

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of
Commission Policies and Procedures Under
Section 310(b)(4) of the Communications Act,
Foreign Investment in Broadcast Licensees
MB Docket No. 13-50

DECLARATORY RULING

Adopted: November 14, 2013

Released: November 14, 2013

By the Commission: Chairman Wheeler and Commissioners Clyburn, Rosenworcel, Pai, and O’Rielly
issuing separate statements.

I. INTRODUCTION

1. This Declaratory Ruling issued pursuant to section 1.2 of the Commission’s rules<sup>1</sup> is intended to remove apparent uncertainty about the Commission’s policies and procedures for evaluating potential foreign investment in broadcast licensees under section 310(b)(4) of the Communications Act of 1934, as amended (the “Act”).<sup>2</sup> That section restricts foreign ownership or voting interests exceeding 25 percent of the capital stock in U.S.-organized entities that control broadcast (and certain other types of) Commission licensees, when the Commission finds that the imposition of such a limitation is in the public interest. As noted below, broadcasters, public interest groups, and others have expressed the view that it would be in the public interest to increase access to capital and investment financing for the broadcast sector. These parties assert that, as they read Commission precedent, the application of section 310(b)(4) to broadcast licensees has restricted the flow of foreign capital to domestic broadcast licensees or to entities interested in entering the broadcast industry. They assert that foreign sources of capital would be available to broadcasters if section 310(b)(4) were not applied to block access to those sources. Some parties further believe that the benefits of increased capital from foreign investors would assist, among other beneficiaries, minorities, women, and small broadcast entities, for which access to capital is a particular impediment to market entry. In light of these stated concerns, we believe it useful to articulate and clarify the Commission’s policies and procedures in reviewing applications or proposed transactions that propose foreign broadcast ownership that would exceed the 25 percent benchmark contained in section 310(b)(4) and to assure the broadcast industry and potential foreign investors that the Commission intends to consider such matters on a case-by-case basis.

II. BACKGROUND

2. The Act’s foreign ownership restrictions were originally conceived to address homeland security interests during wartime. They were designed to protect the integrity of ship-to-shore and governmental communications and thwart the airing of foreign propaganda on broadcast stations.<sup>3</sup>

<sup>1</sup> 47 C.F.R. § 1.2. See also 5 U.S.C § 554(e).

<sup>2</sup> 47 U.S.C. § 310(b)(4).

<sup>3</sup> See, e.g., Radio Communications: Hearing on S. 3620 and S. 5334 Before the House Commerce Committee, 62nd Cong 35-37 (Mar. 1, 1912) (adopting predecessor language to section 310). See also Fox Television Stations, Inc., 10 FCC Rcd 8452 (1995) (“Fox I”); Wilner & Scheiner, Request for Declaratory Ruling Concerning the Citizenship

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Nevertheless, those statutory provisions have always provided the Commission with the discretion to approve foreign ownership in broadcast licensees in excess of the 25 percent benchmark. Section 310 currently states in pertinent part:

(b) No broadcast or common carrier or aeronautical en route or aeronautical fixed radio station license shall be granted to or held by – \*\*\* (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 country, if the Commission finds that the public interest will be served by the refusal or revocation of such license.<sup>4</sup>

3. The Commission has traditionally viewed the 25 percent benchmark for foreign ownership and voting interests in U.S.-organized entities that control broadcast licensees as the presumptive limit consistent with the public interest.<sup>5</sup> It has done so based on a determination that foreign ownership of broadcast stations presents different questions from those raised by foreign ownership in other types of radio spectrum licensees.<sup>6</sup> The Commission’s approach to the benchmark for foreign

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Requirements of Section 310(b)(3) and (4) of the Communications Act of 1934, 103 FCC 2d 511, 516-17 (stating that “. . . 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.”) (1985) (“*Wilner & Scheiner*”); *Request for Declaratory Ruling Concerning Section 310(a)(5) of the Communications Act*, 67 FCC 2d 604 (1974) (the prior section 310(a)(5) is now section 310(b)(4)). *See also* Letter from Mace Rosenstein and Gerard J. Waldron, Counsel for the Coalition for Broadcast Investment (“CBI”), to Marlene H. Dortch, Secretary, Federal Communications Commission at 2 (Aug. 31, 2012) (“CBI Request”); Nexstar Broadcasting, Inc. Comments at 2 (“Nexstar”).

<sup>4</sup> 47 U.S.C. § 310(b)(4). The officer and director thresholds originally contained in Section 310(b)(4) were eliminated by Section 403(k) of the Telecommunications Act of 1996, P.L. No. 104-104, 110 Stat 56 (1996); *see also Implementation of Section 403(k) of the Telecommunications Act of 1996* (Citizenship Requirements), 61 FR 55579-01, Oct. 28, 1996 (FCC 96-396) (amending Commission rules, 47 C.F.R. Parts 20, 21, 22 and 101 (Communications common carriers, Radio); and 47 C.F.R. Parts 24, 26, 80, 87, 90 and 100 (Radio)).

