

**Before the
Federal Communications Commission
Washington, DC 20554**

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

COMMENTS OF VODAFONE GROUP

Ari Q. Fitzgerald
Michele C. Farquhar

Hogan Lovells
555 Thirteenth Street, NW
Washington, DC 20004
(202) 637-5600

Attorneys for Vodafone Group

Richard Feasey
Public Policy Director

Vodafone Group
One Kingdom Street
London W2 6BY
United Kingdom
+447748776618

December 5, 2011

TABLE OF CONTENTS

	Page
I. INTRODUCTION AND SUMMARY	1
II. VODAFONE SUPPORTS THE COMMISSION’S MODEST PROPOSALS FOR REFORM, BUT BELIEVES THEY DO NOT GO FAR ENOUGH	5
III. THE COMMISSION’S REGULATORY FRAMEWORK FOR AUTHORIZING FOREIGN INVESTMENT IN COMMON CARRIER WIRELESS LICENSEES REQUIRES COMPREHENSIVE REFORM	7
A. Comprehensive Reform Is Necessary to Reduce the Burdens of the Commission’s Current Framework.....	7
B. The Commission Should Enhance the Predictability and Clarity of its Procedures for Reviewing Foreign Investment by Clarifying that Section 310(b)(3) Applies to Direct Investment and 310(b)(4) Applies to All Indirect Investment.....	12
1. Section 310(b)(3) of the Act Does Not Apply to Indirect Foreign Investment	13
2. Section 310(b)(4) Applies to Indirect Foreign Investment.....	19
C. The Commission Should Adopt a Notice Framework for Reviewing Foreign Investment in Wireless Licensees that Does Not Require the Commission’s Pre-Approval Through a Declaratory Ruling Procedure.....	30
1. Vodafone’s Proposed Section 310(b)(4) Notice Framework	30
2. Vodafone’s Proposed Section 310(b)(4) Notice Framework Would Reduce Unnecessary Regulation and is Consistent with the Act, U.S. Trade Commitments, and Commission Precedent.....	31
3. Vodafone’s Additional Reform Proposals Would Not Compromise the Government’s National Security, Law Enforcement, Foreign Policy, and Trade Policy Interests	34
IV. CONCLUSION.....	35

**Before the
Federal Communications Commission
Washington, DC 20554**

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

COMMENTS OF VODAFONE GROUP

Vodafone Group (“Vodafone”) respectfully submits these comments to the Notice of Proposed Rulemaking (“NPRM”) in the above captioned proceeding.¹ While the proposals outlined by the Federal Communications Commission (“FCC” or “the Commission”) in the NPRM will effect modest improvements in the Commission’s foreign ownership policies, they do not go far enough. Vodafone urges the Commission to adopt more comprehensive reform to ensure that its foreign ownership rules are clear, effective, and consistent with the applicable statutes and U.S trade commitments.

I. INTRODUCTION AND SUMMARY

The Commission aptly recognizes that “[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.”² It has long held a presumption that the public interest is served “by permitting greater investment by foreign individuals and entities from

¹ *Review of Foreign Ownership Practices 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, 26 FCC Rcd 11703 (rel. Aug. 9, 2011) (“NPRM”).

² *Id.* ¶ 2.

[World Trade Organization] Member countries in U.S. common carrier . . . licensees.”³ Such beneficial foreign investment provides much needed resources for U.S. wireless licensees to continue to upgrade their networks and deliver advanced communications services to their customers.

As one of the largest and most significant foreign investors in the U.S., Vodafone commends the Commission’s efforts in this proceeding to promote additional beneficial foreign investment in the future by eliminating unnecessary regulatory burdens that have long plagued its foreign ownership regime. As the comments below make clear, regulatory reform in this area can be easily accomplished without causing any reduction in the Commission’s ability under section 310(b) of the Communications Act of 1934, as amended (the “Act”),⁴ to protect the public interest and address comprehensively foreign ownership in covered licensees. The purpose and legislative history of section 310(b)(4) shows that Congress gave the Commission broad authority under that provision to recognize and address indirect foreign ownership in all forms and at all levels in a covered licensee’s ownership chain, and such authority can be fully and completely exercised under a less burdensome and more structurally coherent regime.

As noted above, foreign investment in common carrier wireless licensees is governed by section 310(b). Section 310(b)(3) imposes a 20 percent cap on direct investment by foreign individuals, corporations, and governments in U.S. common carrier wireless licensees.⁵ Section 310(b)(4) permits unlimited investment by foreign individuals, corporations, and governments in U.S.-organized entities that directly or indirectly control U.S. common carrier wireless licensees,

³ *Id.* ¶ 13; see also *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, IB Docket Nos. 97-142 and 95-22, 12 FCC Rcd 23891, 23940 ¶ 111 (1997) (“*Foreign Participation Order*”), modified by *Order on Reconsideration*, 15 FCC Rcd 18158 (2000).

⁴ 47 U.S.C. § 310(b).

⁵ *Id.* § 310(b)(3).

unless the Commission finds that the public interest is served by imposing a 25 percent cap on such investment.⁶

The Commission currently authorizes foreign investment in common carrier wireless licensees under the procedures outlined in its 1997 *Foreign Participation Order* and the International Bureau's 2004 *Foreign Ownership Guidelines* ("IB Guidelines").⁷ Under the current framework, wireless licensees seeking Commission approval of their U.S. parents' foreign ownership must file a petition or request for declaratory ruling before the foreign interest in the parent may exceed 25 percent.⁸ The Commission considers petitions for declaratory ruling on a case-by-case basis, placing them on public notice, usually within one or two months of their filing.⁹ Because the Commission's review policies seek to reduce barriers to foreign investment from World Trade Organization ("WTO") Member countries, they focus on whether the proposed foreign investor is from a WTO Member or non-WTO Member country.¹⁰ The Commission generally will authorize foreign investors named or described in the petition, and then only in the ownership amounts specified in the petition, and may grant a petition subject to conditions imposed upon the licensee.¹¹ Finally, the Commission also will consider any national security, law enforcement, foreign policy, or trade concerns raised by Executive Branch agencies

⁶ *Id.* § 310(b)(4).

⁷ See *Foreign Participation Order; Foreign Ownership Guidelines for FCC Common Carrier and Aeronautical Radio Licensees*, 19 FCC Rcd 22612 (IB 2004) ("*IB Guidelines*"). The IB Guidelines apply only to FCC common carrier and aeronautical radio licenses. *IB Guidelines* at 4.

⁸ *NPRM* ¶ 11.

⁹ See *id.* ¶¶ 11, 73; see also *infra* note 32 and accompanying text.

¹⁰ The Commission applies an "open entry" standard to indirect foreign investment from WTO Member countries, which creates a rebuttable presumption that such foreign investment does not raise competitive concerns in the United States. *NPRM* ¶¶ 12-13. By contrast, the Commission applies an "effective competitive opportunities" standard to indirect foreign investment from non-WTO Member countries, which considers whether the foreign country that hosts the proposed investor's principal place of business offers "effective competitive opportunities" to U.S. investors in the same wireless service sector. *Id.* ¶ 14.

¹¹ *Id.* ¶¶ 15-18.

(e.g., the Department of Justice and Department of Homeland Security), and may impose conditions requested by such agencies.¹²

Over the last 13 years, parties have applied for – and the Commission has issued – about 150 section 310(b)(4) rulings authorizing foreign investment in U.S. telecommunications carriers under the *Foreign Participation Order*'s procedures.¹³ Those procedures, however, have been complex, expensive, time-consuming, and burdensome for licensees, prospective foreign investors, and the Commission, and have served to discourage additional, beneficial foreign investment.¹⁴ Wireless licensees face difficulties in ascertaining their percentage of foreign ownership and are required to compile voluminous, highly detailed records, while the Commission must undertake a “fact-sensitive, time consuming review” that yields only a “snapshot” of the licensee’s foreign ownership structure at the time of the review.¹⁵ Parties often must return to the Commission to obtain additional section 310(b)(4) approvals when their foreign ownership structures change.¹⁶

The NPRM proposes changes to “revise and simplify” this current regulatory framework.¹⁷ While Vodafone commends the Commission’s goals and supports its modest reform proposals, it urges the Commission to adopt more comprehensive reform to ensure its procedures are clear and predictable, are consistent with the Act and U.S. trade commitments, are efficient and cost-effective, and promote foreign investment in common carrier wireless licensees. Specifically, Vodafone urges the Commission to: (1) clarify the relationship between sections 310(b)(3) and (b)(4), specifying that section 310(b)(3) applies only to direct foreign

¹² *Id.* ¶ 13.

¹³ *Id.* ¶ 2.

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ *Id.* ¶ 3.

investment in a covered licensee, while section 310(b)(4) applies to indirect foreign investment in a covered licensee; and (2) adopt a streamlined notice procedure for processing section 310(b)(4) petitions, as described herein.

II. VODAFONE SUPPORTS THE COMMISSION’S MODEST PROPOSALS FOR REFORM, BUT BELIEVES THEY DO NOT GO FAR ENOUGH

Vodafone supports the Commission’s efforts to “reduce to the extent possible the regulatory costs and burdens imposed on wireless common carrier and aeronautical applicants, licensees, and spectrum lessees; provide greater transparency and more predictability with respect to the Commission’s filing requirements and review process; and facilitate investment from new sources of capital.”¹⁸ Vodafone agrees with the Commission that reducing barriers to foreign investment in wireless licensees will inure to the benefit of U.S. consumers.¹⁹

In the NPRM, the Commission seeks to reduce the number of section 310(b)(4) petitions for declaratory ruling, as well as the time and expense associated with such petitions.²⁰ Specifically, the Commission’s proposals include issuing section 310(b)(4) rulings in the name of the U.S. parent and automatically extending those approvals to subsidiaries and affiliates of the parent;²¹ permitting named foreign investors to increase their direct or indirect interests at any time after the Commission’s initial ruling, up to and including a non-controlling 49.99 percent interest, with the additional option of seeking approval at the outset to acquire 100 percent of the equity/voting interests in the U.S. parent company;²² and eliminating the requirement that U.S. parents expressly identify any foreign investor that holds an interest of 25 percent or less, subject to the requirement that the petition identify any individual or entity that holds a direct or indirect

¹⁸ *Id.* ¶¶ 1, 23.

