

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

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

COMMENTS OF T-MOBILE USA, INC.

T-Mobile USA, Inc. (“T-Mobile”) supports the Commission’s efforts in the above-referenced notice of proposed rulemaking proceeding¹ to reform its policies and procedures applicable to foreign ownership of common carrier radio station licenses under Section 310(b)(4) of the Communications Act of 1934, as amended (the “Act”).² The Commission’s proposals to streamline the foreign ownership review process are pro-competitive, will help facilitate the delivery of broadband services, and serve the public interest.³ In making this reform, however, the Commission should take certain steps to ensure that any revised Section 310(b)(4)

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*, Notice of Proposed Rulemaking, IB Docket No. 11-133, FCC 11-121 (rel. Aug. 9, 2011) (“*Foreign Ownership NPRM*”).

² 47 U.S.C. § 310(b)(4).

³ T-Mobile has for many years called upon the Commission to streamline and improve FCC licensing policies applicable to foreign-owned licensees in order to facilitate new service offerings and promote more efficient spectrum use. *See, e.g.*, Reply Comments of T-Mobile USA, Inc., WT Docket No. 00-230 (filed Jan. 5, 2004); Petition for Reconsideration or, in the Alternative, Clarification of T-Mobile USA, Inc., WT Docket No. 00-230 (filed Jan. 27, 2005).

framework that it may ultimately adopt in this proceeding is administratively efficient and does not needlessly burden Commission personnel or service providers.

I. STREAMLINING THE SECTION 310(B)(4) REVIEW PROCESS SERVES THE PUBLIC INTEREST

As the Commission has acknowledged, “[f]oreign investment has proven to be an important source of equity financing for U.S. telecommunications companies, fostering technical innovation, economic growth, and job creation.”⁴ It also is widely recognized that the rapid evolution of wireless broadband services is key to both domestic and international economic development.

T-Mobile respectfully submits that the Section 310(b)(4) foreign ownership review process, established in 1998, however, has not kept pace with market developments and has become unnecessarily complex and burdensome.⁵ The procedures require extensive and difficult fact gathering, and it is increasingly clear that the results do not justify the effort. A Section 310(b)(4) foreign ownership declaratory ruling – even for those companies whose foreign ownership has been previously and thoroughly reviewed and passed upon by the Commission – routinely requires many months to obtain.⁶ This lengthy review period delays license acquisitions and lease arrangements, placing foreign-owned service providers at a competitive disadvantage because they cannot respond as swiftly as their U.S.-owned competitors, a serious impediment in a fast moving market.

⁴ *Foreign Ownership NPRM*, ¶ 2.

⁵ For example, under current procedures, a foreign-owned company must obtain a new Section 310(b)(4) declaratory ruling for each new licensee subsidiary and type of common carrier wireless license, even if the Commission previously has reviewed and approved the foreign ownership of the company’s other licensee subsidiaries and other types of common carrier licenses.

⁶ *Foreign Ownership NPRM*, ¶ 2.

Streamlining the Commission’s foreign ownership review process is entirely consistent with the Act and Commission precedent. For example, as explained below, Section 310(b)(4) requires a public interest determination addressing a company’s foreign ownership levels, but does not mandate licensee-specific, service-specific, or geographic-specific declaratory rulings.⁷ In addition, it has long been the Commission’s policy to presume that no competitive concerns are raised by indirect investment by entities from World Trade Organization member countries.⁸ Streamlining the Section 310(b)(4) framework would help reinforce this policy by promoting competition and delivery of broadband and other services.

Specifically, T-Mobile supports the Commission’s proposal to issue Section 310(b)(4) foreign ownership rulings to a wireless licensee’s U.S. corporate parent company and extending those rulings to all existing or later acquired subsidiaries and affiliates.⁹ T-Mobile similarly agrees that companies should be able to effectuate internal reorganizations without requiring additional Section 310(b)(4) rulings, so long as the reorganization does not affect the ultimate ownership of the previously FCC-approved foreign investor.¹⁰ (As suggested in the *Foreign Ownership NPRM*, this would include an internal reorganization of a U.S. parent company that results in a successor U.S. parent company taking its place in the vertical chain of ownership, as

⁷ See *infra* Section II.A.