<sup>5</sup> Traditionally, the Commission has considered the type of radio license at issue in assessing whether foreign ownership in excess of the benchmark would serve the public interest. *See, e.g., 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*, IB Docket No. 11-133, Notice of Proposed Rulemaking, FCC 11-121, 26 FCC Rcd 11703, 11704 n.3 (2011) (“*Foreign Ownership NPRM*”) (noting that the Commission historically has recognized different policy concerns for foreign ownership in the U.S.-organized parents of broadcast licensees under section 310(b)(4)); *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*, IB Docket No. 11-133, First Report and Order, FCC 12-93, 27 FCC Rcd 9832, 9834 n.11 (2012) (same) (“*Foreign Ownership First Report and Order*”); *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*, IB Docket No. 11-133, Second Report and Order, FCC 13-50, 28 FCC Rcd 5741, 5742 n.4 (2013) (“*Foreign Ownership Second Report and Order*”), citing to *Foreign Ownership NPRM* at 11704 n.3. For example, the Commission has noted common carrier radio licenses are passive in nature and confer no control over the content of transmissions. Broadcast transmissions have been found to present additional national security concerns because they implicate content. *See, e.g., Foreign Ownership NPRM*, 26 FCC Rcd at 11704 n.3, citing *Cable & Wireless, Inc.*, Declaratory Ruling and Memorandum Opinion, Order, Authorization, and Certificate, 10 FCC Rcd 13177, 13179, ¶ 18 (1995); *Market Entry and Regulation of Foreign-Affiliated Entities*, Notice of Proposed Rule Making, 10 FCC Rcd 4844, 4852 n.19 and accompanying text (1995) (“*Market Entry NPRM*”).

<sup>6</sup> *Market Entry and Regulation of Foreign-Affiliated Entities*, Report and Order, 11 FCC Rcd 3873, 3947 (1995) (“*Market Entry Order*”) (Commission determination not to adopt an effective competitive opportunities (“ECO”) approach for broadcast foreign ownership similar to that applied in common carrier section 310 evaluations). *See also supra* note 5.

investments in broadcast licensees has reflected “heightened concern for foreign influence over or control of [broadcast] licensees which exercise editorial discretion over the content of their transmissions.”<sup>7</sup> Over time, the Commission’s approach to foreign investment in the common carrier context has resulted in the development of a body of precedent, rules, and procedures for transactions involving such carriers. The Commission has not been presented with a similar number of applications in the broadcast sector and therefore has not had the opportunity to develop its policies and procedures in this context.

4. A number of diverse interested parties have asked the Commission to review its policies and procedures regarding the assessment of applications or proposed transactions that would exceed the 25 percent threshold in section 310(b)(4) in the broadcast context. On August 31, 2012, the Coalition for Broadcast Investment (“CBI”) filed a “Request for Clarification of the Commission’s Policies and Procedures Under 47 U.S.C. § 310(b)(4).” Therein, CBI sought “clarification” that the Commission will exercise its statutory discretion to “conduct a substantive, facts and circumstances evaluation of proposals for foreign investment in excess of 25 percent in the parent company of a broadcast licensee.”<sup>8</sup> On February 26, 2013, the Media Bureau issued a public notice inviting comment on the CBI Request. The Commission received nine comments and five reply comments, the majority of which support CBI’s position.<sup>9</sup>

5. CBI asserts that the Commission, for over 80 years, has failed to exercise its authority and discretion to permit foreign ownership interests in entities that control the licensees of broadcast radio or television stations in excess of the 25 percent benchmark.<sup>10</sup> It is commenters’ view that the Commission “maintains an irrebutable presumption” against relief from the 25 percent restriction, which inhibits financial institutions and other investors from considering broadcast transactions where the 25 percent benchmark would be surpassed and frustrates the public interest.<sup>11</sup> CBI contends that by confirming its intention to exercise the discretion afforded the agency by the plain language of the statute the Commission can ease the path for new broadcast entrants, while enabling existing broadcasters to offer expanded, innovative services.<sup>12</sup> National Association of Media Brokers (“NAMB”) indicates that banks from Canada and Europe have expressed their interest in making equity investments in U.S. broadcast stations but that the alien ownership limitations in section 310(b)(4) of the Act, as applied to the

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<sup>7</sup> *Market Entry NPRM*, 10 FCC Rcd at 4884 ¶ 99.

<sup>8</sup> CBI Request at 1; *see also* CBI May 28, 2013, Ex Parte at 1. CBI members comprise national broadcast networks, radio and television station licensees, and community and consumer organizations.

<sup>9</sup> *Media Bureau Announces Filing of Request for Clarification of the Commission’s Policies and Procedures Under 47 U.S.C. §310 (b)(4) by the Coalition for Broadcast Investment*, MB Docket No. 13-50, Public Notice, 28 FCC Rcd 1469 (MB 2013). Comments were filed by Adelante Media Group, Nexstar Broadcasting, Inc., Asian American Justice Center, Minority Media and Telecommunications Council, National Association of Broadcasters, National Association of Media Brokers, Dale A. Ganske, Bradley L. Gould and David A. Schum. Reply comments were filed by CBI, National Association of Broadcasters, Alaska Broadcast Communications, Inc. *et al.*, Wiley Rein LLP, and National Association of Black Elected Legislative Women. *See also* Letter from Sen. Harry Reid (D-Nevada) to Julius Genachowski, FCC Chairman (June 8, 2012); Letter from Sen. Charles Schumer (D-New York) to Julius Genachowski, FCC Chairman (July 2, 2012). Senators Reid and Schumer support a case-by-case review process for foreign broadcast investments and coordination of national security reviews with Executive Branch agencies.

<sup>10</sup> CBI Request at 2.

<sup>11</sup> Nexstar Comments at 2; *see also* Alaska Broadcast Communications, Inc., Juneau Alaska Communications, LLC and Texarkana Radio Center Licenses, LLC (jointly “AJT”) Joint Reply Comments at 2 n.4.