¹⁹ *Id.* ¶ 2.

²⁰ *Id.* ¶¶ 3-5.

²¹ *Id.* ¶¶ 39-40.

²² *Id.* ¶¶ 41-45.

interest of 10 percent or more, or any “controlling” interest in the U.S. parent.²³ The Commission also seeks comment on a variety of additional issues related to its section 310(d)(4) declaratory ruling procedures.²⁴

Vodafone does not object to the Commission’s proposals, and believes they would limit the number of section 310(b)(4) petitions filed with the Commission and reduce to some extent the expense associated with those filings.²⁵ Nevertheless, Vodafone believes that the Commission’s proposals do not go far enough to provide more practical benefits to licensees seeking foreign investment. Instead, the Commission should adopt more comprehensive reform, as described below, to clarify and simplify its approach to foreign ownership under both sections 310(b)(3) and 310(b)(4) and to streamline its section 310(b)(4) approval process. Vodafone’s proposals are consistent with the NPRM’s solicitation of proposals outlining “ways [the FCC] can improve the proposed framework,” and the NPRM’s invitation to submit “alternative approaches.”²⁶ Pursuant to the NPRM’s requirement that “[p]roponents of a different or modified approach . . . provide detailed recommendations for specific rules to implement their proposals,” Vodafone describes its specific alternative reform proposals below.²⁷

²³ *Id.* ¶¶ 42, 65.

²⁴ The Commission sought comment, for example, on whether it should retain, modify, or eliminate the distinction between WTO and Non-WTO Member investment, *id.* ¶¶ 25-35; permit investors not named in a 310(b)(4) ruling to hold an aggregate interest up to 100 percent in the U.S. parent (so long as no single investor or group of investors hold an interest exceeding 25 percent, or a controlling interest at any level, without Commission approval), ¶¶ 46-47; allow a U.S. parent to insert a new foreign-organized controlling parent into the vertical ownership chain above the U.S. parent without prior Commission approval, ¶¶ 57-58; or require the U.S parent to file periodic certifications to demonstrate its compliance with the foreign ownership rules, ¶ 77.

²⁵ While Vodafone does not object to the Commission’s proposals, it nonetheless suggests modification of the Commission’s proposal to issue the section 310(b)(4) declaratory ruling to the licensee’s lowest-tiered, controlling U.S. parent. *See id.* ¶¶ 39-40. The proposal would produce more beneficial results if the Commission issued the section 310(b)(4) declaratory ruling to the highest-tiered, controlling U.S. parent, thus covering all subsidiaries of affiliated companies sharing the same ownership.

²⁶ *Id.* ¶ 24.

²⁷ *Id.*

III. THE COMMISSION'S REGULATORY FRAMEWORK FOR AUTHORIZING FOREIGN INVESTMENT IN COMMON CARRIER WIRELESS LICENSEES REQUIRES COMPREHENSIVE REFORM

A. Comprehensive Reform Is Necessary to Reduce the Burdens of the Commission's Current Framework

Chairman Genachowski has recently indicated that “agency reform is a top priority,” and should involve a “hard and honest[.]” look at the FCC’s rules.²⁸ Consistent with this objective, the NPRM seeks to “reduce unnecessary barriers to foreign investment and to accommodate the myriad forms of corporate governance and equity investment used to structure and finance business enterprises in global markets, while continuing to protect against harm to the public interest.”²⁹ A hard and honest look at the FCC’s current 310(b) framework reveals that it is inconsistent with the Act, inefficient, and burdensome. For example, although Vodafone’s investment in Verizon Wireless has not changed since the Commission first reviewed that investment in 2000, Vodafone has been forced to file numerous declaratory ruling petitions seeking approval of that investment in later transactions.³⁰ Even if the Commission’s modest reform proposals are adopted, the Commission’s unbounded declaratory ruling framework will continue to be burdensome, costly, and time-consuming. Vodafone believes, therefore, that to

²⁸ Remarks of Chairman Genachowski at Georgetown Center for Business and Public Policy, Georgetown University at 2 (Nov. 7, 2011) (“*Chairman’s Remarks*”).

²⁹ NPRM ¶ 38.

³⁰ See, e.g., *Applications of Cellco Partnership d/b/a Verizon Wireless and Atlantis Holdings LLC For Consent to Transfer Control of Licenses, Authorizations, and Spectrum Manager and De Facto Transfer Leasing Arrangements and Petition for Declaratory Ruling that the Transaction is Consistent with Section 310(b)(4) of the Communications Act*, Memorandum Opinion and Order and Declaratory Ruling, 23 FCC Rcd 17444 (2008); *Applications of Cellco Partnership d/b/a Verizon Wireless and Rural Cellular Corporation For Consent To Transfer Control of Licenses, Authorizations, and Spectrum Manager Leases*, Memorandum Opinion and Order and Declaratory Ruling, 23 FCC Rcd 12463 (2008); *Applications of Northcoast Communications, LLC and Cellco Partnership d/b/a Verizon Wireless*, Memorandum Opinion and Order, 18 FCC Rcd 6490, 6492 ¶ 6 & n.15 (CWD/WTB 2003); *Wireless Telecommunications Bureau and International Bureau Grant Consent for Assignment or Transfer of Control of Wireless Licenses and Authorizations from Price Communications Corporation to Cellco Partnership d/b/a Verizon Wireless*, Public Notice, 16 FCC Rcd 7155 (WTB/IB 2001).

achieve the Commission’s goals while protecting the government’s interests, the Commission must undertake more comprehensive reform of its section 310(b) framework.

As the Commission acknowledges in the NPRM, the current section 310(b)(4) pre-approval process is unnecessarily burdensome and wasteful of staff and applicant resources.³¹ Unreasonable delay is perhaps the most pervasive and costly deficiency of the current process. It often takes between one and two months from the date of filing before petitions for declaratory ruling are even put on public notice.³² Delays can be considerable even under the best of circumstances, when few or no third parties object to the proposed foreign investment, and where the Commission imposes few or no conditions on the licensee (or simply orders the licensee to continue abiding by previously imposed conditions).

In many cases, national security concerns raised by the Executive Branch constitute the only impediment to Commission approval of a section 310(b)(4) request, but even where the

³¹ *NPRM* ¶ 2 (noting that “[w]ireless licensees . . . face significant difficulties and expense in trying to ascertain their percentages of foreign ownership,” “[m]any . . . proceedings generate voluminous records consisting of highly detailed information that companies must compile as to citizenship and principal places of business of their investors, including individuals and entities that hold *de minimis* interests directly or indirectly through multiple intervening investment vehicles and holding companies,” and “[e]ach of these cases . . . requires Commission staff to undertake a fact-intensive, time-consuming review of the company’s ownership information to confirm that its non-WTO ownership does not exceed 25 percent”); *id.* ¶ 22 (“[W]ith the exception of companies that are closely held, U.S. parent companies face significant difficulties and costs in trying to ascertain the citizenship and principal places of their investors, which often hold their interests indirectly through multiple intervening investment vehicles and holding companies.”).

³² Based on a review of filings in the International Bureau’s Filing System (“IBFS”), it appears that many petitions for declaratory ruling are placed on public notice one to two months after filing, and that it sometimes takes substantially longer. *See, e.g.,* América Móvil, S.A.B. de C.V., *Petition for Declaratory Ruling*, File No. ISP-PDR-20100623-00012 (filed June 23, 2010) (placed on public notice 45 days after filing, *Non Streamlined International Applications/Petitions Accepted for Filing*, Public Notice (Aug. 5, 2010)); RigNet SatCom, Inc., *Petition for Declaratory Ruling Under Section 310(b)(4) of the Communications Act of 1934, as Amended*, File No. ISP-PDR-20060815-00011 (filed August 10, 2006) (placed on public notice 40 days after filing, *Non Streamlined International Applications Accepted for Filing*, Public Notice (Sept. 19, 2006)); Choice Holdings LLC, *Petition for Clarification or, In the Alternative, Declaratory Ruling Under Section 310(b)(4) of the Communications Act of 1934, as Amended*, File No. ISP-PDR-20080702-00017 (filed July 2, 2008) (placed on public notice 100 days after filing, *Non Streamlined International Applications/Petitions Accepted for Filing*, Public Notice (Oct. 10, 2008)); Celco Partnership d/b/a Verizon Wireless, *Request for Declaratory Ruling*, File No. ISP-PDR-20071129-00016 (filed Nov. 29, 2007) (placed on public notice 145 days after filing, *Non Streamlined International Applications/Petitions Accepted for Filing*, Public Notice (Apr. 22, 2008)).

licensee voluntarily agrees to abide by the Executive Branch’s requested conditions, the licensee can wait months, if not years, before the Commission grants approval. For example, in 2005, Choice Holdings LLC filed a petition seeking a declaratory ruling that indirect foreign investment of up to 35 percent in two common carrier radio licensees from a citizen of a WTO Member country was permissible under section 310(b)(4).³³ Even though the Commission did not find any public interest harm caused by the proposed investment, it did not grant the petition until more than two years later, imposing only those conditions related to national security sought by the Department of Homeland Security.³⁴ This scenario, in which the petitioner faced considerable delay even though the Commission chose not to impose conditions other than those requested by a national security agency, is all too common.³⁵ The lack of a definite time frame for addressing section 310(b)(4) petitions is in stark contrast to the 30-day time frame applicable to the vast majority of voluntary notice filings made to the Committee on Foreign Investment in the United States (“CFIUS”), which regulates foreign investment in a much broader array of critical economic sectors, including communications.³⁶

Even where a proposed foreign investment raises no national security concerns with the Executive Branch and little or no public interest concerns with the Commission, an unreasonable amount of time may pass before a section 310(b)(4) petition is granted. For example, in 2005,

³³ Choice Holdings LLC, *Petition for Declaratory Ruling Under Section 310(b)(4) of the Communications Act of 1934, as Amended*, File No. ISP-PDR-20050624-00008 (filed June 24, 2005) (“Choice PDR”). The Commission issued a public notice concerning the Choice PDR over four months later, on October 28, 2005. *See Streamlined International Applications Accepted for Filing*, Public Notice (Oct. 28, 2005).

