

equivalent without further notice or authorization.<sup>39</sup> NYNEX urges issuance of a blanket 214 for international routes where the service provider is not affiliated with a dominant carrier on the foreign end.<sup>40</sup> And the British Government recommends granting ISR authorizations without limiting the number of circuits.<sup>41</sup> These requests would reduce regulatory burdens while promoting full and fair competition. They should be adopted either here or, if necessary, in a separate proceeding.

VI. IN THE 310 CONTEXT, THE EMA POLICY SHOULD FOCUS ON CATEGORIES OF SIMILAR SERVICES.

In its opening comments, CWI explained that the ability of U.S. entities to invest in entities holding foreign spectrum licenses should be a relevant consideration under Section 310(b)(4). CWI accordingly urged the Commission to consider the rough equivalency of the ability of U.S. nationals to invest in similar categories of licenses in the home country of the entity seeking authority, and to recognize that the factors considered in the Section 214 public interest analysis cannot be imported wholesale to the Section 310 context. Finally, CWI noted that grant of its Petition for Declaratory Ruling regarding VSAT private line

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<sup>39</sup> AmericaTel at 8. This procedure is followed in the U.K.

<sup>40</sup> NYNEX at 9.

<sup>41</sup> British Government at 5.

service is warranted, given the unfettered ability of U.S. entities to obtain spectrum licenses in the U.K.<sup>42</sup>

Having reviewed the record, CWI continues to believe that EMA (applied as rough equivalency) can be an important element of the public interest determination under Section 310(b)(4). Unlike the Section 214 context, where application of the EMA policy is appropriate only where control is sought by a foreign carrier, EMA in the spectrum context should be considered for any investment above the statutory benchmark. This distinction is warranted because, in the 310 setting, EMA plainly offers additional flexibility to potential investors, if it is properly interpreted as a significant but not dispositive element of the public interest analysis.

CWI reiterates its recommendation that the Commission focus primarily on the ability of U.S. entities to invest in licensees providing similar categories of services in the home country of the entity seeking authorization. For example, if a foreign entity sought permission with respect to broadband PCS, the Commission should consider the availability of broadband CMRS licenses generally. A narrow, service-specific approach<sup>43</sup> would be insensitive to reasonable variations in infrastructure development and market structure, and a broader approach that examined the

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<sup>42</sup> CWI at 9-10. CWI limited its comments to common carrier radio license issues.

<sup>43</sup> See MCI at 27-28.

entire home market would be inadequately tailored to the issues presented in the Section 310(b) context.

VII. CONCLUSION

Adopting the rigid and overbroad approach championed by AT&T would entrench the market positions of incumbent U.S. providers of international facilities-based services, erect insurmountable barriers to entry, and directly harm U.S. consumers. In contrast, a flexible EMA policy that is consistent with the recommendations discussed above and in CWI's opening comments will advance the Commission's goals of promoting competition, preventing discrimination, and creating incentives for liberalization.

Respectfully submitted,

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