<sup>12</sup> CBI Reply Comments at 2.

broadcast industry, have limited their participation.<sup>13</sup> Broadcasters support CBI's request for clarification as a way to attract new sources of capital to their industry.<sup>14</sup>

6. Commenters also highlight the fact that the Commission adjusted its policies and procedures involving common carrier licensees over 15 years ago to authorize foreign investment in excess of the statutory benchmark in order to encourage a "more open and competitive U.S. telecommunications market."<sup>15</sup> Commenters attribute "globalization, growth and innovation" in the telecommunications sector to that Commission decision.<sup>16</sup> NAB adds that the Commission has issued approximately 150 section 310(b)(4) rulings authorizing foreign investment in U.S. telecommunications carriers exceeding the 25 percent statutory benchmark.<sup>17</sup> By comparison, in the view of industry commenters, the Commission's inflexibility in its review of broadcast foreign investment over the 25 percent benchmark has deprived the broadcast sector of available capital.<sup>18</sup>

7. Several commenters remark that the media landscape has evolved significantly since section 310 was enacted and that those changes eliminate the need to restrict foreign ownership in broadcast licensees to 25 percent.<sup>19</sup> CBI member Adelante Media Group states that imposition of the limit on broadcasters is unfair because broadcasters must compete against distribution platforms that are not subject to the same statutory policy – Netflix, Apple, Google, Twitter, multichannel video program distributors, and pay TV networks.<sup>20</sup> Others concur,<sup>21</sup> stating that wireless carriers and cable operators have seen significant capital investments from foreign interests while broadcasters have been denied those same opportunities.<sup>22</sup> Wiley Rein LLP similarly contends that a revised foreign investment policy for broadcasting would correct the current marketplace distortion that exists between broadcasters and their

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<sup>13</sup> NAMB Comments at 2.

<sup>14</sup> National Association of Broadcasters Comments at 1-2 ("NAB"), citing, *Foreign Ownership NPRM*, 26 FCC Rcd at 11706; Adelante Media Group Comments at 2; AJT Joint Reply Comments at 3-4; CBI Request at 3. *But see* Comments of Bradley L. Gould, David A. Schum.

<sup>15</sup> Nexstar Comments at 3 n.6, citing *Market Entry Order*, 11 FCC Rcd at 3943 ¶ 183.

<sup>16</sup> CBI Request at 4.

<sup>17</sup> NAB Comments at 3, citing *Foreign Ownership NPRM*, 26 FCC Rcd at 11705-06 ¶ 2.

<sup>18</sup> CBI Request at 5; NAB Comments at 3 ("... Commission should not continue its disparate treatment of broadcast entities seeking needed investment capital from a variety of sources, including those outside the United States.").

<sup>19</sup> NAB Comments at 3; CBI Request at 3-4.

<sup>20</sup> Adelante Comments at 2. Adelante Media Group specializes in Spanish language radio and television broadcasting in emerging Hispanic markets, owning and operating 18 radio stations in nine markets. Jay Meyers, Chief Executive Officer of Adelante, is also President and CEO of Broadcast Management and Technology, a firm that consults with financial institutions and broadcast owners. Adelante Comments at 1-2; *see also* Nexstar Comments at 2-3; AJT Joint Reply Comments at 3-4 n.11 (citing *Statement of Ajit Pai, Commissioner, Federal Communications Commission, Hearing Before the Committee on Commerce, Science, and Transportation of the United States Senate, "Oversight of the Federal Communications Commission,"* 2013 WL 987095 \*11 (Mar. 12, 2013)); Wiley Rein Reply Comments at 4.

<sup>21</sup> *See, e.g.*, NAB Reply Comments at 2 n.4, citing *Foreign Ownership Second Report and Order*, Statement of Commissioner Jessica Rosenwerfel (available at [http://transition.fcc.gov/Daily\\_Releases/Daily\\_Business/2013/db0418/FCC-13-50A4.pdf](http://transition.fcc.gov/Daily_Releases/Daily_Business/2013/db0418/FCC-13-50A4.pdf)) and Statement of Commissioner Ajit Pai (available at [http://transition.fcc.gov/Daily\\_Releases/Daily\\_Business/2013/db0418/FCC-13-50A5.pdf](http://transition.fcc.gov/Daily_Releases/Daily_Business/2013/db0418/FCC-13-50A5.pdf)).

<sup>22</sup> NAMB Comments at 2-4.

competitors in other services.<sup>23</sup> NAB states that today's security concerns stem principally from the possibility that foreign interests will engage in cyber-warfare over wired and wireless communications networks, not from the possibility of editorial control over broadcast transmissions.<sup>24</sup>

8. CBI maintains that a regulatory infrastructure exists that is sufficient for the Commission to evaluate broadcasters' foreign investment proposals. They recommend that the Commission utilize the procedures already in place with respect to proposed common carrier foreign ownership to coordinate with the relevant Executive Branch agencies on any issues related to national security, law enforcement, foreign policy, or trade policy with respect to particular applications or proposed transactions that would exceed 25 percent foreign investment in the controlling U.S. parents of telecommunications entities.<sup>25</sup> CBI notes that, pursuant to current procedures, the Commission regularly refers requests for section 310(b)(4) declaratory rulings involving such proposed investments in common carriers to the relevant Executive Branch agencies with expertise in national security matters.<sup>26</sup> CBI suggests that a similar process would ensure that broadcast transactions that propose foreign investment over the 25 percent benchmark would receive national security review.<sup>27</sup>

9. NAB and other commenters observe that Congress and the Commission have long recognized lack of access to capital as a leading barrier to increased ownership opportunities for small businesses, including women and minorities, in broadcasting and other communications sectors.<sup>28</sup> Commenters in other Commission proceedings have raised similar concerns. For example, in the current quadrennial review of broadcast ownership rules, Diversity and Competition Supporters<sup>29</sup> request that the Commission "relax its foreign ownership policies pursuant to section 310(b)(4) to provide new funding options for minority broadcast entrepreneurs . . . and give all U.S. broadcasters the opportunity to increase their investments in foreign broadcast outlets."<sup>30</sup> Furthermore, in its comments in this proceeding, Minority Media and Telecommunications Council ("MMTC"), on behalf of 31 national minority and civil rights organizations, states that encouraging foreign investment in broadcasting would create "reciprocal

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<sup>23</sup> Wiley Rein Reply Comments at 3; CBI Reply Comments at 5 (asserting that increased investment will speed the development of additional services, including 3-D television, ultra-high definition television and "services not yet envisioned").