³⁴ *International Authorizations Granted*, Public Notice, DA 07-3402 (Jul. 16, 2007).

³⁵ *See, e.g.*, Telecom North America Mobile, Inc., *Petition for Declaratory Ruling*, File No. ISP-PDR-20090820-00007 (filed Aug. 18, 2009), granted on February 4, 2011 (535 days after filing); América Móvil, S.A.B. de C.V., *Petition for Declaratory Ruling*, File No. ISP-PDR-20100623-00012 (filed June 23, 2010), granted on February 7, 2011 (229 days); T-Mobile USA, Inc., *Petition for Clarification or, In the Alternative, Declaratory Ruling Under Section 310(b)(4) of the Communications Act of 1934, as Amended, and Request for Streamlined Processing*, File No. ISP-PDR-20060510-00013 (filed May 10, 2006), granted on November 28, 2006 (202 days).

³⁶ *See* <http://www.treasury.gov/resource-center/international/foreign-investment/Pages/cfius-overview.aspx>.

Telemetrix Inc. sought Commission approval of a proposed transaction that would result in foreign ownership exceeding 25 percent.³⁷ Having found no public interest harms caused by the foreign investment, the Commission granted Telemetrix's petition on August 7, 2006 – 494 days after filing – without imposing any conditions on the licensee.³⁸ Such prejudicial delay in granting section 310(b)(4) petitions, without the imposition of any conditions, frequently arises when a licensee with an approved foreign ownership structure acquires licenses to new spectrum in an FCC-sponsored auction. In 2007, Verizon Wireless filed a petition to confirm that its ownership structure complied with section 310(b)(4) and would permit the acquisition of licenses to be sold in the 700 MHz band auction.³⁹ Although the Commission did not find any competitive or public interest issues raised by the acquisition of such licenses, it waited nearly a full year before granting the petition;⁴⁰ 252 days after announcing that Verizon Wireless had acquired 700 MHz licenses in the auction.⁴¹ Other licensees have faced similar prolonged delays following their acquisition of spectrum licenses at auction, despite the Commission's decision not to impose any new conditions in granting their section 310(b)(4) petitions.⁴²

³⁷ Telemetrix Inc., *Petition for Declaratory Ruling Under Section 310(b) of the Communications Act of 1934, as Amended*, File No. ISP-PDR-20060221-00003 (filed Mar. 31, 2005) ("Telemetrix PDR"). More than one year passed before the Commission placed the Telemetrix PDR on public notice. *Non Streamlined International Applications Accepted for Filing*, Public Notice (Apr. 12, 2006).

³⁸ *International Authorizations Granted*, Public Notice, DA 06-1614 (Aug. 10, 2006). The Commission also authorized the licensee to accept an additional, aggregate 25 percent indirect equity and/or voting interest from the named foreign investors or other foreign investors without seeking further Commission approval under section 310(b)(4), subject to certain conditions.

³⁹ Cellco Partnership d/b/a Verizon Wireless, *Request for Declaratory Ruling*, File No. ISP-PDR-20071129-00016 (filed Nov. 29, 2007).

⁴⁰ *International Authorizations Granted*, Public Notice, DA 08-2577 (Nov. 26, 2008).

⁴¹ *Auction of 700 MHz Band Licenses Closes; Winning Bidders Announced for Auction 73*, Public Notice, DA 08-595 (Mar. 20, 2008).

⁴² See, e.g., Choice Holdings LLC, *Petition for Clarification or, In the Alternative, Declaratory Ruling Under Section 310(b)(4) of the Communications Act of 1934, as Amended*, File No. ISP-PDR-20080702-00017 (filed July 2, 2008) (granted on May 20, 2009 – 322 days after filing); United Wireless Holdings Inc., *Petition for Declaratory Ruling Under Section 310(b)(4) of the Communications Act of 1934, as Amended*, File No. ISP-PDR-20080404-00010 (filed Apr. 4, 2008) (granted on December 9, 2008 – 249 days after filing); AST Telecom, LLC, *Request for*

The foregoing demonstrates that even in the best of cases – where the Commission identifies no public interest or competitive harms and the Executive Branch raises no objections (or where the petitioner voluntarily agrees to conditions requested by the Executive Branch) – a petitioner often must wait months, if not years, before the Commission approves a section 310(b)(4) petition under the current framework. The Commission’s proposals set forth in the NPRM fail to alleviate the onerous time lag that follows from even these benign foreign investments.

While a delay of months or years would cause significant harm to a wireless provider in any event, such delay in circumstances where the Commission has no reason to impose conditions on granting a petition results in even greater harm and yields nothing more than a deadweight loss to the provider, its investors, and the public. Such delays are especially troubling for new spectrum licenses because they delay new network construction. The current pre-approval process also places U.S. wireless providers seeking investment capital at a distinct disadvantage vis-à-vis wireless providers in other countries because many of the non-U.S. providers are not required to seek pre-approval of foreign investment from “friendly” nations. It also places U.S. wireless providers with significant amounts of foreign investors at a disadvantage vis-à-vis U.S. wireless providers without such investors. Given the capital-intensive nature of the wireless business, these disadvantages have real consequences for network deployment, capacity, and coverage.

In view of these fundamental problems with the current system, it is appropriate for the Commission to consider not just the incremental reforms proposed in the NPRM, but more comprehensive reform to achieve the clarity and predictability that the current section 310(b)

Declaratory Ruling, File No. ISP-PDR-20080401-00006 (filed Apr. 1, 2008) (granted on November 26, 2008 – 239 days after filing).

regulatory framework lacks. Vodafone’s proposed changes to the section 310(b) regulatory framework, described in more detail below, would promote foreign investment in U.S. licensees, reduce the regulatory burden on licensees and foreign investors, streamline the Commission’s review process, and align the Commission’s procedures with the requirements of the Act and U.S. trade commitments, while continuing to ensure that the government’s “interests related to national security, law enforcement, foreign policy, and trade policy” are protected.⁴³

B. The Commission Should Enhance the Predictability and Clarity of its Procedures for Reviewing Foreign Investment by Clarifying that Section 310(b)(3) Applies to Direct Investment and 310(b)(4) Applies to All Indirect Investment

A significant obstacle to enhancing the clarity and efficiency of the Commission’s current section 310(b)(4) framework is the International Bureau’s incorrect interpretation of the relationship between sections 310(b)(3) and 310(b)(4).⁴⁴ The IB Guidelines, which were issued without affording the public an opportunity for comment, incorrectly apply section 310(b)(3) to restrict some forms of indirect foreign investment, and illogically make it harder for a foreign company to hold a “non-controlling” indirect interest than a “controlling” indirect interest in a

⁴³ *NPRM* ¶ 3.

⁴⁴ 47 U.S.C. § 310(b)(3)-(4). Section 310(b) provides, in relevant part:

(b) No broadcast or common carrier or aeronautical en route or aeronautical fixed radio station license shall be granted to or held by –

....

(3) any corporation of which more than one-fifth of the capital stock is owned of record or voted by aliens or their representatives or by a foreign government or representative thereof or by any corporation organized under the laws of a foreign country;

(4) any corporation directly or indirectly controlled by any other corporation of which more than one-fourth of the capital stock is owned of record or voted by aliens, their representatives, or by a foreign government or representative thereof, or by any corporation organized under the laws of a foreign county, if the Commission finds that the public interest will be served by the refusal or revocation of such license.

wireless licensee.⁴⁵ The Bureau’s interpretation also is in conflict with the Act and U.S. trade commitments.

Section 310(b)(4), in contrast, can be read to encompass all levels and types of indirect investment that meet that provision’s minimum level of foreign ownership. Analyzing all indirect investment under section 310(b)(4), therefore, is consistent with the Act and is in harmony with U.S. trade commitments. The Commission should thus take the opportunity afforded by this proceeding to confirm that all types of indirect foreign investment are governed by section 310(b)(4), not section 310(b)(3).

1. Section 310(b)(3) of the Act Does Not Apply to Indirect Foreign Investment

The IB Guidelines state that section 310(b)(3)’s 20 percent cap on foreign interests governs where relevant foreign interests “hold[] equity or voting interests in a licensee through an intervening domestically organized holding company that itself holds *non-controlling* interests in the licensee.”⁴⁶ This statement is incorrect as a matter of law and policy because it conflicts with the plain meaning of section 310(b)(3), the legislative history of that provision, and the United States’ WTO Commitments, and is not supported by Commission precedent.

