Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of	)	
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Review of Foreign Ownership Policies for Common Carrier and Aeronautical Radio Licenses Under Section 310(b)(4) of the Communications Act of 1934, as Amended	))))	IB Docket No. 11-133

To: The Commission

COMMENTS OF THE SATELLITE INDUSTRY ASSOCIATION

The Satellite Industry Association ("SIA") respectfully submits these comments in response to the above-captioned *Notice of Proposed Rulemaking* regarding Commission review of foreign ownership in common carrier and aeronautical radio licenses pursuant to Section 310(b)(4) of the Communications Act.[1] As detailed herein, there is much the Commission can do to eliminate unnecessary, burdensome policies, and such action will facilitate further foreign investment in U.S. communications companies.

SIA is a U.S.-based trade association providing worldwide representation of the leading satellite operators, service providers, manufacturers, launch services providers, and ground equipment suppliers.[2] Since its creation fifteen years ago, SIA has become the unified voice of the U.S. satellite industry on policy, regulatory, and legislative issues affecting the satellite business.

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[1] Review of Foreign Ownership Policies for Common Carrier and Aeronautical Radio Licenses Under Section 310(d)(4) of the Communications Act of 1934, as Amended, *Notice of Proposed Rulemaking*, 26 FCC Rcd 11703 (2011) ("*Notice*").

[2] SIA Executive Members include: Artel, Inc.; The Boeing Company; The DIRECTV Group; DBSD North America, Inc.; EchoStar Satellite Services L.L.C.; Harris CapRock Communications; Hughes Network Systems, LLC; Integral Systems, Inc.; Intelsat, S.A.; Iridium Communications Inc.; LightSquared; Lockheed Martin Corporation.; Loral Space & Communications, Inc.; Northrop Grumman Corporation; Rockwell Collins Government Systems; SES S.A.; and TerreStar Networks, Inc. SIA Associate Members include: Arqiva Satellite and Media; ATK Inc.; Cisco; Cobham SATCOM Land Systems; Comtech EF Data Corp.; DRS Technologies, Inc.; Eutelsat, Inc.; GE Satellite; Globecomm Systems, Inc.; Glowlink Communications Technology, Inc.; iDirect Government Technologies; Inmarsat, Inc.; Marshall Communications Corporation.; Orbital Sciences Corporation; Panasonic Avionics Corporation; Segovia, Inc.; Spacecom, Ltd.; Spacenet Inc.; Stratos Global Corporation; TeleCommunication Systems, Inc.; Telesat Canada;

I. INTRODUCTION

As the *Notice* observes, foreign investment has proven to be an important source of equity for U.S. communications companies, contributing to technical innovation, economic growth, and job creation.[3] Over the years, however, the FCC has adopted policies intended to address Section 310(b)(4) that needlessly impose "significant difficulties and expense" and "unnecessary barriers"[4] on licensees seeking FCC approval of foreign ownership.

SIA supports the Commission's efforts in this proceeding to reduce regulatory costs and burdens, provide greater transparency and predictability, and facilitate investment from new sources of capital.[5] While the U.S. government retains an interest in the FCC review process as a forum for Executive Branch review of proposed foreign investment, the FCC can and should streamline the current Section 310(b)(4) review process. SIA supports adoption of several of the *Notice's* proposals and urges the Commission to take additional steps to reduce the burdens associated with Section 310(b)(4) reviews.

II. THE FCC SHOULD ELIMINATE UNNECESSARY AND DUPLICATIVE REQUESTS FOR SECTION 310(b)(4) DECLARATORY RULINGS

Several existing Commission policies require Section 310(b)(4) approvals even where there is no change in the foreign ownership of a licensee outside of the parameters of existing approvals. The FCC should eliminate these policies, thus reducing the need for U.S. companies to return for approval after receiving an initial ruling.

A. Eliminate Approval Requirements for Internal Reorganizations

As proposed in the *Notice*, the Commission should permit internal reorganizations of a controlling U.S. parent without Section 310(b)(4) prior approval where a new, foreign-organized

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Trace Systems, Inc.; Ultisat, Inc.; and ViaSat, Inc. Additional information about SIA can be found at http://www.sia.org.

[3] *Notice*, 26 FCC Rcd at 11705 ¶ 2.

[4] *Id*. at 11705 ¶ 2, 11722 ¶ 37.

[5] *Id*. at 11704 ¶ 1.

controlling entity is inserted into the vertical ownership chain above the U.S. parent, provided that the new foreign company is under 100 percent common ownership and control with the controlling U.S. parent.[6] The FCC should allow similar internal reorganizations of approved non-controlling foreign investors without prior Section 310(b)(4) approval.