<sup>24</sup> NAB Comments at 6.

<sup>25</sup> CBI Request at 8.

<sup>26</sup> *Id.*, citing *FCC Homeland Security Liaison Activities* (Mar. 2012).

<sup>27</sup> CBI Request at 8.

<sup>28</sup> Asian American Justice Center Comments at 1; CBI Request at 4; *see also* NAB Comments at 5 n.13 (the Commission has previously recognized that the primary impediment to the participation of women and minorities in spectrum-based services is lack of access to capital, caused by factors which include higher costs in raising capital and lending discrimination).

<sup>29</sup> Diversity and Competition Supporters ("DCS") includes 50 trade, civil rights, legislative and scholarly organizations. *See* Initial Comments of the Diversity and Competition Supporters in Response to the Notice of Proposed Rulemaking, *2010 Quadrennial Regulatory Review – Review of the Commission's Broadcast Ownership Rules and Other Rules Adopted Pursuant to Section 202 of the Telecommunications Act of 1996, Promoting Diversification of Ownership in the Broadcasting Services*, MB Docket Nos. 09-182, 07-294 ("DCS Initial Comments").

<sup>30</sup> *See* DCS Initial Comments at 24. Several commenters in that proceeding broadly endorsed DCS' proposal that the Commission relax foreign ownership policies. *See* Reply Comments of Tribune Company, Debtor-in-Possession, MB Docket Nos. 09-182, 07-294 at 41-42; Bonneville/Scranton Reply to the Report on Ownership of Commercial Broadcast Stations, MB Docket Nos. 09-182, 07-294 at 13 ("323 Report"); *see also* NAB 323 Report Reply at 3. *See also* "Azteca: Raise Foreign Ownership Limits," by Harry A. Jessell, TV NEWSCHECK (July 13, 2010) (Azteca International Corp. urges the Commission to relax foreign ownership rules to allow foreign companies to own up to 51 percent of U.S. broadcasting companies).

opportunities” for American broadcasters to expand their footprints into radio and television markets in regions and countries such as Central and South America, China, Korea, and Australia.<sup>31</sup> These groups maintain that relaxing the strict interpretation and application of section 310(b)(4) is one of the most significant steps the Commission can take to reverse the decline in minority broadcast ownership.<sup>32</sup> Commenters, including Adelante and NAMB, assert that access to additional capital will support the creation of more programming aimed at racial and ethnic minorities and bilingual speakers, and foster new entrants into broadcast ownership.<sup>33</sup>

### III. DISCUSSION

10. We believe the broadcast industry, the financial sector, and ownership diversity advocates will each benefit from a fresh statement of our policy and procedures governing Commission review under section 310(b)(4) of the Act of proposals for foreign investment exceeding the 25 percent benchmark in U.S.-organized entities that control broadcast licensees. We acknowledge commenters’ common position that changes have occurred in the media landscape and marketplace since the foreign ownership restriction was enacted and that limited access to capital is a concern in the broadcast industry, especially for small business entities and new entrants, including minorities and women. We read the plain language of the statute as providing us the opportunity to review on a case-by-case basis applications for approval of foreign investment in the controlling U.S. parent of a broadcast licensee above the 25 percent benchmark. Such applications may be granted unless the Commission finds that a denial will serve the public interest. In light of the concerns many commenters raised, we believe that a clear articulation of the Commission’s approach to section 310(b)(4) in the broadcast context has the potential to spur new and increased opportunities for capitalization for broadcasters, and particularly for minority, female, small business entities, and new entrants.<sup>34</sup> Greater capitalization may in turn yield greater innovation, particularly in programming directed at niche or minority audiences.

11. Section 310(b)(4) of the Act authorizes us to evaluate whether or not, in a particular situation, it is in the public interest to permit an entity to obtain or to hold a station license notwithstanding the fact that the alien interest in the U.S. parent of the station licensee would exceed the statutory benchmark – and to make such determinations on a case-by-case basis.<sup>35</sup> Congress’ directive is that 25 percent alien ownership is the point at which the Commission must act and exercise its discretion in making a public interest determination on proposed ownership arrangements that would exceed this level.<sup>36</sup> Congress entrusts to the Commission the discretion to reject alien voting or ownership above the

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<sup>31</sup> Comments of MMTC on behalf of Thirty-one Civil Rights Organizations at 1; *see also* CBI Reply Comments at 1, 5; Asian American Justice Center Comments at 1; Letter from Margaret L. Tobey, Vice President for Regulatory Affairs, NBC Universal, to Marlene H. Dortch, FCC Secretary (Nov. 7, 2013) (“the Declaratory Ruling . . . could help U.S. broadcast companies gain greater access to foreign media markets”).

<sup>32</sup> Comments of MMTC on behalf of Thirty-one Civil Rights Organizations at 1; *see also* National Organization of Black Elected Legislative Women Reply Comments at 2. *But see* Letter from Lauren M. Wilson, Policy Counsel, Free Press, to Marlene H. Dortch, FCC Secretary (Nov. 7, 2013) (raising concerns about the availability of foreign investment for new entrants and smaller broadcasters).