Section 310(b)(3)’s Plain Meaning. The plain meaning of section 310(b)(3) covers only direct foreign interests in common carrier radio licensees, not indirect interests. Section 310(b)(3) applies only to a covered licensee whose equity is “owned” or “voted” by a foreign entity.⁴⁷ Where equity in the licensee is held or voted by a *domestic* entity, the domestic entity (and not any alien) is the owner of record, and/or has the power to vote the equity. Because the section 310(b)(3) terms “owned of record” and “voted by” are not ambiguous, the Commission

⁴⁵ *IB Guidelines* at 6.

⁴⁶ *Id.*

⁴⁷ 47 U.S.C. § 310(b)(3).

may not interpret them in a manner that is contrary to their plain meaning.⁴⁸ Nor does section 310(b)(3) need to be stretched to address indirect interests in licensees held by foreigners through a domestic company because that is the purpose of section 310(b)(4), which regulates “corporation[s] directly or indirectly controlled by any other corporation.”⁴⁹ Before the issuance of the IB Guidelines, the Commission correctly applied the 20 percent limit in section 310(b)(3) to direct foreign investment in licensees only.⁵⁰

Legislative History of Section 310(b). The legislative history of section 310(b) underscores the plain meaning of section 310(b)(3) by demonstrating that Congress added section 310(b)(4) to address indirect interests that were not addressed by sections 310(b)(1)-(3).⁵¹ The current sections 310(b)(1)-(3) have their origin in Section 12 of the Radio Act, which Congress imported into the Act with only minor revisions.⁵² Section 12 of the Radio Act comprised the then-existing limits on foreign ownership of common carrier radio licensees.⁵³

⁴⁸ *Barnhart v. Sigmon Coal Co.*, 534 U.S. 438, 450 (2002) (quoting *Robinson v. Shell Oil Co.*, 519 U.S. 337, 340 (1997)) (“As in all statutory construction cases, we begin with the language of the statute. The first step is to determine whether the language at issue has a plain and unambiguous meaning with regard to the particular dispute in the case. . . . The inquiry ceases if the statutory language is unambiguous and the statutory scheme is coherent and consistent.”) (internal quotation marks omitted).

⁴⁹ 47 U.S.C. § 310(b)(4). See *United States v. Locke*, 471 U.S. 84, 95–96 (1985) (“[D]eference to the supremacy of the Legislature, as well as recognition that Congressmen typically vote on the language of a bill, generally requires us to assume that the legislative purpose is expressed by the ordinary meaning of the words used. . . . *Going behind the plain language of a statute in search of a possibly contrary congressional intent is ‘a step to be taken cautiously’ even under the best of circumstances.*”) (quoting *Richards v. United States*, 369 U.S. 1, 9 (1962); *American Tobacco Co. v. Patterson*, 456 U.S. 63, 75 (1982); *Piper v. Chris-Craft Industries, Inc.*, 430 U.S. 1, 26 (1977)) (internal quotation marks omitted) (emphasis added).

⁵⁰ See, e.g., *Bell Atlantic New Zealand Holdings, Inc., and Pacific Telecom Inc.*, 18 FCC Rcd 23140, 23150 n.70 (2003) (section 310(b)(3) not triggered because the proposed transaction did not involve “direct foreign investment”); *Global Crossing Ltd. (Debtor-in-Possession), and GC Acquisition Limited*, 18 FCC Rcd 20301, 20318 n.81 (2003) (same); *Lockheed Martin Corporation et al.*, 17 FCC Rcd 27732, 27755 n.127 (2002) (same); *Glentel Corp.*, 17 FCC Rcd 12008, 12009 n.9 (2002) (applying section 310(b)(3) to “direct ownership,” while indicating that “[i]ndirect foreign ownership . . . is governed by section 310(b)(4) of the Act”); *Application of Fox Television Stations, Inc.*, 11 FCC Rcd 5714, 5728-29 ¶¶ 35-36 (1995).

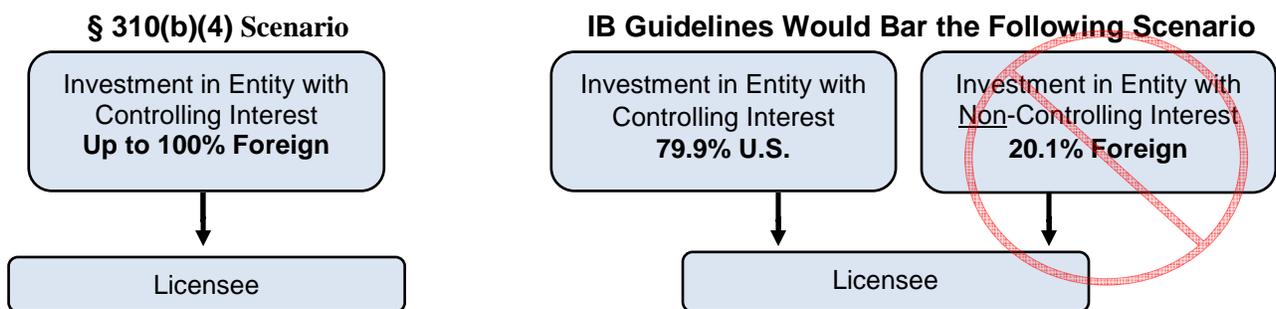
⁵¹ See *Bell Atlantic Tel. Cos. v. FCC*, 131 F.3d 1044, 1047 (D.C. Cir. 1997) (indicating that the “meaning of statutory language . . . depends on context,” including Congress’ purpose and the legislative history).

⁵² See H.R. Rep. No. 1918, 73d Cong., 2d Sess., 48 (1934) (“*Conference Report*”).

⁵³ *Id.*

Because it believed that those limits “[did] not apply to holding companies,” Congress added the current section 310(b)(4) to the Act to limit the amount of indirect interests that could be held by foreign entities.⁵⁴ And, instead of applying section 310(b)(3)’s fixed 20 percent ownership cap to holding companies, Congress employed a 25 percent benchmark and made it non-mandatory, giving the Commission the flexibility to determine whether indirect holdings in excess of 25 percent were contrary to the public interest.⁵⁵ This context makes clear that section 310(b)(3) does not apply to indirect foreign interests, whether controlling or not. Congress expressly recognized that section 310(b)(3) did not apply to indirect interests, and that is why it created section 310(b)(4).

The IB Guidelines turn Congressional intent on its head and lead to a nonsensical result by imposing more severe limits on non-controlling indirect foreign interests than on controlling indirect foreign interests. Under the IB Guidelines’ approach, an indirect, non-controlling interest in a licensee by a foreign entity would be restricted to no more than 20 percent, while under section 310(b)(4) an indirect, *controlling* interest (up to 100 percent) by the same foreign entity would be permitted.



⁵⁴ *Id.* at 48-49.

⁵⁵ *Id.*

There is no conceivable reason for Congress to have been more concerned about non-controlling, indirect foreign ownership than about controlling, indirect foreign ownership. It is an absurd result on its face, and is not a permissible interpretation.⁵⁶

U.S. Trade Commitments. By imposing a 20 percent flat cap on some types of indirect ownership by entities organized in WTO Member nations, the IB Guidelines directly conflict with the United States' WTO Commitments. In 1997, the United States' leadership was critical in achieving the WTO Basic Telecom Agreement, the core principles of which include open entry and foreign investment in telecommunications markets across the globe. As part of the United States' commitment to the trade pact, the U.S. government made unqualified and unambiguous commitments related to foreign investment in domestic companies that hold interests in common carrier radio licensees.⁵⁷ The United States' 1997 WTO Commitments identify section 310(a) and (b)(1)-(3) limits on market access for "Direct" foreign investment in common carrier licenses, but those commitments expressly declare there are *no* "Indirect" limits.⁵⁸ Indeed, under the United States' WTO Commitments, indirect foreign investment in U.S. common carriers can be as high as 100 percent. The IB Guidelines' interpretation of section 310(b)(3), however, contravenes these commitments by preventing some indirect WTO investment above 20 percent. The proper approach is to subject such indirect interests to section

⁵⁶ The "Court will not construe a statute in a manner that leads to absurd or futile results." *Nixon v. Missouri Municipal League*, 541 U.S. 125, 138 (2004) (citing *United States v. American Trucking Assns., Inc.*, 310 U.S. 534, 543 (1940)).

⁵⁷ See United States of America Schedule of Specific Commitments, 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"); *Foreign Participation Order*, 12 FCC Rcd 23902-04 ¶¶ 25-28.

⁵⁸ U.S. Schedule, Supp. 2, GATS, at ¶ 2.C. (Apr. 11, 1997).

310(b)(4), which permits ownership up to 100 percent – consistent with the “no Indirect limits” language of the United States’ WTO Commitments.

Commission Precedent. The IB Guidelines’ interpretation also is not supported by the lone case on which it relies, nor is it supported by any other Commission precedent. The IB Guidelines reference a single 1985 decision, *Wilner and Scheiner*,⁵⁹ but that decision does not support, let alone compel, applying section 310(b)(3) to indirect foreign ownership, and is at odds with numerous other Commission decisions approving indirect, minority interests under section 310(b)(4).⁶⁰

First, *Wilner and Scheiner* addressed foreign ownership through limited partnership interests in broadcast stations only.⁶¹ In particular, the Commission pointed to the insulation provisions under its broadcast ownership attribution rules, which are central to its media cross-ownership policies, explaining that without insulation a limited partner might take on the character of an officer or director.⁶²

Second, *Wilner and Scheiner* addressed concerns about foreign interests in broadcast licensees held as limited partnership interests for reasons largely related to the then-existing

⁵⁹ *Request for Declaratory Ruling Concerning the Citizenship Requirements of Sections 310(b)(3) and (4) of the Communications Act of 1934, as amended*, Declaratory Ruling, 103 F.C.C.2d 511, 520-22 ¶¶ 16-20, n.45 (1985) (“*Wilner and Scheiner*”), *reconsidered in part*, 1 FCC Rcd 12 (1986).

