

**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
Licenses under Section 310(b)(4) of the)	
Communications Act of 1934, as Amended)	

REPLY COMMENTS OF VODAFONE GROUP

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January 4, 2012

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I. EXECUTIVE SUMMARY

Vodafone Group (“Vodafone”) submits these reply comments in connection with the Notice of Proposed Rulemaking (“NPRM”) issued by the Federal Communications Commission (“FCC” or “Commission”) in the above captioned proceeding.¹ The initial comments in this proceeding reflect near-universal agreement that the Commission should substantially reform its current foreign ownership review process, which almost all parties find unnecessarily complex, costly, unpredictable, and time-consuming. In particular, other parties – both foreign and U.S. – agree with Vodafone that the Commission should clarify that section 310(b)(3) of the Communications Act (the “Act”) applies only to direct foreign investment, while section 310(b)(4) applies to all indirect foreign investment. Even if the Commission implements no other proposed changes, it could introduce far more rationality and certainty to the marketplace by adopting this strongly supported and important proposal.

Furthermore, the Commission should adopt a streamlined foreign ownership review framework that no longer relies upon the onerous declaratory ruling process. A notice regime, such as those proposed by Vodafone and other commenters, would satisfy the Commission’s goals

¹ *Review of Foreign Ownership Policies for Common Carrier and Aeronautical Radio Licensees under Section 310(b)(4) of the Communications Act of 1934, as Amended*, Notice of Proposed Rulemaking, IB Docket No. 11-133, 26 FCC Rcd 11703 (rel. Aug. 9, 2011) (“NPRM”).

set forth in the NPRM, encourage foreign investment, and bring the Commission's foreign ownership review process more in line with U.S. trade commitments. We explain in these comments why such changes can be made without in any way compromising the Executive Branch's ability to protect important U.S. national security, law enforcement, trade and foreign policy interests.

II. BROAD SUPPORT EXISTS FOR THE COMMISSION TO REFORM ITS FOREIGN OWNERSHIP REGIME AND ADOPT A MORE STREAMLINED FOREIGN OWNERSHIP REVIEW PROCESS THAT DOES NOT RELY EXCLUSIVELY ON DECLARATORY RULINGS.

The initial comments filed in this proceeding reflect broad support for comprehensive reform of the Commission's foreign investment review framework under section 310(b)(4),² and general agreement that the current process is unduly complex, opaque, and time-consuming.³ While commenters applaud the Commission's efforts to streamline this process, they also stress that the rule changes proposed in the NPRM will not, by themselves, adequately eliminate or reduce the burdens imposed by the current process.⁴ The vast majority of comments confirm the Commission's recognition, as reflected in the NPRM, of the current system's deficiencies that served as a basis for proposing reforms.⁵ Only the Executive Branch commenters expressed

² See generally Comments of Vodafone Group, IB Docket No. 11-133 (filed Dec. 5, 2011) ("Vodafone Comments"); Comments of Verizon, IB Docket No. 11-133 (filed Dec. 5, 2011) ("Verizon Comments"); Comments of AT&T Inc., IB Docket No. 11-133 (filed Dec. 5, 2011) ("AT&T Comments"); Comments of T-Mobile USA, Inc., IB Docket No. 11-133 (filed Dec. 5, 2011) ("T-Mobile Comments"); Comments of European-American Business Council, IB Docket No. 11-133 (filed Dec. 5, 2011) ("EABC Comments"); Comments of the GSM Association, IB Docket No. 11-133 (filed Dec. 5, 2011) ("GSMA Comments"); Comments of the Satellite Industry Association, IB Docket No. 11-133 (filed Dec. 5, 2011) ("SIA Comments").

³ See Vodafone Comments at 7-12; Verizon Comments at 2-4; AT&T Comments at 8-11; T-Mobile Comments at 2-4; EABC Comments at 6-8; GSMA Comments at 4; SIA Comments at 2-4; Comments of Intelsat, IB Docket No. 11-133, 2 (filed Dec. 5, 2011).