Internal reorganizations do not entail any change in the previously-approved ultimate control of the licensee, or any change in foreign ownership outside of pre-approved levels. Indeed, the FCC long ago decided to forbear from enforcing its prior approval requirements under Section 310(d) (related to transfer of control and assignment of licenses) in connection with *pro forma* transactions involving wireless licenses.[7] The Commission should similarly revise its Section 310(b)(4) approach as well.

B. Eliminate the Requirement for Service- and Geographic-Specific Rulings

Where an entity has already obtained Section 310(b)(4) approval, no foreign ownership approval should be required for any existing or subsequently acquired license where there is no change in foreign ownership outside of the limits of existing approvals.[8] The fact that any new licenses may be in different services, or in new geographic areas, is irrelevant to any Section 310(b)(4) issue and thus there is no need for any such review. Adoption of this proposal will facilitate licensing in new services and areas to licensees whose ownership has already been approved by the Commission.

C. Issue Rulings in the Name of a Controlling U.S. Parent

SIA supports the proposal to issue Section 310(b)(4) rulings to a U.S. parent.[9] The Commission should clarify that parent company rulings cover subsidiaries and affiliates that are in existence at the time of the ruling, as well as those that are subsequently formed or acquired,

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[6] *Id*. at 11733 ¶¶ 57-58.
[7] Federal Communications Bar Association, *Memorandum Opinion and Order*, 13 FCC Rcd 6293 (1998).
[8] *Notice*, 26 FCC Rcd at 11733-35 ¶¶ 59-61. SIA recognizes that this approach does not extend to broadcast licenses.
[9] *Id*. at 11723 ¶¶ 39-41.

provided that the U.S. parent remains in compliance with the terms of its foreign ownership ruling. Any additional Section 310(b)(4) review would be duplicative and unnecessary as those entities are under common ownership and control with the U.S. parent.

D. Revise FCC Form 312 to Eliminate the Requirement that Non-Common Carrier Space Station Applicants Respond to Foreign Ownership Questions 30-34

Consistent with the *Notice's* stated objective of reducing the regulatory costs and burdens associated with Section 310(b), the FCC should relieve non-common carrier space station license applicants from having to respond to Section 310(b)-related questions on FCC Form 312, thereby according such applicants identical treatment to non-common carrier earth station license applicants. As the *Notice* properly explains, Section 310(b) does not apply to non-common carrier radio licenses.[10] Nevertheless, FCC Form 312 presently requires non-common carrier space station applicants to answer a series of questions (Questions 30-34) specifically designed to elicit information regarding compliance with Sections 310(b)(3) and (4). In contrast, non-common carrier earth station applicants are already exempt from answering these questions. According to the FCC Form 312 instructions, "[e]arth station applicants not proposing to provide broadcast, common carrier, aeronautical en route or aeronautical fixed radio station services are not required to respond to Items 30-34."[11] The FCC should act here and similarly exempt space station applicants not proposing to provide broadcast, common carrier, aeronautical en route or aeronautical fixed radio station services from answering these statutorily inapplicable questions.

Adoption of these proposals identified above will dramatically reduce the burden on Commission staff in processing requests for approvals where foreign ownership is not implicated, will provide companies with the flexibility to complete internal reorganizations and create new

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[10] *Id*. at 11709 ¶ 9.
[11] *Instructions for Completion of FCC Form 312 Application for Satellite Space and Earth Station Authorizations* at 5 (Feb. 1998), *available at* http://transition.fcc.gov/Forms/Form312/312Fill.pdf.

operating subsidiaries where sound business principles warrant, without having to pursue unnecessary foreign ownership approvals, while also eliminating inapplicable application hurdles.

III. THE FCC SHOULD REVISE ITS RULES TO FOSTER ADDITIONAL FOREIGN INVESTMENT

The FCC can take significant steps to encourage investment in U.S. communications companies while also preserving the Section 310(b)(4) directive to evaluate foreign ownership in appropriate situations. To that end, the FCC should eliminate the distinction between investment from WTO and non-WTO Members and revise its policies involving non-material changes in foreign ownership where U.S. parent companies have already obtained a Section 310(b)(4) ruling.