⁸ See, e.g., *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 23891 (1997).

⁹ *Foreign Ownership NPRM*, ¶¶ 55-56. The Commission has long used a similar approach for authorizations to provide U.S.-international telecommunications services under Section 214 of the Act, 47 U.S.C. § 214. Specifically, wholly-owned subsidiaries can operate under the international Section 214 authority of their parent companies without obtaining a new authorization. See 47 C.F.R. § 63.21(h).

¹⁰ *Foreign Ownership NPRM*, ¶¶ 56-58.

well as an internal reorganization that inserts new foreign-organized entities into the vertical ownership chain.¹¹⁾

Reducing the number of Section 310(b)(4) filings and simplifying the review process will make it more efficient and less administratively burdensome for both service providers and Commission personnel. It also will help foreign-owned wireless companies compete on a more level playing field with their U.S.-owned competitors because they will be able to respond more quickly to ever-changing market conditions and developments.

II. THE FCC SHOULD ENSURE THAT THE REVISED SECTION 310(B)(4) FRAMEWORK IS EFFICIENT AND NOT OVERLY BURDENSOME

The Commission also should take several steps to ensure that a new Section 310(b)(4) framework is easy to administer and not unnecessarily burdensome for Commission personnel and service providers.

A. Section 310(b)(4) Declaratory Rulings Should Encompass All Types of Wireless Service Licenses and Geographic Service Areas

The Commission currently issues Section 310(b)(4) declaratory rulings on a service-specific and geographic-specific basis. But a new ruling should not be required each time a company acquires a different type of wireless service license or a license that covers a new geographic area, particularly if the license will be used for augmenting or expanding the

¹¹ If an internal reorganization results in a successor U.S. parent company taking the place in the vertical chain of ownership of the U.S. parent company that holds a Section 310(b)(4) ruling, the successor-in-interest would effectively step into the shoes of the original parent company as the Section 310(b)(4) holder. It would therefore be reasonable as the *Foreign Ownership NPRM* suggests to require the successor-in-interest to notify the Commission within 30 days after the reorganization so it can update its list of Section 310(b)(4) holders. *Id.* ¶ 56. In contrast, the Commission need not require the U.S. parent company to notify the Commission under Section 310(b)(4) about reorganizations that insert new foreign-owned entities into the vertical ownership chain when the U.S. parent company holding the Section 310(b)(4) ruling would remain the same and pro forma notifications for the reorganization would have been filed under Sections 214 and 310(d) of the Act. *Id.* ¶ 58.

company's current business. The plain language of Section 310(b)(4) requires only that the Commission make a public interest determination to allow foreign ownership in amounts greater than 25 percent, and does not require service-specific and geographic-specific rulings.

Moreover, there is no reasonable basis for requiring a wireless company to obtain a new foreign ownership determination for each new service and/or location it intends to serve.

Retaining service-specific and geographic-specific rulings would negate the efficiencies of the Commission's proposals to streamline and simplify its Section 310(b)(4) framework. The Commission previously would have reviewed and approved the petitioning company's foreign ownership – the fact that the company is acquiring a license for a different type of wireless service or a license in a different market would not have a material impact on the Commission's prior analysis or conclusions.¹² Thus, without this change, companies would continue to file, and Commission personnel would continue to process, unnecessary petitions for declaratory rulings. Furthermore, requiring new rulings would unreasonably discriminate against foreign-owned companies as they would remain at a competitive disadvantage. The additional processing time would needlessly delay the acquisition of the licenses and the deployment of services.

B. Information Disclosure Requirements in Section 310(b)(4) Petitions Should be Reasonable

1. Ownership Information

To the extent the Commission requires Section 310(b)(4) petitions for declaratory ruling to contain basic ownership information,¹³ T-Mobile submits that the disclosures should mirror

¹² T-Mobile is aware of no cases in which the Commission has denied the Section 310(b)(4) petition of a company that had previously received Section 310(b)(4) approval for the acquisition of other wireless licenses and whose previously approved foreign ownership levels have not changed.

