National Venture Capital Association

November 5, 2009

VIA ELECTRONIC FILING

Chairman Julius Genachowski
Federal Communications Commission
445 Twelfth Street, SW
Washington, DC 20554

Re: Fostering Innovation and Investment in the Wireless Communications Market

Reply Comments in GN Docket No. 09-157 and 09-52

Dear Chairman Genachowski:

The National Venture Capital Association ("NVCA") hereby submits these reply comments to the Commission's above-captioned *Notice of Inquiry* ("NOI")[1] seeking public input on ways to foster innovation and investment in the U.S. wireless industry. NCVA strongly supports the request made in the comments filed by Centennial Ventures, Columbia Capital, and M/C Venture Partners (the "Investors") that the FCC streamline and eliminate unnecessary regulatory burdens in its rules that apply to proposed foreign investments in companies that have wireless licenses.[2]

NVCA is comprised of more than 400 member firms, and is the premier trade association representing the U.S. venture capital industry. NVCA's mission is to foster greater understanding of the importance of venture capital to the U.S. economy, and support entrepreneurial activity and innovation.

NVCA strongly supports changes to the FCC's rules that would facilitate greater commitment of venture capital in the wireless sector while still addressing the Commission's public interest and statutory objectives. These steps would not only serve the national interest in fostering job growth, but also the Commission's priority commitment to nationwide deployment of broadband services and advanced wireless technologies. A commitment to investment in early stage companies has been a key differentiating factor in our country's ongoing economic leadership. The venture capital industry invests billions of dollars each year into innovative ideas

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1 *Fostering Innovation and Investment in the Wireless Communications Market; A National Broadband Plan For Our Future*, GN Docket Nos. 09-157 and 09-51, *Public Notice*, FCC 09-66 (rel. Aug. 27, 2009) ("NOI").

2 Comments of Centennial Ventures, Columbia Capital, and M/C Venture Partners, GN Docket Nos. 09-157, 09-51, filed Sept. 30, 2009.

that have the potential to grow into world class companies. Often these ideas are not even businesses yet, but reside in the minds of entrepreneurs, scientists or engineers. These individuals typically have the intellectual capacity and vision to do great things but lack the risk capital and business expertise to bring their concepts to life. At one time or another, every blue chip company in the United States was just an idea. Companies such as Google, Intel, Genentech, eBay, Amgen, and Starbucks were once early stage start ups. In 2008, companies that were originally funded by venture capital accounted for 12.1 million employees and represented 21 percent of US GDP. According to StartUp Hire, there are currently more than 10,000 job openings at early stage start-ups across the United States. Venture capital investment in these companies is a proven job creator and incubator for innovation.

As the key organization representing the public policy interests of the venture capital community, NVCA agrees that existing FCC regulations and precedent regarding foreign ownership stifle investment in wireless ventures in the United States. While venture capitalists still maintain a high interest in investing in this sector, the Commission's foreign ownership approval process often creates significant barriers that discourage such investment. Potential investors confront a myriad of complicated ownership structure requirements that can either preclude using favored off-shore investment entities, such as Bermuda or Cayman Islands corporations, or at a minimum require extensive and lengthy regulatory proceedings at the FCC. These regulatory burdens apply regardless of whether the foreign party involved in the investment is only indirectly involved or a passive investor. Unfortunately, these types of government hurdles do not reflect the everyday realities of today's investor marketplace in which non-U.S. parties are often a part of investments in the U.S. business market.

NVCA recognizes that the FCC must abide by certain statutory requirements, such as Section 310(b)(4) of the Communications Act, in reviewing investments in wireless entities. However, NVCA believes that there are a number of ways the Commission can streamline that review process to lessen burdens and stimulate investment.

NVCA has reviewed the proposals made by the Investors, and believes that these recommended changes would go a long way towards improving the FCC's review process.

NVCA supports the designation of specific "safe harbors" for certain types of foreign investments:

- The Investors proposal that no prior FCC approval should be required for investments by non-U.S. entities holding less than a combined indirect 5% interest in the licensee is a good example of a "safe harbor" that grants some flexibility to investors while still serving the satisfying the Commission's statutory requirements.

- Another "safe harbor" would be for the Commission to allow foreign investors that have already had their background checked and approved for investment in an FCC licensee to be able to increase their interests without additional approval, provided a transfer of control does not occur.

- Likewise, wireless licensees that have already had foreign investments above 25% approved through the FCC's review process, should be able to accept up to an *additional* 25% foreign investment without prior approval.

- Finally, the FCC should not treat as foreign investments or require approval for any investment through a limited partnership or limited liability company where the general partner or managing members are U.S. entities.

None of these proposed "safe harbors" raises any of the trade, national security, or public interest issues that the FCC Section 310(b)(4) process was designed to capture.

To the extent that certain foreign investment does not qualify for one of the above "safe harbors," the FCC should have in place a streamlined approval process to review this investment. NVCA fully supports the streamlining measures proposed by the Investors, and encourages the Commission to implement them, and any other measures that would accelerate the government review process.

Many forces are already driving capital and jobs away from the U.S. telecommunications sector. The undue time and expense of the government approval process for foreign investment in this sector prompts investors and companies to focus their attention on other markets. The Commission has the opportunity now and the means to rectify this situation and improve the investment climate for wireless enterprises. New investment will help keep jobs in America, and fund the national broadband buildout which is a key goal of the Obama administration.

On behalf of the many venture capitalists seeking opportunities to invest in the U.S. wireless industry, NVCA appreciates your consideration of our perspective. We look forward to working with you on this issue and your continuing efforts to secure and expand the benefits of an innovative and robust wireless communications marketplace in the United States.

Sincerely,

Mark G. Heesen
President