<sup>33</sup> Adelante Comments at 2; NAMB Comments at 4; NAB Reply Comments at 3.

<sup>34</sup> We also hope that clarifying our policy regarding foreign investment will encourage other countries to liberalize restrictions on investment in their media markets and pave the way for greater U.S. investment opportunities in those markets.

<sup>35</sup> *See, e.g., Wilner & Scheiner*, 103 FCC 2d at 524 (clarifying, *inter alia*, that limited partnership interests are within the scope of section 310(b)).

<sup>36</sup> The statutory benchmark reflects Congress’ judgment of the point at which foreign ownership and voting may conflict with the national interest. *Fox Television Stations Inc.*, 11 FCC Rcd 5714, 5722 (1995); *see also Univision Holdings, Inc. (Transferor) and Perenchio Television, Inc. (Transferee) for Transfer of Control of Univision Station*

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benchmark if the Commission finds that the public interest would be served by the refusal of the transaction which would confer a greater than 25 percent alien interest in the controlling U.S. parent of a domestic broadcast license or by the revocation of the licenses involved.<sup>37</sup> The Commission's decision in such cases is based on the specific facts and unique circumstances presented by each application before it.<sup>38</sup> The bulk of the Commission's precedent under section 310(b)(4) has involved foreign investment in the controlling U.S. parents of telecommunications carriers, not broadcast station licensees.<sup>39</sup> To the extent that the Commission's past practice may have been interpreted as precluding case-by-case review of applications involving foreign investment in the controlling U.S. parents of broadcast licensees, as some commenters have suggested, we take this occasion to clarify that the contrary is true. We have given, and will continue to give, the fact-specific, individual case-by-case review the statute calls for to applications involving broadcast stations. As we have previously concluded with respect to the application of section 310(b)(4) in broadcast cases, the 25 percent benchmark "is only a trigger for the exercise of our discretion, which we then exercise based upon a more searching analysis of the circumstances in each case."<sup>40</sup>

12. The Commission has not interpreted the benchmark as a permissive threshold that would allow foreign investors to hold more than 25 percent interests in the controlling U.S. parents of licensees absent Commission action.<sup>41</sup> Rather, under the Commission's precedent, the 25 percent benchmark set forth in section 310(b)(4) of the Act has been applied to restrict foreign ownership of the controlling U.S. parents of broadcast licensees absent an affirmative Commission finding in a particular case that such ownership is in the public interest. The parties to this proceeding have not asked us to reconsider this precedent. Thus, we reiterate that, under this precedent, applicants may not exceed the 310(b)(4) benchmark absent the express prior consent of the Commission. To exercise the statute's discretion in a meaningful way, the Commission must receive from the applicant detailed information sufficient for the agency to make the public interest finding required by the statute.<sup>42</sup>

13. Applicants seeking approval of broadcast assignments or transfers must continue to

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*Group, Inc., Licensee of Television Station Group Inc.*, 7 FCC Rcd 6672 (1992) (examining alien *de facto* control and real-party-in-interest issues for section 310(b)(4) compliance).

<sup>37</sup> *Fox I*, 10 FCC Rcd at 8469-70.

<sup>38</sup> *Fox I*, 10 FCC Rcd at 8472.

<sup>39</sup> See, e.g., *supra* note 5; see also *Foreign Ownership Second Report and Order*, 28 FCC Rcd 5741.

<sup>40</sup> *Fox I*, 10 FCC Rcd at 8472. See also *GRC Cablevision Inc.*, 47 FCC 2d 467, 468 ¶ 6 (1974) (alien ownership in broadcast television "presents different questions which we will deal with as they arise in concrete situations").

<sup>41</sup> *Fox I*, 10 FCC Rcd at 8745-46 (stating that "... [T]he Commission must be given the opportunity to make a public interest determination specifically focused upon the implications of exercising its discretion before an ownership structure above the foreign ownership benchmark is vested with corporate prerogatives over a Commission licensee."); *Galesburg Broadcasting Company*, Notice of Apparent Liability for Forfeiture, 6 FCC Rcd 2210, 2210 (1991) ("*Galesburg*") (finding that the transfer of a majority of the voting stock in the U.S.-organized parent of the licensee to a trustee wholly owned by a Canadian bank without prior Commission approval "deprived the Commission of the opportunity to pass on the propriety of alien ownership which Section 310(b)(4) of the Act contemplates"). See also *Foreign Ownership First Report and Order*, 27 FCC Rcd at 9843 n.58; *Foreign Ownership Second Report and Order*, 28 FCC Rcd at 5759, n.98 (both citing to *Fox I* and *Galesburg* for the same proposition).

<sup>42</sup> *Fox I*, 10 FCC Rcd at 8476-77; *Galesburg Broadcasting Company*, 6 FCC Rcd at 2210; compare *In re Hispanic Broadcasting Corp.*, 18 FCC Rcd 18834 (2003) (finding that the equity and voting interests held by foreign entities in Univision comply with the alien ownership restrictions set forth in section 310 of the Communications Act). See also *Foreign Ownership Second Report and Order*, 28 FCC Rcd at 5759 (confirming "the Commission's long-standing policy that the statute requires us to review and approve foreign ownership of licensees subject to section 310(b)(4) before that foreign ownership exceeds the 25 percent statutory limit").

inform the Commission of their proposed transaction's compliance with section 310 of the Act.<sup>43</sup> For example, Section III, Question 9 of Form 314 requires proposed assignees to certify their compliance with the provisions of section 310 relating to interests of aliens and foreign governments. Applicants must continue either to certify that their transactions will comply with section 310 benchmarks or, in the event they will not, to indicate that they will not comply and provide an explanatory exhibit.<sup>44</sup> A petition for declaratory ruling to allow foreign ownership to exceed the 25 percent benchmark must be filed along with any application in which the applicant cannot certify compliance with section 310(b)(4).<sup>45</sup> Again, in all cases, before the benchmark may be exceeded, we must approve the transaction.

