Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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

COMMENTS OF THE GSM ASSOCIATION

The GSM Association ("GSMA") hereby submits these comments in response to the Notice of Proposed Rulemaking ("*Notice*") in the above captioned proceeding.[1] The Federal Communications Commission ("Commission" or "FCC") proposes to reduce unnecessary regulatory costs and burdens associated with implementation of Section 310(b) of the Communications Act of 1934, as amended, and to facilitate foreign investments in the communications industry. GSMA submits these comments to highlight the importance of adopting liberalized foreign ownership policies that will encourage and promote cross-border investment in the global communications industry.

GSMA represents the interests of the worldwide mobile communications industry. Spanning 219 countries, GSMA unites nearly 800 of the world's mobile operators, as well as more than 200 companies in the broader mobile ecosystem, including handset makers, software companies, equipment providers, Internet companies, and media and entertainment organizations. GSMA's members represent approximately five billion mobile wireless

[1] *Review of Foreign Ownership Policies for Common Carrier and Aeronautical Radio Licensees under Section 310(b)(4) of the Communications Act of 1934, as Amended*, IB Docket No. 11-133, Notice of Proposed Rulemaking, FCC 11-121 (August 9, 2011) ("*Notice*").

connections using virtually all types of wireless technologies. GSMA's members provide mobile broadband to individuals and businesses wherever and whenever they want it—both in the United States and around the world. At its core, GSMA is focused on innovating, incubating, and creating new opportunities for people around the world to benefit from mobile communications.

The United States is recognized as a leader in global communications policy, and the Commission's policies regarding foreign investments are always closely reviewed by other governments around the world. As a result, it is vitally important for the Commission to adopt liberal foreign ownership policies that demonstrate flexibility and encourage investment to the maximum extent permitted by law because such policies can encourage the adoption of similar policies globally. Strong pro-investment policies in the United States signal to other administrations that similar policies should be implemented to attract cross border investments. Liberalized foreign ownership policies would also help ensure that the United States can, from a policy perspective, effectively encourage other governments to open investment opportunities for foreign companies, including those from the United States.

Alternatively, if the FCC takes a restrictive approach, it can potentially have a negative impact on the ability of entities from the United States and elsewhere to invest in other countries. The Commission recognizes the importance of foreign investment in the communications industry, noting that such investment has "proven to be an important source of equity financing for U.S. telecommunications companies, fostering technical innovation, economic growth, and job creation."[2] Restrictive policies that discourage foreign investment will not only harm the ability of U.S. companies to acquire much-needed capital, but may also encourage other

[2] *Id.* at ¶ 2.

administrations to similarly restrict the ability of U.S. entities to invest in foreign communications providers or otherwise in foreign markets. Such restrictions will harm both investment opportunities and the growth of the Internet and communications internationally. It is important, therefore, for the Commission to reject suggestions to impose any unnecessary foreign ownership burdens and instead consider how existing requirements can be adjusted to best encourage liberalized foreign investment policies, both in the United States and abroad.

Importantly, flexible and non-obstructive foreign ownership policies are consistent with U.S. treaty obligations and FCC precedent. As part of the WTO Basic Telecommunications Agreement, the United States and other signatories committed to open their markets to foreign competition for some or all basic telecommunications services.[3] According to the U.S. Schedule of Specific Commitments to this agreement, there are no market access limits on indirect ownership of a common carrier radio license by foreign companies or entities.[4] Thus, the treaty requires that the United States not impose limits on indirect foreign ownership from WTO Member countries.

To enact these treaty provisions domestically, the Commission adopted an open entry standard for WTO Member investment in the U.S. basic telecommunications services market.[5]

---

[3] The results of the WTO basic telecommunications services negotiations are incorporated into the General Agreement on Trade in Services (GATS) by the Fourth Protocol to the GATS, April 30, 1996, 36 I.L.M. 366 (1997).

[4] *See* Schedule 2, General Agreement on Trade in Services, ¶ 2.C, supplementing pages 45-46 of document GATS/SC/90 (Apr. 11, 1997) (identifying limits on market access for direct foreign investments in common carrier licensees, without identifying any limitation for indirect foreign investments); Fourth Protocol to the General Agreement on Trade in Services (WTO 1997), 36 I.L.M. 354, 366 (1997) (noting that, in response to the 1996 amendments to the Act, the United States "revised its offer to clarify that indirect foreign ownership was permitted, even though restrictions remained on direct foreign ownership").

[5] *Rules and Policies on Foreign Participation in the U.S. Telecommunications Market: Market Entry and Regulation of Foreign-Affiliated Entities*, Report and Order and Order on Reconsideration, 12 FCC Rcd 23896 (¶ 9) (1997) (*Foreign Participation Order*), Order on

The Commission specifically found that "the public interest would be served by permitting greater investment by foreign individuals and entities from WTO Member countries in U.S. common carrier and aeronautical radio licensees pursuant to the discretionary authority in section 310(b)(4)."[6] Any foreign ownership policies adopted as a result of this *Notice* must, consistent with this finding, provide communications companies with the necessary flexibility to attract foreign investments.

GSMA strongly supports the Commission's initiation of the instant proceeding to reduce unnecessary regulatory burdens and to facilitate foreign investment in the communications industry. Other parties will provide detailed arguments regarding specific policies and how these policies can best encourage foreign investment in conformance with U.S. policy objectives. In order to best serve global communications consumers, GSMA encourages the Commission to adopt policies that will encourage foreign investment both domestically and internationally. This is another vitally important opportunity for the Commission to demonstrate global leadership on an important issue that affects not only Americans, but also people around the world. By creatively and effectively encouraging foreign investments into the United States market, the Commission will also be showing the way forward for other governments and people everywhere.

(Continued . . .)
Reconsideration, FCC 00-339, 15 FCC Rcd 18158 (2000) ("We find that the commitments made in the context of the WTO Basic Telecom Agreement, an increasingly competitive environment and our improved regulatory tools enable us to adopt a deregulatory approach that presumes entry is in the public interest.").

[6] *Foreign Participation Order*, 12 FCC Rcd at 23893-97 (¶¶ 1-12), 23935-42 (¶¶ 97-118).

Respectfully submitted,

GSM ASSOCIATION

By:

Tom Phillips.

Tom Phillips, Chief Government and
Regulatory Affairs Officer
GSM ASSOCIATION
7th Floor
5 New Street Square
London, UK
EC4A 3BF

Dated: December 5, 2011