⁶⁰ *See General Electric Capital*, 16 FCC Rcd 17575, 17585-86 ¶ 22 (2001) (“Section 310(b)(4) was designed to address indirect ownership and control situations that were not covered by the prohibitions of Section 310(a) or 310(b)(1)-(3).”); *Vodafone AirTouch, PLC and Bell Atlantic Corp.*, 15 FCC Rcd 16507, 16513-14 ¶ 16 (2000) (“*Vodafone Airtouch*”) (approving Vodafone’s indirect, non-controlling investment in Verizon Wireless under section 310(b)(4)); *VoiceStream Wireless Corp. et al.*, 16 FCC Rcd 9779, 9846-48 ¶¶ 129-34 (2001) (approving Deutsche Telekom AG’s indirect, non-controlling interests in certain licensees, including several Cook Inlet entities and Wireless Alliance, L.L.C., under section 310(b)(4)) (“*DT-VoiceStream Order*”).

⁶¹ *See Wilner and Scheiner* at 516-17 ¶ 11 (“First, while the petitioner is correct in its assertion that one objective underlying the adoption of Section 310 is to preclude aliens from exercising actual control over broadcast facilities, this was not the sole purpose underlying the enactment of Section 310(b). Rather, Section 310(b) reflects the broader purpose of ‘safeguard[ing] the United States from foreign influence’ in the field of broadcasting. The specific citizenship requirements governing positional, ownership and voting interests reflect a deliberate judgment on the part of Congress as to the limitations necessary to prevent undue alien influence in broadcasting.”) (footnotes omitted).

⁶² *Id.* at 520 ¶ 16 & n.43, 522 ¶ 20 & n.50.

section 310(b)(3) and (4) limits on foreign officers and directors. Those limits, however, were eliminated by the Telecommunications Act of 1996, removing this rationale.⁶³

Third, the decision contains no statutory analysis of section 310(b)(3). The IB Guidelines reference the following discussion for the proposition that section 310(b)(3) applies to non-controlling direct *and* indirect foreign ownership interests:⁶⁴

While the fact of domestic organization is necessary for citizenship status, by itself it is not sufficient to place an entity beyond the scope of the statutory limitations established *in Section 310(b)*. A contrary rule would enable aliens, by creating or shifting their interests to domestically organized businesses, to easily circumvent the clear intent of Congress to limit the level of influence of or ownership by aliens in broadcast licenses.⁶⁵

The quoted statement makes reference only to section 310(b) generally – not section 310(b)(3) – even though it appears in a section of the decision with the heading, “Section 310(b)(3).” The passage does not state that section 310(b)(3) applies to indirect as well as direct foreign ownership in a license. To the contrary, *Wilner and Scheiner* elsewhere indicates that “[t]here are differences in the alien ownership provisions contained in Section 310(b)(3), which apply to non-controlling interests directly in the licensee, and those of Section 310(b)(4), which apply to companies which directly or indirectly control the licensee,”⁶⁶ further underscoring that section 310(b)(3) does not apply to indirect ownership interests. The proper interpretation of the quoted language is that Congress did not intend to allow foreign entities, through the creation of

⁶³ Telecommunications Act of 1996, Pub. L. 104–104, § 403(k)(1)-(2), 110 Stat. 131 (1996) (“1996 Act”).

⁶⁴ See *IB Guidelines* at 6-7 (citing *Wilner and Scheiner* at 520-22).

⁶⁵ *Wilner and Scheiner* at 521 (emphasis added). The IB Guidelines also point to footnote 45 in *Wilner and Scheiner*, which states: “By its express language, the benchmarks established in Section 310(b)(4), rather than those contained in Section 310(b)(3), apply in situations in which an entity directly or indirectly controls the licensee. . . . As a consequence, the standards contained in Section 310(b)(3) are applicable only in situations in which an entity holds a non-controlling equity or voting interest.” *Id.* at 521 n.45. Nothing in the language cited states that section 310(b)(3) applies to *indirect, non-controlling* foreign ownership interests.

⁶⁶ *Id.* at 524 (emphasis added).

domestic holding companies, to evade entirely any foreign ownership review under section 310(b). This, however, does not support the interpretation advanced by the IB Guidelines.

In any event, the Commission is not bound by the rationale of *Wilner and Scheiner* as adopted by the International Bureau,⁶⁷ and should therefore take this opportunity to revisit the IB Guidelines' misplaced reliance on the case by instead treating indirect, minority foreign investment in a manner consistent with the plain language and purpose of the Act's foreign ownership provisions.

2. Section 310(b)(4) Applies to Indirect Foreign Investment

The proper reading of section 310(b) is that section 310(b)(4) – not section 310(b)(3) – addresses indirect foreign ownership. As the Commission stated in the *Deutsche Telekom-VoiceStream* decision, the “legislative evolution” of sections 310(b)(3) and (b)(4) “indicates that the categories of restrictions developed over time to reach situations where the foreign connection was progressively less direct and [to] impose[] restrictions that were progressively less absolute.”⁶⁸ Section 310(b)(4) should thus be read to address all indirect foreign ownership above 25 percent.

Section 310(b)(4)'s Plain Language. Section 310(b)(4) allows the Commission, if it so chooses based on its view of the public interest, to decline to issue a common carrier radio license to “any corporation *directly or indirectly controlled* by any other corporation of which more than one-fourth of the capital stock is owned of record or voted by aliens.”⁶⁹ To discharge its duty under this provision, the Commission must determine whether the licensee is in fact

⁶⁷ See, e.g., *Applications of ComEx, Inc.*, Memorandum Opinion and Order, 6 FCC Rcd 3370, 3372 ¶ 14 (1991) (“[T]he Commission is not bound by Bureau precedent.”) (citing *Amor Family Broadcasting Group*, 918 F.2d 960, 962 (D.C. Cir. 1990)).

⁶⁸ *DT-VoiceStream Order*, 16 FCC Rcd at 9801 ¶ 35. Indeed, the structure of section 310(b) is intended to tolerate “larger amounts of nominal alien ownership . . . as the alien’s connection with the license holder becomes more remote.” J. Watkins, *Alien Ownership and the Communications Act*, 33 Fed. Comm. L. J. 1, 3 (1981).

⁶⁹ 47 U.S.C. § 310(b)(4) (emphasis added).

“controlled” by an entity that in turn has greater than 25 percent foreign ownership. Neither section 310(b), however, nor other provisions of the Act, define what constitutes “control.”

While “control” can be *de jure* – *i.e.*, majority equity ownership or “voting” control – it can also be *de facto* – when an owner has enough interest in a company to wield actual control.

Moreover, Commission precedent and the legislative history of section 310(b)(4) make clear that the Commission can review under that provision situations where a foreign investor may not hold majority voting control but exercises significant influence over the affairs of the licensee.⁷⁰

The Commission in other contexts has interpreted the term “control” flexibly and in some cases as synonymous with “influence.” For example:

- In enforcing its duty to review and approve transfers of control of licensees, the Commission has used varying standards to define “control,” including the *Intermountain Microwave* standard,⁷¹ which focuses on a party’s ability to direct a licensee’s operations; the designated entity *de facto* control standard for spectrum auction bidding credit applicants;⁷² and the *de facto* control standard used to determine the party in charge of spectrum usage under the Commission’s spectrum leasing rules.⁷³ Each of these tests examines the scope of the entity’s ability to affect the licensee’s business and operations.
- The Commission also has repeatedly treated general partnership interests, regardless of the amount of equity the general partner holds, as “controlling” interests, meaning that minority general partnership interests are deemed “controlling.”⁷⁴ It has based that position on general partnership law which,

⁷⁰ See *Rochester Telephone Corporation v. United States*, 307 U.S. 125, 145-46 (1939) (holding “Congress did not imply artificial tests of control” under section 2(b) of the Act, which denies the Commission jurisdiction over any carrier “engaged in interstate or foreign communication solely through physical connection with the facilities of another carrier not directly or indirectly controlling or controlled by, or under direct or indirect common control with, such carrier,” and concluding that control “is an issue of fact to be determined by the special circumstances of each case”).

⁷¹ *Intermountain Microwave*, Public Notice, 12 FCC 2d 559 (1963).

⁷² 47 C.F.R. § 1.2110.

⁷³ *Id.* § 1.9010.

⁷⁴ See *BCP CommNet, L.P., Transferor, and Vodafone Airtouch PLC., Transferee, For Consent to Transfer Control of Licenses*, Memorandum Opinion and Order, 15 FCC Rcd 28, 30 (WTB 1999), *ord. on further recon. denied*, 17 FCC Rcd 10998 (WTB 2002), *ord. on further recon. dismissed*, 18 FCC Rcd 8161 (WTB 2003) (“CommNet’s interest in each of the relevant licensees involves a general partnership interest, which the Commission considers to be a controlling interest.”) (“*BCP CommNet*”); *Global Crossing Ltd. And Frontier Corporation, Applications for Transfer of Control Pursuant to Sections 214 and 310(d) of the Communications Act, as amended*, Memorandum

absent contrary provisions in the partnership agreement, enables each general partner to influence the partnership's business by, for example, binding the partnership into contractual commitments.