14. We also clarify that, prospectively, if a proposed foreign investment in a broadcast licensee's controlling U.S. parent would exceed the benchmark but does not require the filing of a Form 314 or other FCC application, a petition for declaratory ruling must be filed with the Commission in advance.<sup>46</sup> We expect to process Form 314 and other applications, as well as petitions for declaratory rulings in this category, in a similar manner for purposes of section 310(b)(4) review. Following preliminary staff review to ensure completeness of the filing materials, both types of submissions will be subject to public notice seeking comment from interested parties. The Commission will coordinate as necessary and appropriate with Executive Branch agencies regarding such applications and petitions. Consistent with the Commission's long-standing policy in reviewing foreign ownership of common carrier applicants and licensees, the Commission will continue to afford appropriate deference to the expertise of the Executive Branch agencies on issues related to national security, law enforcement, foreign policy, and trade policy.<sup>47</sup> As part of its review, the Commission may send the applicants or petitioners letters of inquiry or document requests, request additional materials, or take any other needed measures in order to conduct a comprehensive public interest review. Once the Commission has concluded its inquiry, it will release a written opinion or other notice authorizing, denying, or conditioning the requested foreign ownership.<sup>48</sup>

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<sup>43</sup> See FCC Form 314 – Application for Consent to Assignment of Broadcast Station Construction Permit or License, Section III, Question 9, Alien Ownership and Control (Oct. 2012) (available at <http://transition.fcc.gov/Forms/Form314/314.pdf>); FCC Form 315 – Application for Consent to Transfer Control of Entity Holding Broadcast Station Construction Permit or License, Section IV, Question 11, Alien Ownership and Control (Oct. 2012) (available at <http://transition.fcc.gov/Form/Form315/315.pdf>); FCC Form 316 – Application for Consent to Assign Broadcast Station Construction Permit or License or Transfer of Control of Entity Holding Broadcast Station Construction Permit or License, Section III, Question 10, Alien Ownership and Control (June 2010) (available at <http://transition.fcc.gov/Forms/Form316/316.pdf>).

<sup>44</sup> We use the “long-form” broadcast assignment application, FCC Form 314, as an example. The same standard would apply whenever compliance with the alien ownership provisions or certification to such compliance arises. See, e.g., *supra* note 43.

<sup>45</sup> 47 C.F.R. § 1.2(a) (the Commission may on motion or on its own motion issue a declaratory ruling terminating a controversy or removing uncertainty).

<sup>46</sup> *Id.*

<sup>47</sup> See generally *Foreign Ownership Second Report and Order*, 28 FCC Rcd at 5751 ¶ 13, 5762 ¶ 34; see also *Rules and Policies on Foreign Participation in the U.S. Telecommunications Market: Market Entry and Regulation of Foreign Affiliated Entities*, IB Docket Nos. 97-14 and 95-22, Report and Order and Order on Reconsideration, 12 FCC Rcd 23891, 23920 ¶ 63 (1997) (“*Foreign Participation Order*”) (“We thus will continue to accord deference to the expertise of Executive Branch agencies in identifying and interpreting issues of concern related to national security, law enforcement, and foreign policy that are relevant to an application pending before us.”); see also *Market Entry Order*, 11 FCC Rcd at 3955 ¶ 219. We anticipate that we may further develop our broadcast foreign ownership policies and procedures as we conduct our case-by-case reviews of particular applications and petitions and as we coordinate such filings with the appropriate Executive Branch agencies.

<sup>48</sup> See, e.g., *Applications of Cellco Partnership d/b/a Verizon Wireless and SpectrumCo LLC and Cox TMI, LLC For Consent To Assign AWS-1 Licenses, Applications of Verizon Wireless and Leap for Consent To Exchange Lower 700 MHz, AWS-1, and PCS Licenses, Applications of T-Mobile License LLC and Cellco Partnership d/b/a Verizon*

(continued....)

15. We expect to evaluate proposals on the basis of our body of decisions relating to broadcast ownership and foreign ownership and the framework set forth in this item, evaluating the facts as they are presented in each specific application or petition for declaratory ruling.<sup>49</sup> By their nature, these case-by-case reviews will lead to distinct, factually driven results. Each application or petition will be assessed on its own merits, and we will determine, given the particular circumstances presented in a particular case, whether the public interest would be served by permitting the requested foreign ownership. We anticipate that applicants may propose ownership by a range of foreign interests and countries, involving varying corporate and organizational structures, with differing public interest showings. Although many commenters have suggested that there is significant availability of foreign capital for broadcasters, we cannot predict whether applications proposing new foreign investment will in fact increase. If they do increase, over time, the Commission's case-by-case review may suggest policy issues or streamlined procedural mechanisms that could be addressed in future Commission proceedings. We may in the future elect to create a standardized review process similar to that adopted in the common carrier context.<sup>50</sup> At this time, however, we are cognizant of the distinctions between common carrier facilities and broadcast stations and of the differences in the Commission's experiences with proposals to exceed the section 310(b)(4) benchmark for foreign investments in these two categories of Commission licensees. Therefore, we believe it is appropriate that our review of proposed broadcast investments remain on a case-by-case basis and be allowed to mature before we consider comprehensive rules and procedures similar to those applicable to foreign investment in common carrier licensees.<sup>51</sup>

16. Some commenters have asserted that the underlying national security rationale for section 310(b)(4) in the broadcast area, protection from foreign propaganda on radio and television stations, no