⁴ See Vodafone Comments at 5-6; Verizon Comments at 6-8; T-Mobile Comments at 4-6; EABC Comments at 6-8; SIA Comments at 8-10.

⁵ See NPRM ¶ 1-3.

concerns regarding the Commission's proposed rule changes.⁶ As described further below in Section V, these concerns rest on an incorrect premise that the proposed rule changes would impair the Executive Branch agencies' ability to protect important national security, law enforcement, trade and foreign policy interests. In reality, comprehensive reform is fully consistent with the robust protection of such interests, and all of the concerns raised by the Executive Branch agency commenters can be accommodated under a more rational and streamlined regime.

Several commenters appropriately urge the Commission to assume a leadership role in removing barriers to foreign ownership in the telecommunications sector.⁷ As a global leader in communications policy, the Commission should pursue policies that will not only facilitate valuable foreign investment in U.S. telecom markets, but also foster the adoption of similar policies by other countries that may create more investment opportunities for U.S.-based service providers and investors. By contrast, if the Commission preserves the status quo, or establishes more onerous rules (as the DOJ and DHS appear to endorse in some circumstances), it will miss a critical opportunity to promote additional, much needed foreign investment in domestic wireless networks, which the Commission has recognized is "an important source of equity financing for U.S. telecommunications companies, fostering technical innovation, economic growth, and job

⁶ The Department of Justice ("DOJ") and Department of Homeland Security ("DHS," together with the DOJ, the "Departments") filed joint comments, while the Department of Defense ("DOD") filed a brief letter in support of the Departments' filing. *See* Comments of the Department of Justice and the Department of Homeland Security, IB Docket No. 11-133 (filed Dec. 5, 2011) ("DOJ/DHS Comments"); Letter from Roberts S. Gorman, General Counsel, Defense Information Systems Agency, to Marlene Dortch, Secretary, Federal Communications Commission (Dec. 5, 2011) ("DOD Comments").

⁷ *See* AT&T Comments at 2-5; GSMA Comments at 2.

creation.”⁸ Moreover, such a course would give non-U.S. governments a convenient excuse to resist opening their telecom markets to U.S. investment.

Given the fundamental shortcomings of the current system, the Commission must do more than simply adopt the modest proposals set forth in the NPRM. As described in Section III below, it should at least make clear that all indirect foreign ownership falls within the scope section 310(b)(4) of the Act, despite the erroneous guidance set forth in the *Foreign Ownership Guidelines* issued by the International Bureau (“IB”) in 2004 (the “IB Guidelines”).⁹ This clarification alone would bring considerable rationality, consistency, and transparency to the marketplace, and provide foreign entities more certainty regarding their ability to invest indirectly in U.S. wireless licensees. In addition, as several parties request,¹⁰ the Commission should adopt a framework that dispenses with, or substantially reduces, the need for licensees to request and obtain a declaratory ruling from the Commission in every instance where indirect foreign investment from WTO countries exceeds section 310(b)(4)’s 25 percent ownership threshold for particular covered licenses. By adopting a notice regime, as proposed by Vodafone,¹¹ the Commission could reduce the regulatory burdens imposed on wireless licensees, provide greater clarity and predictability for licensees and investors, and foster investment from new sources of capital. Moreover, such a process would preserve and fortify the Executive Branch’s ability to address matters of national security, law enforcement, foreign policy, and trade policy.

⁸ See NPRM ¶ 2.

⁹ *Foreign Ownership Guidelines for FCC Common Carrier and Aeronautical Radio Licensees*, 19 FCC Rcd 22612 (IB 2004) (“*IB Guidelines*”).

¹⁰ See Vodafone Comments at 30; Verizon Comments at 8; T-Mobile Comments at 4; EABC Comments at 6; SIA Comments at 2.

¹¹ The proposed notice regime is described *infra* Section IV.

