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 THE ORGANIZATION FOR INTERNATIONAL INVESTMENT

The Organization for International Investment ("OFII") respectfully submits the following comments in response to the Notice of Proposed Rulemaking ("NPRM") issued by the Federal Communications Commission ("FCC" or "the Commission") in the above-referenced proceeding.[1]

SUMMARY

OFII supports the proposals outlined in the NPRM and applauds the Commission's efforts to streamline its regulatory framework for foreign investors in the U.S. telecommunications sector. Such efforts are consistent with the United States' longstanding adherence to open investment principles, existing U.S. trade and investment obligations, and ongoing efforts by the Obama Administration to reverse the declining U.S. share of global cross-border investment stock. However, OFII believes the public interest would be best served by a more comprehensive set of reforms, including its guidelines pertaining to both Sections 310(b)(3) and 310(b)(4) of the Communications Act.

The United States can and should lead the world in open competitiveness and ease of market access for global investors in telecommunications. The Commission has correctly noted

[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*").

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] OFII urges the FCC to take full advantage of this opportunity to make its processes substantially more transparent, efficient, and attractive to foreign-based investors in this key sector of the U.S. economy. Doing so will unleash billions of dollars of investment capital and enhance ongoing efforts to encourage other nations to open their markets to investment from the United States.

I. Mission of the Organization for International Investment and Economic Benefits of Inward Foreign Direct Investment

OFII is a business association representing over 160 U.S. subsidiaries of many the world's largest non-U.S. parent companies (membership list attached). OFII advocates for fair, non-discriminatory treatment in federal and state law and regulation with the goal of making the United States an increasingly attractive and competitive market for foreign direct investment ("FDI"). Identifying and eliminating discriminatory impediments to market entry from foreign-based investors is a key priority for the organization.

Foreign-based companies have long played a vital and dynamic role in stimulating U.S. economic growth and sustaining America's innovation and manufacturing industries. According to the most recent U.S. government data,[3] U.S. subsidiaries directly employ 5.3 million Americans – roughly five percent of private sector employment. These companies support an annual U.S. payroll of more than $400 billion, account for 17 percent of U.S. manufacturing jobs, produce nearly 21 percent of U.S. goods exported, spend more than $40 billion annually on

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[2] *NPRM* ¶ 2.

[3] Latest available data on the majority-owned affiliates of foreign-headquartered multinational companies from the U.S. Department of Commerce, U.S. Bureau of Economic Analysis, available at http://www.bea.gov/.

U.S. research and development activities, and purchase nearly $1.8 trillion in intermediate inputs from local suppliers and small businesses.

II. Easing Foreign Ownership Restrictions is Consistent with Longstanding U.S. Commitment to Open Investment Policy, Obama Administration Priorities, and U.S. International Obligations

The Commission's NPRM coincides with a heightened interagency focus from the Obama Administration on eliminating barriers to inward cross-border investment and making the United States more attractive to foreign companies looking to expand abroad. OFII believes such efforts are an essential aspect to U.S. economic recovery and long-term prosperity.

Over the past 20 years, new economies have emerged offering high economic growth rates, competitive tax regimes, skilled workforces, and attractive incentives to potential investors. Companies looking to expand abroad, no matter where they are domiciled, have an unparalleled variety of potential investment destinations from which to choose. While other nations have responded to this shifting economic landscape with aggressive trade and investment initiatives, the United States has lost ground in the global race for cross-border investment. OFII recently released a report documenting the sharp, decade-long decline in America's share of global FDI stock.[4] While this decline is the result of a variety of factors, including some unrelated to U.S. policy or regulation, there is no doubt that it is at least in part the result of a simple lack of policy focus and resources devoted to investment promotion.

Recent U.S. policy developments demonstrate a new and unprecedented level of attention to the benefits of inward investment and the need to refocus efforts to attract global companies and their capital. In June of 2011, the White House Council of Economic Advisors ("CEA") released a report detailing the beneficial impact of FDI in the United States, which read in part:

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[4] "The Foreign Investment Challenge for the United States," released October 2011, available at http://www.ofii.org/docs/The_Foreign_Investment_Challenge_for_the_United_States_October_2011.pdf.

