

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, DC 20554**

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

**REPLY COMMENTS OF  
THE UNITED STATES TELECOM ASSOCIATION**

The United States Telecom Association (USTelecom)<sup>1</sup> respectfully submits these reply comments in response to the comments filed pursuant to the Notice of Proposed Rulemaking addressing the 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 (Foreign Ownership NPRM)<sup>2</sup>. The Foreign Ownership NPRM is a significant step forward in reducing the regulatory costs and burdens imposed on common carriers holding radio licenses. Such licenses are often held by common carriers that predominantly provide wireline and incumbent local exchange carrier (ILEC) services.

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<sup>1</sup> USTelecom is the premier trade association representing service providers and suppliers for the telecommunications industry. USTelecom members provide a full array of services, including broadband, voice, data, and video over wireline and wireless networks.

<sup>2</sup> See *In the Matter of Review of Foreign Ownership Policies for Common Carrier and Aeronautical Ownership Policies under Section 310(b)(4) of the Communications Act of 1934, as Amended*, IB Docket 11-133, released August 9, 2011 (*Foreign Ownership NPRM*).

USTelecom supports the adoption of much needed reforms to the foreign ownership rules. As detailed in the record in this proceeding, the current foreign ownership rules prohibit economically efficient transactions, do not provide adequate transparency and predictability with respect to the Commission's filing requirements and review process, and are unnecessarily costly and cumbersome for carriers to administer. The proposed rules, with the inclusion of modifications suggested by USTelecom, Verizon and AT&T, would facilitate investment from new sources of capital while continuing to serve the Commission's goals which properly seek to protect important interests related to national security, law enforcement, foreign policy and trade policy.<sup>3</sup>

#### **I. IMPROVEMENTS TO FOREIGN OWNERSHIP APPROVAL PROCESS**

Various commenters in this proceeding have identified the numerous problems that arise under the Commission's current foreign ownership rules. The Commission's complex rules necessitate redundant and voluminous filings that must contain information that is often difficult to obtain and of little demonstrated value. As the Commission and numerous others in this proceeding uniformly acknowledge, the existing framework is tremendously burdensome, extremely expensive and results in the creation of a formidable administrative barrier to investment.<sup>4</sup> The Commission should therefore

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<sup>3</sup> See *Foreign Ownership NPRM*, ¶1.

<sup>4</sup> See e.g., Comments of Intelsat, p. 2 (noting that although it is not subject to some of the Commission's Foreign Ownership rules, "currently is required to provide detailed foreign ownership information," which imposes "significant regulatory costs and burdens on Intelsat and other non-common carrier satellite space station applicants."); Comments of The European-American Business Council, p. 1 (stating that the Commission should use its proceeding "to effect more fundamental changes that will improve the timeliness, transparency, predictability and clarity of its foreign ownership framework and promote cross-border investment."); Comments of the Satellite Industry Association (supporting "the Commission's efforts . . . to reduce regulatory costs and burdens, provide greater transparency and predictability, and facilitate investment from new sources of capital.).

promptly adopt streamlined measures relating to foreign investment which will remove these administrative barriers and result in greater access to foreign capital.

The record in this proceeding contains several much-needed changes that the Commission should implement in order to improve the foreign ownership review process. AT&T for example, urges the Commission to revise its 2004 Foreign Ownership Guidelines, and adopt the proposed streamlining of the current foreign ownership regulatory framework.<sup>5</sup> Among other things, AT&T recommends that the Commission revise its treatment of foreign indirect non-controlling ownership of U.S. common carriers. As AT&T notes, “it is illogical to treat non-controlling interests more harshly than controlling interests, by interpreting Section 310 to *prohibit* foreign indirectly held *non-controlling* interests over 20 percent, and to *allow* foreign indirectly held *controlling* interests up to 100 percent.”<sup>6</sup> As AT&T notes, the Commission should revise its rules to avoid “such an absurd result,” by permitting foreign indirect non-controlling ownership of U.S. common carriers.<sup>7</sup>

AT&T also encourages the Commission to allow U.S. parent companies to exclude five percent or lesser interests held by single or “group” non-World Trade Organization (WTO) investors from calculations of non-WTO investment. As AT&T notes, the five percent standard is already utilized by the Commission in its media attribution rules, based on the finding that, “holders of such interests do not have the

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<sup>5</sup> See AT&T Comments, pp. 5-8; pp. 8- 11, respectively.

<sup>6</sup> *Id.*, p. 5 (emphasis in original).

<sup>7</sup> *Id.*, p. 6. *See also*, Comments of the European-American Business Council, pp. 3 - 4 (noting that the Commission’s rule “has the inexplicable effect . . . of making the foreign acquisition of a *controlling* interest easier than the foreign acquisition of a *non-controlling* interest.”) (emphasis in original).

ability to influence or control the licensee.”<sup>8</sup> Such an approach makes sense in the foreign ownership review process, and to the extent current policies and rules are modified in the current proceeding, “all existing Section 310(b)(4) rulings should be modified to incorporate these changes without requiring those petitioners to request new rulings.”<sup>9</sup>

Similarly, Verizon submitted detailed comments encouraging the Commission to eliminate the need to obtain declaratory rulings for indirect foreign interests from WTO member countries.<sup>10</sup> Verizon notes the Commission’s previous conclusion that “investments by foreign entities from WTO Member countries are presumptively in the public interest.”<sup>11</sup> USTelecom agrees that the Commission can “dispense with the need to engage in individual review of indirect foreign ownership interests from WTO Member countries, thereby encouraging further investment by these entities.”<sup>12</sup>

Moreover, Verizon identifies a number of proposals contained in the Foreign Ownership NPRM that – if adopted – would contravene the goals of this proceeding by imposing additional burdens. For example, Verizon encourages the Commission to reject any proposals that would lower certain disclosure thresholds,<sup>13</sup> and encourages the Commission to focus on voting power rather than on equity interests.<sup>14</sup> Collectively, these considerations should be considered by the Commission as it seeks to identify ways

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<sup>8</sup> AT&T Comments, pp. 9 – 10.