III. COMMENTERS URGE THE COMMISSION TO REJECT THE INTERNATIONAL BUREAU'S ERRONEOUS INTERPRETATION OF SECTION 310(B) AND CLARIFY THAT SECTION 310(B)(3) APPLIES ONLY TO DIRECT FOREIGN INVESTMENT AND SECTION 310(B)(4) APPLIES TO ALL INDIRECT FOREIGN INVESTMENT.

One of the most helpful actions that the Commission could take in this proceeding is to correct the IB's incorrect interpretation of section 310(b) in the IB Guidelines and clarify that all indirect foreign investment above 25 percent arises under section 310(b)(4) of the Act. Even if the Commission does not adopt any other proposed rule or otherwise reform its foreign ownership review process, it should correct the IB's erroneous and unsupported determination that non-controlling, indirect foreign investment in a covered licensee is subject to section 310(b)(3), and is therefore limited to a non-waivable 20 percent cap. Multiple parties, both foreign and U.S.-based, agree that such an interpretation (i) contradicts the plain language of sections 310(b)(3) and (b)(4), (ii) ignores clear legislative intent, (iii) frustrates important U.S. trade commitments, (iv) undermines Commission precedent, and (v) yields an illogical and contradictory result that would make the foreign acquisition of a *controlling* indirect interest easier than the foreign acquisition of a *non-controlling* indirect interest.¹²

As Vodafone's initial comments show, the plain language and legislative history of section 310(b) dictate that all indirect foreign investment above 25 percent be governed by section 310(b)(4). Section 310(b)(3) expressly applies to covered licensees whose equity is "owned" or "voted" by a foreign entity.¹³ Such terms unambiguously refer to *direct* interests—if the owner or voter of a covered licensee's equity is a U.S. entity, section 310(b)(3) does not apply. The relevant legislative history demonstrates that Congress enacted section 310(b)(3) to establish

¹² See Vodafone Comments at 12-29; Verizon Comments at 18-19; AT&T Comments at 5-8; EABC Comments at 3-6.

¹³ 47 U.S.C. § 310(b)(3).

limits on direct foreign ownership of common carrier radio licenses.¹⁴ By contrast, section 310(b)(4), which Congress added to address influence exerted by holding companies (*i.e.*, indirect shareholders) that were not covered by sections 310(b)(1)-(3),¹⁵ explicitly reaches “indirect” foreign investment.¹⁶

The IB’s interpretation also undermines vital trade commitments undertaken by the U.S. at the World Trade Organization (“WTO”), through the WTO Basic Telecom Agreement. In that trade pact, the U.S. agreed to impose *no* limits on the indirect minority foreign ownership of domestic companies holding common carrier radio licenses.¹⁷ The IB’s reading of section 310(b) would eviscerate this commitment by foreclosing indirect foreign investment from WTO Member countries in excess of 20 percent. Such a prohibition also contravenes a core trade principle between the United States and the European Union that promotes full foreign participation in the Information and Communications Technology Services (“ICT”) sector.¹⁸ Failure to conform the FCC’s interpretation of section 310(b) to the U.S.’s trade commitments would signal to the rest of the world that the U.S. does not take its trade and market access commitments seriously. It may cause other countries or territories to abandon their trade and market opening commitments, and hinder the U.S. in persuading other jurisdictions to lower their trade and investment barriers.¹⁹

¹⁴ See Vodafone Comments at 14 & n.52.

¹⁵ Vodafone Comments at 14-15, 21-25.

¹⁶ *Id.* § 310(b)(4). As AT&T notes, before the enactment of section 310(b)(4), the Commission held that “foreign ownership of domestic holding companies that directly or indirectly controlled” licenses was “not previously covered” by the foreign ownership rules. AT&T Comments at 6 (citing *VoiceStream Wireless Corp., et al.*, Memorandum Opinion and Order, 16 FCC Rcd 9779 ¶ 35-36 (2001)).

¹⁷ See Vodafone Comments at 16 & n.57; AT&T Comments at 6-7 & n.16; EABC Comments at 5-6 & n.14.

¹⁸ See EABC Comments at 2-3; AT&T Comments at 6-7.