(Continued from previous page)

\_\_\_\_\_ *Wireless for Consent to Assign Licenses*, WT Docket No. 12-4, Memorandum Opinion and Order and Declaratory Ruling, FCC 12-95, 27 FCC Rcd 10699, 10769 ¶¶ 191-92 (2013), *pet. for recon. pending* (conditioning grant of applications to assign licenses and grant of declaratory ruling to Verizon Wireless on its compliance with the terms and conditions contained in the March 27, 2008, Letter to Stewart Baker, Assistant Secretary of Policy, U.S. Department of Homeland Security; and conditioning grant of applications to assign licenses to T-Mobile License on its compliance with the terms contained in the National Security Agreement entered into on January 12, 2001, as amended as of January 4, 2008, between Deutsche Telekom and the U.S. Department of Justice, the Federal Bureau of Investigation, and the U.S. Department of Homeland Security).

<sup>49</sup> We will not entertain petitions to exceed the foreign ownership limits of section 310(b)(3) for foreign investment in broadcast licensees. Foreign interests in a U.S.-organized parent that controls a licensee are subject to section 310(b)(4), not section 310(b)(3). Unlike section 310(b)(4), section 310(b)(3) does not afford the Commission any discretion to approve foreign investment in broadcast licensees in excess of the limitations contained therein. While the Commission has statutory authority to forbear from applying any regulation or provision of the Act to a telecommunications carrier or service if the Commission determines that forbearance is in the public interest, that authority is limited to application of those requirements to telecommunications carriers or services. *See* 47 U.S.C. § 160. It does not extend to broadcast station licensees covered by section 310(b)(3). *Foreign Ownership Second Report and Order*, 28 FCC Rcd at 5749 ¶ 9 n.31. *See also Foreign Ownership First Report and Order*, 27 FCC Rcd 9832 (adopting forbearance from applying the section 310(b)(3) limit to the class of common carrier licensees in which foreign ownership in the licensee is held through U.S.-organized entities that do not control the licensee, to the extent the Commission determines such foreign ownership is consistent with the public interest under the policies and procedures the Commission has adopted for the public interest review of foreign ownership subject to section 310(b)(4) of the Act).

<sup>50</sup> *See Foreign Ownership Second Report and Order*, 28 FCC Rcd 5741 (codifying policies and procedures for authorizing foreign ownership of common carrier, aeronautical en route, and aeronautical fixed radio station licensees under section 310(b)). *See also Foreign Participation Order*, 12 FCC Rcd at 24033 ¶ 323.

<sup>51</sup> Some commenters raise additional suggestions for Commission review of foreign investment in broadcast licensees. Although many of these recommendations proffer thoughtful contributions to the proceeding record, it is premature to adopt them at this time. Our consideration of the numerous overarching issues involved in this area is ongoing. As we continue to address applications on a case-by-case basis, we will ascertain whether it is appropriate to conduct a rulemaking proceeding.

longer exists.<sup>52</sup> Although many new potential threats and national security issues have arisen as technology has advanced,<sup>53</sup> we do not believe that the historical statutory concern for foreign influence over broadcast stations has disappeared. Broadcast stations are licensed to serve the needs and interests of local U.S. communities. They uniquely offer a range of critical information services to the American public, including, for instance, the provision of local, state, national, and international news, national Emergency Alerts, local severe weather alerts, Amber Alerts for missing children, and homeland security information. Ensuring that the ownership of broadcast licensees serves the public interest is embodied in a statutory directive with which we must faithfully comply and we will evaluate applications proposing foreign broadcast ownership accordingly. In particular, we will address each specific situation in terms of its potential public interest benefits and any relevant public interest concerns, including national security concerns, consistent with the statute and this Declaratory Ruling.

#### IV. ORDERING CLAUSE

17. Accordingly, IT IS ORDERED that, pursuant to the authority contained in sections 4(i) and 310(b) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 310(b), 5 U.S.C. § 554(e) and section 1.2 of the Commission's rules, 47 C.F.R. § 1.2, this Declaratory Ruling in MB Docket No. 13-50 IS ADOPTED.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch  
Secretary

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<sup>52</sup> NAB Comments at 6; NAMB Comments at 4; CBI Request App. at 2; Nextstar Comments at 2.

<sup>53</sup> See, e.g., "Confidential Reports List U.S. Weapon System Designs Compromised by Chinese Cyberspies," by Ellen Nakashima, THE WASHINGTON POST (May 27, 2013).

**STATEMENT OF  
CHAIRMAN TOM WHEELER**

**Re: *Commission Policies and Procedures Under Section 310(b)(4) of the Communications Act, Foreign Investment in Broadcast Licensees, Declaratory Ruling, MB Docket No. 13-50***

Promoting a regulatory framework that does not inhibit the flow of capital to the US communications sector is an important goal of Commission policy. In today's global economy, companies regularly look beyond their borders for new sources of investment. We have heard from the broadcast industry, however, that the Commission's interpretation of Section 310(b)(4) is widely perceived as an obstacle to new investment opportunities.

Today's Declaratory Ruling clarifies that the Commission is open to considering proposals for foreign investment in broadcast licensees that exceed the 25 percent statutory benchmark.

I want to emphasize that we are "open to considering" such proposals. This is far from an indication that we're going to rubber stamp them. The Commission will look at each petition and application on a case-by-case basis to determine if approval to exceed 25 percent benchmark for foreign ownership is consistent with the public interest, including the goals established by Congress. Those goals include encouraging investment, innovation, media diversity, localism, and the efficient use of spectrum.