<sup>9</sup> *Id.*, p. 10.

<sup>10</sup> Verizon Comments, pp. 8 – 17.

<sup>11</sup> *Id.*, p. 8.

<sup>12</sup> *Id.*, pp. 8 – 9.

<sup>13</sup> *Id.*, p. 18.

<sup>14</sup> *Id.*

to streamline its foreign ownership review process and thereby increase foreign investment potential.

## **II. FURTHER STREAMLINING MEASURES SHOULD BE ADOPTED**

USTelecom is encouraged by the Commission's proposals that seek to reduce the current administrative burdens associated with foreign ownership proceedings. For example, the Commission proposes to decrease the burdens on U.S. parent companies obtaining specific approval of named foreign investors based on certain thresholds and reduce the need for repeated filings.<sup>15</sup> In addition, the Commission has proposed mechanisms that are designed to ease the burdens on licensees seeking approval to permit WTO membership of up to 100 percent of the company's diversified ownership.<sup>16</sup> But the Commission's Foreign Ownership NPRM does not address several issues that continue to add unnecessary burdens and costs to such proceedings.

### **A. Simplification of the Demonstration of Ownership**

The ways in which a company must currently demonstrate ownership through the foreign ownership approval process are unnecessarily complex and burdensome. Indeed, the Commission notes that "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."<sup>17</sup> USTelecom therefore supports measures that would simplify demonstration of ownership during the foreign ownership approval process. Rather than maintaining the torturous process of identifying each ultimate shareholder, the

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<sup>15</sup> *Foreign Ownership NPRM*, ¶4.

<sup>16</sup> *See e.g.*, ¶15.

<sup>17</sup> *Foreign Ownership NPRM*, ¶22.

Commission should simplify its process by, for example, permitting the identification of investing mutual funds, or the place of business of a general partner.

**B. Elimination of Redone Survey of Ownership when a Company Seeks a License for a Different Service than Previously Authorized**

USTelecom maintains that the Commission should modify its current practice of requiring a brand new declaratory ruling (and thus a redone survey of ownership) when the company seeks a license for a different service than previously authorized. 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 rulings.

There is no reasonable basis for requiring a company to obtain a new foreign ownership determination for each new service it intends to provide. Retaining service-specific rulings will invalidate efficiencies the Commission seeks to attain through its Foreign Ownership NPRM. Absent implementation of this critical streamlining proposal, companies will continue to file, and Commission personnel will continue to process, unnecessary and voluminous petitions for declaratory rulings. Furthermore, the additional processing time would needlessly delay the acquisition of the licenses and the deployment of services.

**C. Timeliness of Agency Review**

Finally, it is important to note that streamlining of the Commission's procedures in the manner discussed will ensure greater timeliness for agency review. One of the major hurdles in seeking foreign ownership approval is the substantial time it takes for the companies to prepare their application and for the Commission to complete its review. Currently, the Commission permits executive agencies to place a hold on an

application pending a lengthy review, which is almost always permitted without comment from the executive branch. A specific timeline such as 90 days should be set for the executive branch review. Streamlining of the application process is essential in order to ensure timely completion of the review process, absent establishment of a clear deadline, or a deemed granted treatment of the petition if no objection is levied.

### **III. COMMISSION IMPROVEMENTS TO ITS OWNERSHIP RULES SHOULD BE INFORMED BY PRESIDENT OBAMA'S RECENT EXECUTIVE ORDER**

The Commission's consideration of reforms to its ownership rules should also be informed by the recent Executive Order issued by President Barack Obama entitled "Improving Regulation and Regulatory Review."<sup>18</sup> The overarching purpose of the President's Executive Order is to encourage regulatory flexibility and reduce regulatory burdens on businesses.<sup>19</sup> As noted by numerous commenters in this proceeding, the Commission's current regulatory obligations associated with its ownership rules are extensive, and result in costly and time consuming obligations on companies and Commission staff.

President Obama emphasized in his Executive Order that a policy standard works best when it is based on "a reasoned determination that its benefits justify its costs (recognizing that some benefits and costs are difficult to quantify)."<sup>20</sup> The Executive Order also states that when considering new regulations, each regulatory agency must tailor its regulations to "impose the least burden on society, consistent with obtaining

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<sup>18</sup> Executive Order 13563 of January 18, 2011, Improving Regulation and Regulatory Review (available at: <http://www.gpo.gov/fdsys/pkg/FR-2011-01-21/pdf/2011-1385.pdf>) (visited November 16, 2011) (*Executive Order*).

<sup>19</sup> *Executive Order*, §4.

<sup>20</sup> *Id.*, §1(b)(1).

regulatory objectives, taking into account, among other things, and to the extent practicable, the costs of cumulative regulations.”<sup>21</sup>

The Commission should take this guidance to heart as it examines ways to streamline its ownership rules. Adoption of the streamlining proposals discussed in the initial comments in this proceeding would help ensure that the Commission’s subsequent ownership rules are consistent with the Executive Order, and would strike the appropriate balance between imposing minimal burdens while achieving important policy goals.

#### **IV. CONCLUSION**

In the Foreign Ownership NPRM, the Commission comprehensively reviews its foreign ownership rules and policies and works to achieve important policy goals. It should adopt the recommendations presented by USTelecom and others in order to achieve these important goals.

Respectfully submitted,  
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<sup>21</sup> *Id.*, §1(b)(2).