¹³ *Foreign Ownership NPRM*, ¶ 62.

the ownership disclosure requirements that currently apply to common carrier wireless licensees under Part 1 of the Commission's rules.¹⁴ Specifically, petitioning U.S. parent companies should only be required to disclose the name, address, citizenship, and principal business(es) for each individual or entity that holds a 10 percent or greater direct or indirect equity or voting interest, or a controlling interest, in the company.¹⁵ The vast majority of companies already track and report this ownership information as part of the wireless licensing process. Complying with a lower reporting threshold (e.g., providing ownership information for those with more than a five percent ownership interest), however, would be unnecessarily burdensome, especially for widely held companies, and again offers no corresponding benefits.

2. Call Signs and Lease File Numbers

The proposed rules set forth in the Appendix of the *Foreign Ownership NPRM* would require parent companies to list in their petitions all call signs and lease file numbers for each licensee/lessee to which the Section 310(b)(4) declaratory ruling would apply.¹⁶ Some wireless companies hold hundreds or even thousands of wireless licenses and complying with this requirement would impose substantial burdens on them without producing any tangible benefits. It would be more reasonable to simply require the disclosure of the parent company's licensee subsidiaries and affiliates to which the Section 310(b)(4) ruling would apply.¹⁷ This approach would produce the same benefits as filing a list of licenses and leases, because any interested

¹⁴ See 47 C.F.R. §§ 1.919, 1.948, 1.2112(a).

¹⁵ To the extent an applicant seeks Section 310(b)(4) approval of an investor that holds less than a 10 percent ownership interest, the ownership information for the minority interest holder also would be disclosed in the petition for declaratory ruling. *Foreign Ownership NPRM*, ¶¶ 62-63.

¹⁶ *Id.* at Appendix, proposed 47 C.F.R. § 1.991(b)(1).

¹⁷ *Id.* at Appendix, proposed 47 C.F.R. § 1.991(a).

party would have sufficient information to search the Commission's Universal Licensing System for the licenses and leases held by each licensee and affiliate.

C. The Commission Should Clarify How Licensees Subject to Existing Section 310(b)(4) Rulings Will Transition to the New Framework

T-Mobile agrees with the Commission that licensees subject to existing Section 310(b)(4) rulings should be able to take advantage of the new rules adopted in this proceeding. However, the Commission's proposals for transitioning existing Section 310(b)(4) rulings to the Commission's new framework can be simplified, or at minimum clarified, to reduce unnecessary administrative burdens. Under the proposals set forth in the *Foreign Ownership NPRM*, the terms of existing Section 310(b)(4) rulings would not change retroactively, and the controlling U.S. parent company of a wireless carrier that already has received a ruling could file a new petition for declaratory ruling under the new rules adopted in this proceeding.¹⁸ Thus, it appears that a new petition for declaratory ruling would be necessary merely to move an existing Section 310(b)(4) ruling from a wireless carrier to its U.S. parent company, even if the terms of the ruling remain the same.

Consistent with its proposals in this proceeding to reduce unnecessary or duplicative filing requirements, the Commission should instead require a simple notification regarding the move of an existing Section 310(b)(4) ruling from a licensee subsidiary to the U.S. parent company level. The Commission could provide a reasonable transition period – say, within 60 days after the effective date of the new rules – during which the controlling U.S. parent company could notify the Commission of the transferred Section 310(b)(4) ruling and the names of all subsidiaries and affiliates to which the ruling would apply. Merely shifting an existing ruling to

¹⁸ *Foreign Ownership NPRM*, ¶ 78.

the parent company level is effectively an administrative change as the terms and conditions of the prior ruling would remain in place. This approach also would avoid a flood of unnecessary new Section 310(b)(4) petitions to review foreign ownership levels that have already been passed upon.

III. CONCLUSION

The Commission's efforts to update and streamline its Section 310(b)(4) foreign ownership review process will serve the public interest by promoting competition and the delivery of broadband wireless services. Consistent with the comments above, the Commission should ensure that its new Section 310(b)(4) framework it is easy to administer and not unnecessarily burdensome for service providers and Commission personnel.

Respectfully submitted,

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