- Under the Commission's broadcast attribution standards, holders of voting equity in a broadcast licensee in amounts as low as five percent are treated as though they are the owners or parties in "control" of the broadcast licensee for purposes of the Commission's multiple broadcast ownership and cross-ownership restrictions.⁷⁵

In none of these situations has the Commission limited its review to *de jure* control. All of these standards of "control" vary, depending on their context, suggesting that the Commission has similar flexibility to interpret the term "control" in the context of indirect foreign ownership under section 310(b)(4) as well. Moreover, in view of the purpose and legislative history of section 310(b), including, as discussed more fully below, Congress' clear focus on those foreign investors that have the ability to influence covered licensees, the fact that the Commission establishes a threshold for "control" for purposes of section 310(b)(4) does not mean that the same threshold would apply in determining "control" for purposes of section 310(d) or other provisions of the Act.

Legislative History of Section 310(b)(4). Section 310(b)(4)'s legislative history reveals Congress' intent that the Commission review indirect foreign interests under that section. As noted above, Congress added section 310(b)(4) to the then-existing foreign ownership limitations contained in Section 12 of the Radio Act with the express purpose of addressing indirect foreign

Opinion and Order, 14 FCC Rcd 15911, 15915 ¶9 (WTB/IB/CCB 1999) ("As a general partner in UCN, Frontier holds a controlling interest by definition.") (citation omitted).

⁷⁵ See 47 C.F.R. § 73.3555 (Note 2a) (indicating that "partnership and direct ownership interests and any voting stock interest amounting to 5% or more of the outstanding voting stock of a corporate broadcast licensee . . . will be cognizable"); (Note 1) (defining "cognizable interest" as "any interest . . . that allows a person or entity to own, operate or control, or that otherwise provides an attributable interest in, a broadcast station"); *Corporate Ownership Reporting and Disclosure by Broadcast Licensees*, Report and Order, 97 FCC 2d 997 (1984), *reconsidered in part*, 58 RR 2d 604 (1985), *further reconsidered in part*, 1 FCC Rcd 802 (1986) ("[A] 5% benchmark is likely to identify nearly all shareholders possessed of a realistic potential for influencing or controlling the licensee, with a minimum of surplus attribution.").

interests held through U.S.-organized holding companies.⁷⁶ Congress believed that such indirect interests were not addressed by the then-existing provisions of the Radio Act, including the predecessor to section 310(b)(3).⁷⁷

The legislative history further indicates that Congress's primary goal in enacting section 310(b)(4) was to empower the Commission to regulate broadly indirect foreign influence over covered FCC licensees wielded through domestically organized companies, and not merely when such indirect foreign influence rises to the level of a majority voting interest. When the Conference Committee convened to resolve inconsistencies between the House and Senate versions of the legislation that ultimately enacted section 310(b)(4), it substantially adopted the Senate's version.⁷⁸ In its Report, the Senate stated that the purpose of its language was "to insure the American character of holding companies whose subsidiaries operate under radio licenses granted by the Commission," while still allowing some level of alien representation.⁷⁹ Elsewhere in its discussion, the Senate referred to indirect "foreign ownership," "alien representation," and foreign "interests," suggesting that its concern related broadly to indirect foreign influence over covered licensees, as opposed merely to majority or voting control.⁸⁰ Nowhere did the Senate suggest that its use of the phrase "controlled by" in section 310(b)(4)

⁷⁶ *Conference Report* at 48-49. See also *DT-VoiceStream Order*, 16 FCC Rcd at 9805 ¶ 40 (noting that one purpose of adding 310(b)(4) was to address indirect ownership and control) (citing H.R. Rep. No. 1918, 73d Cong., 2d Sess. 48 (1934)). See also *Bell Atlantic*, 131 F.3d at 1047 (indicating that the "meaning of statutory language . . . depends on context," including Congress' purpose and the legislative history).

⁷⁷ *Conference Report* at 48-49.

⁷⁸ *Id.* at 49 (adopting the Senate version and adding additional authority for the FCC to reject an indirect foreign interest greater than 25% if it would not serve the public interest).

⁷⁹ S. Rep. No. 781, 73d Cong., 2d Sess., 7 (1934) ("*Senate Report*") ("To prohibit a holding company from having any alien representation or ownership whatsoever would probably seriously handicap the operation of those organizations that carry on international communications and have large interests in foreign countries in connection with their international communications."). The Senate also expanded the indirect foreign ownership cap from the previously proposed limit of 20% to 25%. *Id.*

⁸⁰ *Id.*

was meant to limit application of the section solely to situations where U.S. holding companies with foreign ownership wield majority or voting control.

A memorandum from the Secretary of Commerce to the President of the United States, which was transmitted to the Senate, underscores this concern, noting that a “loophole” in Section 12 of the Radio Act (*i.e.*, sections 310(b)(1)-(3)) allowed “foreign influence” to enter the U.S. communication system unchecked:

In 1927 when the Radio Act was made law, Congress was alive to this possibility and went to great length in section 12 of that act to prevent foreign influence from entering our communication system. They were unsuccessful, to some extent, as a loophole in the law permits a foreign-dominated holding company to own United States communication companies. This flaw in the law has already been utilized for that very purpose, and . . . one member [of the committee] strongly advises that now is the time to remedy the defect. . . . To this end, that member of the committee believes the provisions of section 12 of the Radio Act of 1927 should be amended and strengthened in order that the intent of the provisions of this section may not be evaded by setting up holding companies with foreign directors or influenced by foreign stockholders, which holding companies now may control United States communication companies under the provision of this section, although not so intended by the framers of the law.⁸¹

Context for the Senate’s use of the phrase “controlled by” in section 310(b)(4) also is revealed by the House Report, which was released several months after the Senate Report and a few days before the Conference Committee Report.⁸² The House noted that the Senate rejected specific definitions “of the terms ‘parent,’ ‘subsidiary,’ and ‘affiliated’ for the purposes of those provisions of the bill which applied to parents and subsidiaries of common carriers subject to the

⁸¹ Letter from the President of the United States to the Chairman of the Committee on Interstate Commerce transmitting a Memorandum from the Secretary of Commerce Relative to a Study of Communications by an Interdepartmental Committee, S. Comm. Print, 73d Cong. 2d Sess. 6 (1934).

⁸² The Senate Report was released on April 17, 1934, the House Report was released on June 1, 1934, and the Committee Report was released on June 4, 1934.

[A]ct and persons affiliated with such carriers.”⁸³ Instead, the Senate referred to those interests generally as “controlling,” an approach the House Report endorsed, reasoning that the term “controlling” was preferable to attempting to cover those interests with specific definitions, as “[m]any difficulties are involved in attempting to define such terms.”⁸⁴ Making clear its intent for the term “controlling” to have a broad meaning, the House explained:

No attempt is made to define ‘control’, since it is difficult to do this without limiting the meaning of the term in an unfortunate manner. Where reference is made to control the intention is to include actual control as well as what has been called legally enforceable control. It would be difficult, if not impossible, to enumerate or to anticipate the many ways in which actual control may be exerted. A few examples of the methods used are stock ownership, leasing, contract, and agency. It is well known that actual control could be exerted though ownership of a *small percentage* of the voting stock of a corporation, either by the ownership of such stock alone or through such ownership in combination with other factors.⁸⁵

The House thus declined to adopt a definition of control that could limit its meaning.

The Conference Report underscores Congress’ broad interpretation of control. It describes Section 12 of the Radio Act, which, as noted above, is now reflected in sections 310(b)(1)-(3) of the Act, as restricting “alien control” of radio station licenses – even though those subsections deal with direct ownership restrictions, including the 20 percent cap on foreign interests:

Section 12 of the Radio Act restricting alien control of radio-station licenses does not apply to holding companies. The Senate bill, adapted from H.R. 7716, provides that such licenses might not be granted to or held by any corporation controlled by another corporation of which any officer or more than one-fourth of the directors are aliens or of which more than one-fourth of the capital

⁸³ H.R. Rep. No. 1850, 73d Cong., 2d Sess. 4 (1934) (“*House Report*”) (definitions of these terms were initially included in the House version of the Act, H.R. 8301).

⁸⁴ *Id.* at 4-5.

⁸⁵ *Id.* (emphasis added).

stock is owned of record or voted, after June 1, 1935, by aliens, their representatives, a foreign government, or a corporation organized under the laws of a foreign country. The substitute (sec. 310(a)(5)) adopts the Senate provision with an addition stating that the license may not be granted to or held by such a corporation if the Commission finds that the public interest will be served by the refusal or the revocation of such license.⁸⁶

The Conference Report's use of the term "control" to cover the 20 percent ownership ban indicates that Congress viewed "control" for section 310(b) purposes as something that could involve far less than actual majority voting control and reflected instead foreign influence.⁸⁷

Authority Under Section 310(b)(4) to Address All Indirect Foreign Interests

Throughout the Vertical Ownership Chain. In addition to indicating that section 310(b)(4) is the proper vehicle for regulating indirect foreign interests in excess of 25 percent, the plain language and legislative history demonstrate that the Commission has broad authority under section 310(b)(4) to recognize, address, and aggregate all forms and levels of indirect foreign ownership throughout the vertical ownership chain. Section 310(b)(4) applies to wireless licensees directly or indirectly controlled by "*any other corporation of which*" more than 25 percent "of the capital stock is owned of record or voted by aliens."⁸⁸ Unlike section 310(b)(3), which limits the amount of stock owned or voted by a foreign investor in the licensee, section 310(b)(4) limits the amount of stock owned or voted by a foreign investor in any other

⁸⁶ *Conference Report* at 48-49.