¹⁹ See AT&T Comments at 7.

The IB's interpretation of section 310(b) also defies Commission precedent. As Vodafone explained in its initial comments, the lone decision on which the IB relies to justify its interpretation does not support or compel application of section 310(b)(3) to indirect foreign investment.²⁰ Indeed, before 2004, the Commission regularly applied section 310(b)(3)'s 20 percent limitation only to *direct* foreign investment in covered licensees.²¹

Finally, commenters agree that the IB's proposed interpretation yields an incongruous outcome by imposing limitations on *non-controlling* foreign investors that are more restrictive than those applicable to *controlling* foreign investors.²² Such an absurd conclusion cannot stand, as a non-controlling investor necessarily exerts less influence over a covered licensee than a controlling investor, and therefore raises fewer of the risks that Congress sought to address by imposing statutory foreign ownership limits.²³

In view of the foregoing, Vodafone urges the Commission to correct the interpretation of section 310(b) set forth in IB Guidelines and specify that section 310(b)(4) applies to all indirect investment above 25 percent in a covered licensee. This substantive issue transcends the other reforms proposed in the NPRM, which are largely procedural in nature. Such clarification would make the Commission's foreign ownership review process more coherent and predictable, attract more foreign investment, and establish a baseline for more comprehensive streamlining as detailed below.

²⁰ *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 (1985), *reconsidered in part*, 1 FCC Rcd 12 (1986); *see* Vodafone Comments at 17-19.

²¹ *See* Vodafone Comments at 14 & n.50; AT&T Comments at 6.

²² *See* Vodafone Comments at 12, 15-16; Verizon Comments at 19; AT&T Comments at 5-6; EABC Comments at 4-5.

²³ EABC Comments at 5.

IV. THE NOTICE FRAMEWORK PROPOSED BY VODAFONE WOULD STREAMLINE THE FCC'S FOREIGN OWNERSHIP REVIEW PROCESS, ENCOURAGE FOREIGN INVESTMENT, AND HONOR U.S. TRADE COMMITMENTS.

A number of commenters urge the Commission to simplify the current section 310(b)(4) regulatory framework by eliminating the wholesale reliance on declaratory rulings.²⁴ The notice regime proposed by Vodafone, similar to proposals by other commenters, offers a reasonable and effective alternative that would not only incorporate the modest reforms set forth in the NPRM, but also materially streamline the Commission's system for approving foreign investment. Given the severe burdens imposed by the FCC's current process, which requires licensees to obtain approval via a declaratory ruling in every case (even in the most benign circumstances²⁵), simplification of the foreign ownership review process is warranted.

Vodafone recognizes, however, the Commission's need, on occasion, to exercise discretion and seek additional information from covered licensees requesting approval for foreign investment. Likewise, Vodafone wholly supports the Executive Branch's interest in protecting the U.S.'s national security, law enforcement, trade and foreign policy interests. As such, the notice regime proposed by Vodafone in its initial comments, and summarized below, has been designed to preserve the Commission's ability to determine whether and when additional scrutiny is needed. Furthermore, as discussed more fully in Section V, the notice regime fully protects the Executive Branch's ability to identify, interpret, and impose conditions regarding, matters of national security, law enforcement, foreign policy, and trade policy. With these features, the proposed notice process strikes an appropriate balance between the need to reduce the regulatory burdens caused by the status quo, on the one hand, with the Commission's and Executive Branch's need

²⁴ See Vodafone Comments at 30-34; Verizon Comments at 7; T-Mobile Comments at 2; EABC Comments at 6; SIA Comments at 2.

²⁵ See Vodafone Comments at 7-12.

for flexibility and full disclosure when reviewing proposed foreign investment in U.S. wireless licensees, on the other.