The United States welcomes the investment and jobs supported by the U.S. affiliates of foreign-domiciled companies. These companies play an important role in the U.S. economy, as they build plants and other facilities or provide additional capital to businesses that already operate locally in the United States. They invest in knowledge creation and fund research and development.[5]

The CEA report identifies the "open nature of the U.S. economy" as the key to America's historic success in attracting this investment.

That same month, President Obama sent an important signal to the global business community by issuing a policy statement that unequivocally reaffirmed the United States' longstanding commitment to open investment policy and encouraged other nations to pursue fair and equitable treatment for all investors.[6] His statement coincided with the signing of an Executive Order to establish SelectUSA, the first federal-level interagency initiative designed to facilitate inward investment and, whenever possible, cut through unnecessary regulatory or bureaucratic barriers to foreign-based investors.[7]

The theme of attracting FDI has been echoed by a variety of senior officials from across the federal agencies. In a public event with the President's Council on Jobs and Competitiveness ("Jobs Council"), Secretary of State Hillary Clinton said, "we have a significant but untapped potential for job creation and economic growth that comes with attracting foreign investment to the United States to put Americans to work.... We need to show not only that we are open for business, but to use every tool in our toolbox to attract it."[8] Following the event with Secretary Clinton, the Jobs Council presented a series of recommendations to the President, among them a call for a "National Investment Initiative" to capture one trillion dollars of foreign investment

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[5] Executive Office of the President Council of Economic Advisors: "U.S. Inbound Foreign Direct Investment," released June 2011, available at http://www.whitehouse.gov/sites/default/files/microsites/cea_fdi_report.pdf.
[6] President Barack Obama: "Statement by the President on United States Commitment to Open Investment Policy," June 20, 2011, available at http://www.whitehouse.gov/the-press-office/2011/06/20/statement-president-united-states-commitment-open-investment-policy.
[7] Executive Order No. 13577 –SelectUSA Initiative (June 15, 2011).
[8] Secretary of State Hillary Clinton: "Opening Remarks at the President's Council on Jobs and Competitiveness," October 7, 2011, available at http://www.state.gov/secretary/rm/2011/10/175154.htm.

over the next four to five years.[9] Last month, recently-confirmed Secretary of Commerce John Bryson used his first major policy address to highlight attracting investment from abroad as one of his signature policy priorities, saying, "the United States has also not been aggressive enough in pursuing investment here."[10]

These efforts point to a new and widespread awareness of both the benefits of inward FDI and the challenges America now faces in competing for it. However, the barriers to market entry in the U.S. telecommunications sector stand in stark contrast to this country's longstanding legacy of open investment policy and fair treatment of foreign investors. The Commission now has an important opportunity to make measurable progress toward the goal of a more open investment regime by dramatically improving the accessibility of the U.S. market as well as the transparency and efficiency of its administrative process so that industry stakeholders can operate on a more level playing field. Such action would send a welcome signal to the international business community and encourage major U.S. trading partners – including Canada, China, and Mexico – to ease their own foreign ownership restrictions, which has long been a U.S. priority.

III. The Commission Should Undertake More Comprehensive Reform

As noted above, OFII supports the streamlining proposals in the NPRM but believes the Commission should go beyond their current scope by pursuing a more comprehensive series of reforms. For example, there is significant disharmony between the statutory language of Section 310(b)(3) and the non-binding Foreign Ownership Guidelines published by the International

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[9] President's Council on Jobs and Competitiveness: "A National Investment Initiative," available at http://files.jobs-council.com/files/2011/10/JobsCouncil_NII.pdf.