A. Eliminate the WTO/Non-WTO Distinction

The burdens associated with the current WTO/non-WTO distinction far outweigh any purported benefits. First, many more nations have become WTO Members since the Commission adopted the distinction in 1998 (108 Members today, compared with 69 in 1998).[12] As a result, to the extent there could be competitive risk associated with encouraging foreign investment broadly – especially from non-WTO Members – it is much smaller today. In addition, elimination of the distinction will not raise national security or law enforcement concerns, because Executive Branch agencies will continue to review foreign investment.

Importantly, elimination of the distinction will significantly reduce the burden of preparing Section 310(b)(4) filings. As the *Notice* acknowledges, "in many cases it is not possible for companies to ascertain with confidence their percentage of non-WTO Member investment, particularly where the company is publicly traded or is owned in whole or in part by other companies that are publicly traded."[13] The burden is made even more difficult – if not impossible

[12] *Notice,* 26 FCC Rcd at 11717 ¶ 26.
[13] *Id*. at 11718 ¶ 28.

– to satisfy because, in the past, the FCC has required filers to identify even minute non-WTO investments. The Commission should eliminate the distinction.

B. Permit Named Foreign Investors to Increase Interests Without Additional Section 310(b)(4) Review

SIA supports the proposals to eliminate the requirement for a U.S. parent to return for approval to allow an already-named and approved foreign investor to increase its investment.[14]

For minority interests, the Commission should allow parent companies to seek approval for a named foreign investor to increase its interest up to 49.99 percent.[15] The Commission's Section 310(b)(4) rulings typically afford licensees the flexibility to acquire an additional 25 percent foreign ownership without requiring further FCC review, and there is no record evidence that this flexibility has adversely affected the FCC's ability to ascertain foreign ownership. Transfers of control, even those occurring as a result of investment at less than 49.99 percent, would continue to be subject to FCC review pursuant to Section 310(d). The FCC, moreover, would retain the ability to ascertain foreign ownership after the initial investment, as licensees must provide ownership information in applications for new licenses and renewals.

With respect to controlling interests held by named foreign investors, the Commission should adopt its proposal to allow U.S. parent companies to gain approval for the named investor to increase its ownership interest up to 100 percent. Where a named, controlling foreign investor has already been vetted by the FCC and the Executive Branch in a Section 310(b)(4) review, an increase in its holdings does not raise new competitive or national security interests that would warrant further review.

[14] *Id*. at 11723-26 ¶¶ 41-45.

[15] There is no need to require the filer to demonstrate that the foreign investor has the right to, or plans to, increase its investment at some point in the future, as it would only limit flexibility and would undercut the goal of promoting investment.

C. Allow Aggregate Unnamed Foreign Investors up to 100 Percent Without Additional Section 310(b)(4) Review

The FCC should allow a U.S. parent whose foreign ownership has been approved to have up to 100 percent aggregate foreign ownership, including by foreign investors for which the parent did not request specific approval, provided that no single foreign investor or "group" of foreign investors acquires an ownership interest exceeding 25 percent or a controlling interest.[16] The flexibility should apply to investment from WTO and non-WTO Member nations.

The Commission's current practice of allowing U.S. parent companies to acquire up to an additional 25 percent foreign ownership does not provide companies – particularly (but not solely) publicly-traded companies – with sufficient flexibility and hinders investment, as the *Notice* acknowledges.[17] The FCC should extend this flexibility to U.S. parents that are either wholly-owned or partially-owned by foreign companies, in order to provide a level playing field with respect to their opportunities to attract investment.

The 100 percent aggregate foreign interest proposal strikes a fair balance between the need to provide flexibility and the FCC's need to review proposed investments in appropriate circumstances. As the *Notice* notes, in many situations, there is no need for further review of increased foreign ownership in a U.S. parent company, where each of those foreign investments is insubstantial. The 25 percent interest the FCC has proposed as a trigger for FCC review is consistent with Section 310(b)(4). In addition, as the *Notice* points out, the Commission previously has afforded this same level of flexibility (albeit with a distinction for non-WTO investments, which the Commission should eliminate), and acknowledged that "we are not aware of any problems that have resulted from this approach or objections raised in the context of any

[16] *Notice*, 26 FCC Rcd at 11726-27 ¶¶ 46-47.
[17] *Id*. at 11727 ¶ 47.

particular proceedings."[18] Finally, foreign investments below 25 percent can be addressed in national security agreements reached with the Executive Branch (which the *Notice* notes often require prior notice to the Executive Branch of foreign investments exceeding 10 percent).