⁸⁷ The fact that Congress used the term "control" broadly in section 310(b) does not mean that the term must be read that way in all contexts of the Act or even section 310. The courts and the Commission have repeatedly emphasized that a single term may be accorded different meanings when used in different provisions of the same statute. *See, e.g., Environmental Defense v. Duke Energy Corp.*, 549 U.S. 561, 574-76 (2006) ("A given term in the same statute may take on distinct characters from association with distinct statutory objects calling for different implementation strategies": "There is ... no 'effectively irrebuttable' presumption that the same defined term in different provisions of the same statute must 'be interpreted identically.' Context counts."); *see also Abbott Laboratories v. Young*, 920 F.2d 984, 987 (D.C. Cir. 1990); *Amending the Definition of Interconnected VoIP Service*, Notice of Proposed Rulemaking, FCC 11-107, at ¶ 101 n.225 (Jul. 13, 2011).

⁸⁸ 47 U.S.C. § 310(b)(4) (emphasis added).

corporation that directly or indirectly “controls” the licensee.⁸⁹ The plain language, purpose, and legislative history of section 310(b)(4) thus indicates that its scope is much broader than that of section 310(b)(3) and extends beyond the majority owner of the licensee to any company that wields influence over the licensee, whether directly through a single entity or indirectly through a chain of entities.

As noted above, Congress, as revealed in the legislative history, sought through section 310(b)(4) to close those then-existing loopholes that prevented the Commission from identifying and addressing foreign interests in a licensee held indirectly.⁹⁰ At the same time, Congress gave the Commission wide discretion to allow or prohibit indirect foreign ownership in excess of 25 percent. Given the more expansive scope of section 310(b)(4), as compared to section 310(b)(3), and the wide discretion granted to the Commission to address indirect foreign investment above 25 percent (discretion denied to the Commission with respect to direct foreign investment in the licensee under section 310(b)(3)), Congress’ intent was for the Commission to have wide latitude to identify and address under section 310(b)(4) indirect foreign investment at all levels within the vertical ownership chain between the U.S. company that “controls” the licensee and the actual foreign investors.

Given Congress’ intent that “control” under section 310(b)(4) be interpreted broadly to include investors with influence over the licensee, and its purpose that the provision be used to close loopholes that previously allowed foreign investment made through U.S. companies to escape regulation,⁹¹ it is clear that section 310(b)(4) applies to all entities that can influence

⁸⁹ *Id.*

⁹⁰ *See House Report* at 5 (“It is well known that actual control may be exerted through ownership of a small percentage of the voting stock of a corporation, either by the ownership of such stock alone or through such ownership in combination with other factors.”).

⁹¹ *See Senate Report* at 7 (stating its intent “to insure the American character of holding companies whose subsidiaries operate under radio licenses granted by the Commission”); *House Report* at 4 (noting that the Senate

covered licensees, including companies that exert influence indirectly through attenuated vertical ownership structures. Accordingly, section 310(b)(4) gives the Commission the ability to identify, aggregate, and regulate indirect foreign investment at all levels in the vertical ownership chain, even if that investment is filtered through several entities before it ultimately reaches an entity that “controls,” under section 310(b)(4)’s flexible standards, the covered licensee.

The Commission has acknowledged this purpose and legislative history. In *Wilner and Scheiner*, the Commission observed that precluding “aliens from exercising actual control” over FCC licensees “was not the sole purpose underlying the enactment of Section 310(b).”⁹² It noted that “Section 310(b) reflects the broader purpose of safeguarding the United States from foreign influence” and “[t]he specific citizenship requirements governing positional, ownership and voting interests reflect a deliberate judgment on the part of Congress as to the limitations necessary to prevent undue alien influence.”⁹³ Congress’s deliberate judgment did not leave an obvious loophole that would permit some forms of indirect foreign investment, no matter how attenuated, to escape the reach of section 310(b)(4). After all, Congress added that provision for the express purpose of addressing a similar loophole that existed in the Radio Act.⁹⁴ Application of section 310(b)(4) to all situations in which foreign investment of 25 percent or greater is made in a covered FCC licensee indirectly through domestically organized entities is consistent with Congress’ goals.

The Commission should therefore conclude that section 310(b)(4) applies to its review of all indirect foreign interests, as Congress appears to have intended “control” to be synonymous

rejected specific definitions “of the terms ‘parent,’ ‘subsidiary,’ and ‘affiliated’ for the purposes of those provisions of the bill which applied to parents and subsidiaries of common carriers subject to the [A]ct and persons affiliated with such carriers”).

⁹² *Wilner and Scheiner* at 517 ¶ 11.

⁹³ *Id.*

⁹⁴ See *Alarm Industry Communications v. FCC*, 131 F.3d 1066, 1071 (1997) (rejecting distinctions drawn by the Commission that were “not tied to anything remotely related to the evident objective” of the statute).

with “influence” and rejected attempts to define control by reference to any specific corporate structures, level of stock ownership, or percentage of voting rights.⁹⁵ Even if the Commission were to conclude that section 310(b)(4) does not clearly authorize regulation of indirect minority foreign interests, the statute is at least ambiguous. As discussed, Congress deliberately declined to define the term “control” for fear of limiting its meaning.⁹⁶

This approach is consistent with the purpose of section 310(b)(4): to close a loophole in the then-existing foreign ownership provisions of the Radio Act that permitted unlimited and unchecked indirect foreign investment in FCC licensees held through U.S.-organized holding companies. It also conforms to the structure of section 310(b), which tolerates greater amounts of foreign investment as the alien’s connection with the license holder becomes more remote. The legislative history, in addition, uniformly confirms that Congress intended section 310(b)(4) to apply to indirect foreign investment in a covered FCC licensee held through any domestic entity, and not just to majority control calculated as a percentage of shares. Finally, this approach is consistent with the United States’ WTO Commitments in the Basic Telecom Agreement.⁹⁷

⁹⁵ See *Bell Atlantic*, 131 F.3d at 1047 (indicating that the “meaning of statutory language . . . depends on context,” including Congress’ purpose and the legislative history).

⁹⁶ Indeed, in the corporate context, “control” can refer to majority ownership and voting control, but also can (and often does) refer to ownership sufficient, on the facts presented, to give the holder influence.

⁹⁷ Section 303(r) affords the Commission both the authority and the obligation to ensure consistency between its regulations and the nation’s treaty obligations. Section 303(r) directs the Commission to “[m]ake such rules and regulations and prescribe such restrictions and conditions, not inconsistent with law, as may be necessary to carry out . . . any international radio or wire communications treaty or convention, or regulations annexed thereto, including any treaty or convention insofar as it relates to the use of radio, to which the United States is or may hereafter become a party.” 47 U.S.C. § 303(r); see also *Modification of Licenses held by Iridium Constellation, LLC and Iridium, US LP*, 18 FCC Rcd 20023, 20028 ¶ 12 (IB 2003) (“[T]he Communications Act provides the Commission greater discretion where international radio-frequency issues, particularly those involving treaty obligations, are involved.”); *AT&T Corp.*, 14 FCC Rcd 8306, 8313-15 ¶¶ 16-22 (1999) (evaluating Bureau’s order for consistency with international obligations); *Amendment of Part 83 to Provide for an Auxiliary Source of Electrical Energy on Certain U.S. Vessels Subject to the Great Lakes Agreement*, 28 F.C.C.2d 121 (1971) (relying on section 303(r) to support adoption of requirement to further treaty obligation).

This approach is also consistent with the Commission’s goal of ensuring that its reforms continue “to protect important interests related to national security, law enforcement, foreign policy, and trade policy.”⁹⁸ As its history thus far demonstrates, nothing in the Commission’s review of indirect foreign investment under section 310(b)(4) would compromise its ability, or the ability of any agency within the Executive Branch, to carry out its duty to identify, assess, regulate, restrict, or block proposed foreign investment.⁹⁹ Commission review would be triggered whenever the aggregate amount of foreign indirect investment in a covered licensee exceeded 25 percent. Because the licensee would thus be required to inform the Commission of any such foreign ownership interest, the Commission would have a vehicle for referring information about the investment to all of the appropriate Executive Branch agencies,¹⁰⁰ or for imposing on the covered licensee its own obligations designed to protect the government’s national security, law enforcement, foreign policy, and trade-related interests.

By clarifying the relationship between sections 310(b)(3) and (b)(4), and specifying that section 310(b)(4) applies to all indirect investment in a covered licensee in excess of 25 percent, the Commission would conform its procedures to the Act and U.S. trade commitments. Such clarification would also lend clarity and predictability to the Commission’s foreign ownership review procedures, and lay the groundwork for more comprehensive reform and streamlining of the Commission’s section 310(b)(4) framework, as described below.

⁹⁸ *NPRM* ¶ 1.

⁹⁹ Some Executive Branch agencies have independent interests in reviewing foreign investment in wireless licensees for national security, law enforcement, foreign policy and trade concerns. *See, e.g., Foreign Participation Order*, 12 FCC Rcd at 23919 ¶¶ 61-62 (1997); *DT-VoiceStream Order*, 16 FCC Rcd at 9815-23 ¶¶ 60-77.

¹⁰⁰ *See Market Entry and Regulation of Foreign-Affiliated Entities*, Report and Order, 11 FCC Rcd 3873, 3897 ¶ 62 (1995) (noting “[t]he Executive Branch’s input would continue to be important in [its] consideration of the overall public interest”).

C. The Commission Should Adopt a Notice Framework for Reviewing Foreign Investment in Wireless Licensees that Does Not Require the Commission’s Pre-Approval Through a Declaratory Ruling Procedure

Rather than making only modest adjustments to the cumbersome, expensive, and time-consuming declaratory ruling framework, the Commission should revamp its procedures by adopting a notice framework. A notice framework could incorporate many of the modest reforms the Commission has proposed in the NPRM, but would carry the added benefit of streamlining the approval process for the Commission and applicants, while promoting non-controversial, beneficial foreign investment. A notice framework also follows naturally from the clarity and predictability that would be achieved if the Commission specified that section 310(b)(3) covers direct investment only, and that section 310(b)(4) applies to all indirect investment. Accordingly, consistent with the Act, U.S. trade commitments, and Commission precedent, the Commission should review all indirect foreign investment efficiently through a streamlined section 310(b)(4) notice procedure.