[10] Secretary of Commerce John Bryson: "Remarks at the U.S. Chamber of Commerce with Bryson's Vision for Job Creation: Build it Here. Sell it Everywhere," December 15, 2011, available at http://www.commerce.gov/news/secretary-speeches/2011/12/15/remarks-us-chamber-commerce-brysons-vision-job-creation-build-it-.

Bureau ("IB") in 2004 (the "IB Guidelines").[11] In addition to violating long-standing U.S. commitments as a member of the World Trade Organization ("WTO"),[12] the IB Guidelines have the baffling effect of making it easier for a foreign company to acquire a direct controlling interest in a common carrier wireless licensee easier than an indirect, non-controlling interest.[13] OFII respectfully urges the Commission to reject the IB's position on applying Section 310(b)(3) to indirect, non-controlling investment to ensure that its guidelines are consistent with U.S. WTO commitments and the FCC's "open entry" standard for indirect investment by companies in WTO Member countries.[14]

IV. National Security Considerations

OFII sees no sound national security reason for the IB's current guidelines regarding indirect non-controlling foreign ownership, which present some of the most significant burdens on current and potential foreign investors in U.S. telecommunications. The review process administered by the Committee on Foreign Investment in the United States ("CFIUS") ensures that foreign investment in all market sectors – including telecommunications – is thoroughly screened for any detrimental national security implications. OFII believes the CFIUS process, which was strengthened in the 2007 Foreign Investment and National Security Act ("FINSA"),[15] is an important and effective safeguard for U.S. national security concerns. Although this process is voluntary, CFIUS is widely used and provides statutory certainty to investors in the

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[11] *Foreign Ownership Guidelines for FCC Common Carrier and Aeronautical Radio Licensees*, 19 FCC Rcd 22612 (IB 2004) ("*IB Guidelines*").

[12] *See Rules and Policies on Foreign Participation in the U.S. Telecommunications Market: Market Entry and Regulation of Foreign-Affiliated Entities*, Report and Order and Order on Reconsideration, 12 FCC Rcd 23891 (1997) ("*Foreign Participation Order*").

[13] Section 310(b)(3) prohibits foreign investors from acquiring more than 20 percent of a covered licensee's equity. Its prohibitions cannot be waived. By contrast, Section 310(b)(4) prohibits foreign investors from acquiring more than 25 percent of the equity of a company that controls a covered licensee, although the Commission has discretion to permit investment greater than this amount if it is not contrary to the public interest. *See* 47 U.S.C. § 310(b)(3)-(4); *IB Guidelines* at 22617-18.

[14] *NPRM* ¶ 2 n.4.

[15] Foreign Investment and National Security Act of 2007, Public Law 110-49 (July 26, 2007).

form of firm timelines for review and ruling. The vast majority of CFIUS filings are approved after a statutory 30-day review period. In addition, the Commission regularly coordinates with Team Telecom, an interagency group led by the Department of Justice, the Federal Bureau of Investigation and the Department of Homeland Security, regarding foreign investments and transactions in the telecommunications sector.

In contrast to CFIUS, the current approval process under section 310(b)(4) is opaque and devoid of any such certainty even under the most favorable circumstances, making the process of investing inherently unpredictable and burdensome. Companies seek timeliness and transparency when pursuing investment opportunities; the current process offers neither. Therefore, OFII is pleased to support the Commission's proposed streamlining efforts and urges the adoption of further reforms to promote greater foreign investment in the U.S. telecommunications sector.

V. Conclusion

OFII appreciates the opportunity to comment on the proposed rulemaking and urges the Commission to move expeditiously to create a fairer, more transparent, and more efficient regulatory framework governing foreign investment in the U.S. telecommunications sector. OFII views these efforts as an important part of ensuring that the United States maintains its leadership position as the most open and competitive investment destination.

Respectfully submitted,

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ORGANIZATION FOR INTERNATIONAL INVESTMENT
INTERNATIONAL BUSINESS INVESTING IN AMERICA

OFII is the only business association in Washington D.C. that exclusively represents U.S. subsidiaries of foreign companies and advocates for their non-discriminatory treatment under state and federal law.

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