Vodafone urges the Commission to adopt a notice framework in which a covered licensee would be obligated to provide the Commission with notice whenever it believed its indirect foreign investment would exceed the 25 percent threshold.²⁶ Following its receipt of such notice, the Commission would have a defined period of time, such as 30 days, to determine if the proposed investment was truly an indirect investment under section 310(b)(4), or if it constituted a direct investment in the licensee (subject to section 310(b)(3)) or a transfer of control (subject to section 310(d)). During this period, the Commission could seek input from the necessary Executive Branch agencies relating to their areas of competence and concern. Upon the expiration of the established time period, the proposed investment would be automatically deemed approved unless the Commission (i) concluded that section 310(b)(4) did not apply, (ii) elected to block an investment for reasons set forth in the *Foreign Participation Order*,²⁷ or (iii) delayed action because of Executive Branch concerns, in which case the Commission would retain discretion to engage in additional review in accordance with the current review framework. Moreover, the Commission could reject any notices that it deemed incomplete. Once the covered licensee received approval of an investment by a foreign entity, it would not be required to provide further notice or information to the Commission regarding that entity, even if the licensee acquired new wireless licenses or changed the amount of its indirect interest in the licensee (within the scope of the initial notice).

²⁶ Such notice would be required to include any individuals or entities that hold a direct or indirect interest of 10% or more, or any “controlling interest.”

²⁷ *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, 23898 ¶ 13, 23919-20 ¶ 63 (1997) (“*Foreign Participation Order*”), modified by Order on Reconsideration, 15 FCC Rcd 18158 (2000).

In addition to simplifying the current regulatory regime, the notice framework described above would be consistent with the Communications Act, which does not require the Commission to give prior approval to an indirect foreign investment under section 310(b)(4).²⁸ Moreover, such a framework would be in line with other streamlined notice procedures employed previously by the Commission, including the process used to review applications for international section 214 authorizations.²⁹ Finally, as suggested above, the proposed notice framework would give effect to the WTO Basic Telecom Agreement, in which the U.S. agreed that entities organized under the laws of WTO Member countries would not be limited in their ability to make indirect investments in domestic U.S. wireless licensees.³⁰

V. VODAFONE’S PROPOSED NOTICE FRAMEWORK WOULD PRESERVE AND FORTIFY THE EXECUTIVE BRANCH’S ABILITY TO PROTECT IMPORTANT INTERESTS.

Vodafone appreciates the responsibility of the Executive Branch agencies to identify and address national security, law enforcement, trade, and foreign policy issues, and recognizes their “specialized knowledge in these areas” and “unique position to assess whether a license application may present these concerns.”³¹ For this reason, the notice framework proposed above preserves, and strengthens, the Executive Branch’s ability to receive “full and complete information” regarding proposed foreign investments to protect these interests.

As full and accurate disclosure is central to the proposed notice framework, the DOJ and DHS have no reason to be concerned that a streamlined foreign ownership review process would impair their ability to intelligently assess the potential impact of indirect foreign investment in U.S. wireless licensees. The proposed notice framework would not enable covered licensees to

²⁸ Vodafone Comments at 32; Verizon Comments at 9.

²⁹ See Vodafone Comments at 32 & n.107.

³⁰ See *id.* at 33-34.

³¹ DOJ/DHS Comments at 2.

avoid their disclosure obligations; rather, it would promote clearer, fuller, and more accurate disclosures, while dispensing with the onerous and vague processes that plague the FCC's current system of review. Additionally, a notice framework would retain the Commission's unfettered discretion to seek Executive Branch review before the consummation of any proposed transaction. In turn, the Executive Branch agencies would be free to request the blocking of any proposed investment, or the imposition of conditions on, and/or request additional information from, a covered licensee, on a case-by-case basis. As Vodafone noted in its initial comments, the Commission could also establish procedures for notifying Executive Branch agencies of section 310(b)(4) notices, or promulgate a rule that suspends approval of a proposed foreign investment until the Executive Branch has completed its review.³²

The ability of the Executive Branch agencies to adequately review proposed foreign investment would be preserved under Vodafone's proposed framework because their foreign ownership review processes are currently, and should continue to be, separate and distinct from the FCC's review processes. Although the Commission regularly coordinates with Team Telecom, "an interagency group led by DOJ, the Federal Bureau of Investigation and the Department of Homeland Security that reviews communications matters for national security concerns,"³³ Team Telecom's obligation and ability to review foreign investments would not be impacted by any rule changes or streamlined processes that the Commission adopted in this proceeding. Likewise, CFIUS, an inter-agency committee authorized to review foreign investment transactions for their effect on national security, possesses authority pursuant to an Executive Order and federal statute that the Commission has no authority or basis to revoke or change.³⁴ As

³² Vodafone Comments at 34.