1. Vodafone’s Proposed Section 310(b)(4) Notice Framework

Vodafone urges the Commission to adopt a section 310(b)(4) notice framework with the following features:

Initial Notice Procedure. A covered wireless licensee would be required to submit a section 310(b)(4) notice to the Commission whenever it believed its indirect foreign ownership would exceed 25 percent. In this notice, the covered licensee would also be required to identify any individual or entity that holds a direct or indirect interest of 10 percent or more, or any “controlling” interest, in its parent, and indicate whether such foreign investors were from WTO Member countries.

Commission Review of the Section 310(b)(4) Notice. Upon receipt of the section 310(b)(4) notice, the Commission would then have 30 days to determine whether the proposed

investment was truly an indirect foreign investment subject to section 310(b)(4), or whether other provisions applied, such as section 310(b)(3) (in the case of a direct foreign investment in a covered licensee) or section 310(d) (in the case of a transfer of control). During its review period, the Commission could refer the section 310(b)(4) notice to the proper Executive Branch agencies for their review, consistent with the *Foreign Participation Order*.¹⁰¹ At the expiration of the 30-day review period, the foreign investment would be deemed automatically approved, unless the Commission found that section 310(b)(4) did not apply, blocked the investment on specific grounds recognized in the *Foreign Participation Order*,¹⁰² or indicated that Commission action would be delayed because of concerns expressed by the Executive Branch agencies and recognized in the *Foreign Participation Order*.

Follow-On Investment Approval. Once the Commission had approved a foreign entity's indirect investment, the foreign investor or wireless licensee would not be required to provide any further notification or information to the Commission with respect to that foreign entity. Thus, if the licensee acquired additional wireless licenses, it would not be required to file additional foreign ownership notices. Likewise, if the foreign investor's interest in the licensee changed, but such change was within the level of interest contemplated by the initial notice, then the wireless licensee would not be required to file additional notices.

2. Vodafone's Proposed Section 310(b)(4) Notice Framework Would Reduce Unnecessary Regulation and is Consistent with the Act, U.S. Trade Commitments, and Commission Precedent

Vodafone's proposed section 310(b)(4) notice framework furthers the objectives of President Obama's July 11, 2011 Executive Order requiring independent regulatory agencies to review and revise their regulatory processes where they can be "more effective or less

¹⁰¹ See *Foreign Participation Order* at 23919-20 ¶ 63.

¹⁰² See *id.* at 23898 ¶ 13, 23919-20 ¶ 63.

burdensome in achieving the regulatory objectives.”¹⁰³ It also advances Chairman Genachowski’s pledge to review the FCC’s rules and regulations, especially its “significant” rules, to ensure “they are designed ‘in a cost-effective manner consistent with goals of promoting economic growth, innovation, competitiveness, and job creation.’”¹⁰⁴ It is straight-forward, predictable, and promotes beneficial foreign investment. Not only is it more cost-effective and efficient than the Commission’s current declaratory ruling framework, it also is more consistent with section 310(b)(4)’s statutory mandate. Section 310(b)(4) generally permits foreign indirect investment in wireless licensees in any amount.¹⁰⁵ Its 25 percent limit applies only where “the Commission finds that the public interest will be served by the refusal or revocation of such license.”¹⁰⁶ Nothing in the statute requires the Commission’s pre-approval for such investment.

Vodafone’s notice framework also is consistent with other notice frameworks adopted by the Commission. For example, the Commission has adopted a streamlined notice procedure for applications for international section 214 authorizations.¹⁰⁷ Under that framework, the IB’s Policy Division reviews each application for streamlined processing and, if it deems it eligible, releases a public notice indicating that the application is accepted for such processing.¹⁰⁸ Fourteen days after the public notice is released, the applicant’s section 214 authorization is deemed granted and the applicant may commence operations on the fifteenth day.¹⁰⁹ Prior to releasing the public notice, the Commission may deem an application ineligible for streamlined

¹⁰³ Exec. Order No. 13579, 76 Fed. Reg. 41587 (July 14, 2011).

¹⁰⁴ *Chairman’s Remarks* at 2.

¹⁰⁵ 47 U.S.C. § 310(b)(4).

¹⁰⁶ *Id.*

¹⁰⁷ See 47 C.F.R. §§ 63.12, 63.18; *Implementation of Further Streamlining Measures for Domestic Section 214 Authorizations*, Report and Order, CC Docket No. 01-150, 17 FCC Rcd 5517 (2002); *1998 Biennial Regulatory Review—Review of International Common Carrier Regulations*, Report and Order, IB Docket No. 98-118, 13 FCC Rcd 13713 (1998); *Streamlining the International Section 214 Authorization Process and Tariff Requirements*, Report and Order, IB Docket No. 95-118, 11 FCC Rcd 12884 (1996).

¹⁰⁸ See 47 C.F.R. § 63.12; see also <http://transition.fcc.gov/ib/pd/pf/214guide.html>.

¹⁰⁹ See 47 C.F.R. § 63.12(a)-(b).

processing, in which case the application is not deemed granted until the Commission affirmatively acts upon the application.¹¹⁰ Vodafone’s proposed section 310(b)(4) notice framework is similar to the Commission’s section 214 notice procedure, except that it allows the Commission 30 days, instead of 14, to review and take action on such a notice.

In addition, the 25 percent indirect foreign ownership threshold that triggers the notice requirement under Vodafone’s proposed section 310(b)(4) framework is similar to the threshold that triggers notice obligations in other Commission rules. For example, under the Commission’s foreign affiliation rules, an authorized carrier must provide 45-days’ notice to the Commission when a transaction would result in a foreign carrier’s acquisition of a direct or indirect interest greater than 25 percent, or of a controlling interest, in the capital stock of the authorized carrier.¹¹¹

The 25 percent threshold also is consistent with the threshold in other agencies’ notice procedures related to foreign investment. For example, the Department of Treasury’s regulations governing CFIUS’ national security review of foreign investment define covered transactions as those where a foreign entity holds a 10 percent or greater voting interest in the domestic entity.¹¹²

Vodafone’s section 310(b)(4) notice framework, furthermore, is consistent with U.S. trade commitments. As noted above, in its 1997 WTO Commitments, the United States made unqualified and unambiguous commitments not to place *any* limits on indirect foreign

¹¹⁰ See *id.* § 63.12(d).

¹¹¹ See *id.* § 63.11(a)(2).

¹¹² See 31 C.F.R. § 800.302(b) (“Transactions that are not covered transactions include . . . [a] transaction that results in a foreign person holding ten percent or less of the outstanding voting interest in a U.S. business (regardless of the dollar value of the interest so acquired), but only if the transaction is solely for the purpose of passive investment.”). CFIUS is an inter-agency body that implements the Exon-Florio amendment to the Defense Production Act. See 50 U.S.C. § 2170; 31 C.F.R. § 800.101. Exon-Florio authorizes the President “to suspend or prohibit any covered transaction when, in the President’s judgment, there is credible evidence to believe that the foreign person exercising control over a U.S. business might take action that threatens to impair the national security.” See 31 C.F.R. § 800.101.

investment by companies organized under the laws of WTO Members in domestic companies that hold interests in common carrier wireless licensees.¹¹³ Vodafone's proposed notice framework is more consistent with these commitments because it presumes that such investment is in the public interest and creates a streamlined approval process for such investment.

3. Vodafone's Additional Reform Proposals Would Not Compromise the Government's National Security, Law Enforcement, Foreign Policy, and Trade Policy Interests

Just as applying section 310(b)(4) to all indirect foreign ownership would not compromise the government's national security, law enforcement, foreign policy, and trade policy interests, nor would adopting Vodafone's proposed section 310(b)(4) notice framework. That framework permits the U.S. Government to review all transactions before they are consummated, allowing it to intercede and, where necessary, block proposed investment, while eliminating the onerous burdens on licensees, foreign investors, and the Commission that exist under the current declaratory ruling procedure.

Under Vodafone's proposed framework, moreover, the Commission will continue to accord deference to Executive Branch agencies that, through Team Telecom, express concerns on matters of national security, law enforcement, foreign policy, and trade, including by expressly deferring to those agencies, as dictated by the *Foreign Participation Order*.¹¹⁴ If necessary, the Commission could establish procedures to notify the Executive Branch of section 310(b)(4) notices that are filed with the FCC. The Commission could also adopt rules that preclude parties from closing an investment before the Executive Branch completes its review.

¹¹³ See *supra* note 58.

¹¹⁴ See *Foreign Participation Order* at 23919-20 ¶ 63; see also *supra* note 100.

IV. CONCLUSION

For the reasons set forth above, the Commission should clarify the relationship between sections 310(b)(3) and (b)(4), specifying that section 310(b)(3) applies only to direct investment in a covered licensee, while section 310(b)(4) applies to all indirect investment. The Commission also should adopt Vodafone's proposed section 310(b)(4) notice framework to eliminate the burdens of the Commission's current declaratory ruling framework and to streamline the review of beneficial foreign investment in U.S. wireless licensees.

Respectfully submitted,

Ari Q. Fitzgerald
Michele C. Farquhar
Hogan Lovells
555 Thirteenth Street, NW
Washington, DC 20004
(202) 637-5600
Attorneys for Vodafone Group

/s/ Richard Feasey
Richard Feasey
Public Policy Director
Vodafone Group
One Kingdom Street
London W2 6BY
United Kingdom
+447748776618