysis. We have, however, taken into account all issues raised by the public in response to the proposed rules. In certain instances, we have eliminated or modified rules in response to those comments.

C. Significant Alternatives Considered

We have attempted to balance all the commenters' concerns with our public interest mandate under the Communications Act in order to update the existing "interim" rules in the DBS service. We will continue to examine these rules in an effort to eliminate unnecessary regulations and to minimize significant economic impact on small businesses.