³³ *Preliminary Plan for Retrospective Analysis of Existing Rules*, Federal Communications Commission, 2011 WL 5387696 (Nov. 7, 2011).

³⁴ Exec. Order No. 12,661, 3 C.F.R. 618 (1988); 50 U.S.C. app. § 2170; 31 C.F.R. § 800.101.

such, the FCC’s foreign ownership review framework need not, and should not, conflate with those employed by Team Telecom and CFIUS, the governmental bodies best equipped—and legally authorized—to address issues of national security, law enforcement, foreign policy, and trade policy. The notice framework proposed herein not only acknowledges the Executive Branch’s important role and autonomy in reviewing foreign investment, it provides a more distinct mechanism by which Team Telecom and CFIUS may carry out their obligations in this regard.

In view of the foregoing, the Commission should not adopt those proposals endorsed by the DOJ and DHS that would magnify the regulatory burdens created by the FCC’s current section 310(b)(4) process. Such proposals reflect an unfounded concern that streamlining the FCC’s process would “impair the Departments’ knowledge of and ability to review foreign ownership and service changes in section 310 license holders.”³⁵ In reality, however, Vodafone’s proposed notice regime would strengthen, rather than frustrate, the Executive Branch’s ability to monitor and address their policy concerns by requiring applicants to provide full and complete information about their foreign investors in order to qualify for streamlined processing. Moreover, some of the Executive Branch agencies’ proposals rest on a misunderstanding of the Commission’s rules. For example, the agencies ask the Commission to require an approved licensee to obtain approval for a “service change,” even where such licensee’s foreign ownership structure has not changed at all.³⁶ As approved wireless licensees are now free to use their spectrum to provide any service of their choosing—voice, video, data, or any other service permissible under the FCC’s rules—such an obligation would be far more onerous than any approval requirement imposed by the Commission’s current section 310(b)(4) process.

³⁵ DOJ/DHS Comments at 1.

³⁶ *Id.* at 1.

In addition, because the Executive Branch agencies are separately authorized and obligated to review foreign investment (and no rule changes that the Commission adopts in this proceeding will alter such authority or obligation or remove the agencies from the FCC’s section 310(b)(4) process), the agencies can effectuate any of their proposals on a timely, case-by-case basis by imposing conditions on specific licensees prior to approving a proposed investment. For example, as a condition to approving an indirect foreign investment, the DOJ or DHS could require, through a national security agreement (“NSA”), a licensee to make commitments that may be warranted under the circumstances, such as those discussed by the DOJ and DHS in their comments, *even if the Commission does not require the licensee to make such commitments*. Given their autonomous authority to review foreign investment, the DOJ and DHS can impose restrictions they deem appropriate through a condition in a separate agreement or letter executed by the covered licensee. Such a mechanism aligns with the current review framework, in which the Executive Branch agencies frequently enter into security agreements with, or obtain letters of assurance from, licensees to address matters of national security, law enforcement, and foreign and trade policy.³⁷

