

ETNO Response - FCC review of rules governing foreign ownership of telecommunications and broadcasting spectrum licenses in the United States



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On October 21st, the Federal Communications Commission published in the US Federal Register a Notice of Proposed Rulemaking (NPRM) in which it seeks comments by December 5th 2011 (with possible extension) on the procedures it has applied over many years when scrutinising foreign investments in wireless spectrum licences. This proceeding is of direct interest to any foreign entity with, or contemplating, investments in the US wireless telecommunications or broadcast industries, and to foreign Governments that have or may conclude trade agreements with the United States.

The European Telecommunications Network Operators' Association (ETNO) is an organisation of 40 member companies from 35 European countries, representing a significant proportion of aggregate information and communication technology (ICT) activity in Europe, and as such is a likely group of potential investors in the US telecommunications market.

ETNO welcomes the NPRM, as the main objectives behind the texts are reducing, to the extent possible, the regulatory costs and burdens imposed on wireless common carrier and aeronautical applicants, licensees, and spectrum lessees; providing greater transparency and more predictability with respect to the Commission's filing requirements and review process; and facilitating investment from new sources of capital.

The United States has made WTO commitments to apply no limits to foreign ownership in the telecommunications sector. In this sense, 100% foreign control of licensees is allowed, after scrutiny of the FCC verifying US national security interests and WTO reciprocity commitments. But sections 310 (b)(3) and 310 (b)(4) impose certain requirements that can be removed or simplified.

We would like to recommend **applying section 310(b)(4) instead of 310(b)(3) to all forms of indirect foreign investment**. This would allow equal restrictions for indirect non-controlling foreign investments and indirect controlling foreign investments, while ensuring consistency with US trade commitments and bringing much needed clarity to the process, without any loss of effective oversight by the FCC or US national security interests.

Regarding the requests for approval, we would like to recommend the FCC to abandon its current process of requiring all licensees seeking to have indirect foreign investment in excess of 25% to seek a declaratory ruling from the FCC, and to require further requests each time the size or scope of the foreign investment changes. Instead, ETNO members recommend simply requiring licensees to provide notice of proposed indirect foreign investment in excess of 25 % and, *unless the investment can be traced to an entity organised under the laws of a non-WTO nation*, the FCC should do nothing further. This gives effect to the existing US policy of applying no limits to indirect investment by entities in WTO member nations but removes the current burden of the FCC process. No further notifications should be required, unless the underlying thresholds are breached by subsequent changes to the investment.