D. Modify Existing Section 310(b)(4) Rulings to Incorporate a 100 Percent Aggregate Allowance and Other New Policies

SIA commends the Commission for seeking comment on transition issues and supports the approach identified in the *Notice* to "extend the benefits of the rules adopted in this proceeding to U.S. parent companies in a way that minimizes the need for them to return to the Commission for a new ruling."[19] To best achieve this objective, the FCC should adopt a rule that modifies all existing Section 310(b)(4) rulings to include the new policies adopted as a result of this rulemaking. Alternatively, the FCC should issue a Public Notice providing an opportunity for U.S. companies holding existing Section 310(b)(4) rulings to "opt in" to the new rules. Most importantly, under any procedure, the FCC should enable existing holders of Section 310(b)(4) rulings automatically to replace the current standard 25 percent aggregate allowance with a new 100 percent aggregate allowance. To do otherwise, to require entities to submit new Section 310(b)(4) filings to gain the flexibility adopted as a general rule here, would impose the very costs and burdens this proceeding is intended to eliminate. The FCC should thus extend the benefits of the rules it adopts in this proceeding to existing Section 310(b)(4) rulings without requiring U.S. parent companies to return to the Commission.

IV. THE FCC SHOULD STREAMLINE THE PROCESS AND REDUCE THE COSTS, BURDENS AND UNCERTAINTY ASSOCIATED WITH SECTION 310(B)(4) FILINGS

In the event a Section 310(b)(4) filing is required, there are several steps the Commission should take to reduce the burden on filers.

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[18] *Id*. at 11729 ¶ 50.
[19] *Id*. at 11742 ¶ 78.

A. Automatically Grant Section 310(b)(4) Filings Within Specified Period Absent National Security Concerns

The FCC should put Section 310(b)(4) petitions on Public Notice and automatically grant them within 14 days, with further review permitted in the event the Executive Branch raises national security concerns. This will provide filers and investors with a greater level of predictability regarding the Section 310(b)(4) process, and will ease an unnecessary administrative burden on Commission staff.

B. Reduce Disclosure Requirements for Passive and Widely Dispersed Interests

The FCC presently requires Section 310(b)(4) filers to disclose all interest holders with 10 percent or greater interests, or controlling interests at any level, in the applicant. With respect to foreign interests, as noted above, the Commission has in the past required disclosure of those interests down to the most minute levels – even where those interests are passive and represent a mere fraction of a percent interest in the U.S. licensee. These interests are irrelevant in the Section 310(b)(4) context: they present no threat to competition, or national security interests, as these passive interest holders have no influence over either the foreign entity, the U.S. parent, or the U.S. licensee and they fall under the provision's 25 percent threshold. Yet, the burden placed on filers to gather this information is substantial.

The Commission should update its approach by refraining from requiring disclosure of non-controlling interests held in widely-held publicly traded companies, pension funds, and investment funds, except where a single non-U.S. investor or group of investors would have an ownership or voting interest in the licensee of 25 percent or more. This is consistent with the *Notice's* proposal to permit aggregate foreign ownership in the U.S. parent up to 100 percent without prior approval except where an individual foreign investor or group of foreign investors would acquire a 25 percent or greater interest. Indeed, if the Commission were to adopt its 100 percent aggregate foreign ownership proposal, but fail to modify its disclosure rules accordingly, those disclosure rules would significantly undercut the Commission's efforts to reduce the burden on Section 310(b)(4) filers.

C. Rely on Certifications Submitted with Section 310(b)(4) Filings, But Do Not Impose Additional Periodic Certification Obligations

SIA supports the Commission's proposal to rely on a certification by the filer of a Section 310(b)(4) petition confirming that it has calculated and reported its ownership interests in accordance with the FCC's rules. This type of certification with filing-related rules is a well-established practice, and avoids imposing additional burdens on filers (to proactively produce evidence of compliance) and Commission staff (to review such evidence to confirm compliance, even in circumstances where compliance is not in doubt).

The FCC should not, however, require the submission of any subsequent certifications of compliance regarding foreign ownership on a going forward basis. This type of additional, periodic certification is unnecessary, and would undercut the Commission's efforts in the *Notice* to reduce the burdens associated with Section 310(b)(4) compliance. Further, filers are already required to make certain periodic certifications regarding their foreign ownership in connection with applications seeking FCC approval to acquire new licenses and to renew existing licenses.

V. CONCLUSION

As described above, the FCC should revise its rules regarding Section 310(b)(4) to remove unnecessary burdens and facilitate greater foreign investment in U.S. communications companies.

Respectfully submitted,

The Satellite Industry Association

By: ____________________________

Patricia Cooper
President

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