³⁷ See, e.g., *Vizada Services LLC Petition for Declaratory Ruling Under Section 310(b)(4) of the Communications Act of 1934, as amended, to Permit Indirect Foreign Ownership Exceeding 25 Percent in Radio Common Carrier Licensee Vizada Services LLC*, Order and Declaratory Ruling, 25 FCC Rcd 2029, 2059 App. A (IB 2010); International Authorizations Granted, Public Notice, DA 11-1908 (Nov. 17, 2011) (granting Green Eagle Communications, Inc., Petition for Declaratory Ruling, File No. ISP-PDR-20110610-00006 (filed June 10, 2011) conditioned on petitioner “abiding by the commitments agreed to by Telemetrix Inc. in its July 24, 2006 Letter of Assurances to the United State Department of Justice, United States Department of Homeland Security and Federal Bureau of Investigation”); International Authorizations Granted, Public Notice, DA 11-5448 (Mar. 24, 2011) (granting U.S. Telepacific Corp., Petition for Declaratory Ruling, File No. ISP-PDR-20110106-00001 (filed Jan. 6, 2011) conditioned on petitioners “abiding by the commitments and undertakings contained in their March 7, 2011 Letter of Assurance” to the Department of Justice and Department of Homeland Security); International Authorizations Granted, Public Notice, DA 06-2441 (Nov. 30, 2006) (granting T-Mobile USA, Inc., Petition for Declaratory Ruling, File No. ISP-PDR-20060510-00013 (filed May. 10, 2006) “conditioned on T-Mobile USA, Inc. complying with the provisions of the January 12, 2001 Agreement between Deutsche Telekom AG, VoiceStream Wireless Corporation, VoiceStream Wireless Holding Corporation and the Department of Justice (DOJ) and the Federal Bureau of Investigation (FBI), which addresses national security, law enforcement, and public safety issues”).

This approach would allow the Executive Branch agencies to apply more onerous conditions in those cases in which it was deemed necessary to do so, without burdening other applicants with unnecessary and untargeted obligations under the FCC process. This will reduce the administrative burden both for licensees and the agencies themselves.

For similar reasons, the Commission should not require an authorized U.S. parent to seek and obtain additional FCC approval before it can acquire another company simply because the acquired company may be party to an existing U.S. government contract, to which the authorized U.S. parent was never a party.³⁸ Issues of contractual assignment and transfer of control are more appropriately and efficiently addressed in the government contract itself or before the U.S. government selects or approves a contractor. For example, if necessary, the contract could require the designated contractor to give notice to, or seek consent from, the applicable U.S. government agency, before consummating a transfer of control. Likewise, the contract could require the designated contractor to meet certain ownership reporting obligations on a periodic basis. Such contractual devices are far more reasonable alternatives to requiring FCC approval each time an authorized U.S. parent acquires an entity that holds a U.S. government contract.

Notwithstanding the foregoing, Vodafone does not object in principle to the agencies' request that the Commission refrain from authorizing a U.S. parent to have 100 percent aggregate foreign ownership from investors not specifically identified in the relevant notice.³⁹ Likewise, although it deems it burdensome, Vodafone does not object to the Departments' argument for a 5 percent, instead of a 10 percent, ownership disclosure requirement.⁴⁰ However, such considerations do not change the analysis set forth above: as with the agencies' other proposals,

³⁸ See DOJ/DHS Comments at 6.

³⁹ *Id.* at 5.

⁴⁰ *Id.* at 10.

the Executive Branch can always condition approval of a foreign transaction on a licensee's willingness to disclose the identity of each investor with an ownership interest greater than 5 percent, and/or its agreement to limit the aggregate ownership that may be held by foreign entities not listed on the initial notice. Moreover, neither of these considerations obviates the feasibility or value of a streamlined notice regime.

VI. CONCLUSION

For the reasons stated herein, Vodafone respectfully requests the Commission to reform the current foreign ownership review process. At a minimum, the Commission should make clear that section 310(b)(3) applies only to direct investment, while section 310(b)(4) applies to indirect investment. Additionally, the Commission should adopt the notice regime proposed by Vodafone as well as other commenters. Such a framework would not only remove the substantial burdens imposed by the current section 310(b)(4) review process, but would also further the objectives of the NPRM and honor important U.S. trade commitments. The notice regime proposed herein would preserve the Commission's ability to conduct more extensive reviews where necessary, and would strengthen the Executive Branch's ability to review and apply conditions to safeguard national security, law enforcement, trade and foreign policy objectives.

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January 4, 2012