The infusion of additional foreign capital has the potential to enhance the ability of broadcasters to use their spectrum to serve the needs and interests of their communities. Moreover, as we all know, the Commission is engaged in an extensive process to assure that spectrum is put to its highest and best use. Among other means, this process will utilize a voluntary incentive action to allow the market to make that decision. I, therefore, will assess foreign ownership petitions and applications by looking at, among other factors, whether they will help to fulfill these goals, including efficient spectrum usage.

Today's ruling could, for example, unleash new capital to help stations to make the up-front investment necessary to share a channel after their spectrum is sold at auction. Similarly, foreign capital that would help a broadcaster move from the UHF band to VHF band might also further the Commission's efficiency goals. We are in the midst of a major effort to improve spectrum efficiency, and I encourage those who might want to attract foreign investment to keep those goals in mind.

**STATEMENT OF  
COMMISSIONER MIGNON CLYBURN**

**Re: *Commission Policies and Procedures Under Section 310(b)(4) of the Communications Act, Foreign Investment in Broadcast Licensees, Declaratory Ruling, MB Docket No. 13-50***

From my earliest days as a Commissioner, I have heard time and again that a major impediment to new entry in the broadcast industry is access to capital. These concerns, expressed by broadcasters and public sector interests alike, highlight just how acute this situation is for those who are underrepresented in the ownership ranks, namely minorities and women. Knocking down unnecessary barriers and realizing greater ownership diversity will help to open our airwaves to the presentation of content that more fully reflects the composition of our broad society. And while it may be true that the Commission has limited jurisdiction to influence the flow of capital, Section 310(b)(4) of the Act is at least one tool we do have.

Today, I am pleased to say, we clarify the Commission's policies for foreign investment in broadcast licensees by signaling that the Commission is open to considering proposed foreign investments in broadcasting on a case-by-case basis. Doing so will help ensure that broadcasting remains a vital, forward-leaning media service. Competition and innovation in media in the 21<sup>st</sup> century move at warp speed, and in order to keep pace, broadcasters need new and increased sources of capital. Although other platforms, such as telecommunications, have long had the benefit of access to foreign investment, broadcasters have not yet fully tapped those available resources. My hope is that this action will remove whatever hindrances may have restricted new opportunities.

Today's Declaratory Ruling affirms that the plain language of the statute allows the Commission to authorize foreign capital investment above the 25 percent statutory threshold in the controlling U.S. parent of a broadcast licensee. The decision does not attempt to set forth in detail all of the criteria we might consider in determining whether a particular investment is consistent with the public interest. Instead, it contemplates that the Commission will proceed thoughtfully in evaluating all the facts and circumstances implicated by any specific arrangement that is proposed. An applicant is required to submit detailed information sufficient for us to make a satisfactory public interest finding. No investment above the benchmark is permitted without the express prior approval of the Commission. Consistent with our longstanding practice in reviewing foreign investment in telecommunications licensees, we will continue to afford appropriate deference to the expertise of the Executive Branch agencies on issues related to national security, law enforcement, foreign policy, and trade policy.

I thank the staff in the Media Bureau for their hard work on this important item.

**STATEMENT OF  
COMMISSIONER JESSICA ROSENWORCEL**

**Re: *Commission Policies and Procedures Under Section 310(b)(4) of the Communications Act of 1934, Foreign Investment in Broadcast Licensees, MB Docket No. 13-50***

Like other segments of the communications industry, broadcasters are facing an increasingly complex, multi-platform future. But unlike other segments of the communications industry, broadcasters have faced unique funding constraints with respect to investment from foreign shores.

Today, the Commission remedies this anomaly. We begin by acknowledging that federal law expressly permits foreign investment of up to 25 percent in the controlling parent of a broadcast licensee. However, we make clear one of the less clear aspects of the law—that investment that exceeds this 25 percent benchmark is permissible, if the Commission determines that it is in the public interest.

I believe that this is the right thing to do—for two fundamental reasons.

First, I believe our existing approach that treats this 25 percent threshold as an inflexible bar is now a historical aberration. This was a policy long-ago designed to prevent foreign powers from disrupting ship-to-shore governmental communications during warfare. But just as horses and bayonets are not the tools of modern warfare, the cyber threats we face today are not especially well-guarded by this prohibition. Moreover, as scores of civil rights groups have acknowledged, this historical anomaly may have the effect of diminishing investment in small and minority-owned broadcasters.

Second, I believe the steps we take here are entirely consistent with national security objectives. We grant no blanket waivers. We do not permit foreign entities to wholly or directly own broadcast licenses. We will just review what comes before us on a case-by-case basis, consistent with the public interest—and that includes appropriate deference to Executive Branch agencies with expertise in security and trade matters. This is a modern and thoughtful approach. It has my full support.

**STATEMENT OF  
COMMISSIONER AJIT PAI**

**Re: *Commission Policies and Procedures Under Section 310(b)(4) of the Communications Act, Foreign Investment in Broadcast Licensees, MB Docket No. 13-50***

Over a year ago, I called upon the Commission to modernize its approach to foreign investment in broadcasting.<sup>1</sup> Today, we do just that. At long last, we revise our interpretation of Section 310(b)(4) of the Communications Act to eliminate the obsolete *de facto* ban on foreign investment of more than 25 percent in U.S. broadcast holding companies. I am optimistic that this Declaratory Ruling will invigorate American broadcasting, increase minority ownership, and expand opportunities abroad for U.S. media companies.

As the Declaratory Ruling points out, there has been a sharp disparity in the Commission's treatment of foreign investment in the common carrier and broadcast contexts.<sup>2</sup> On one hand, in recent years, the Commission has approved foreign investment in U.S. telecommunications carriers exceeding the 25 percent benchmark approximately 150 times. The Commission has repeatedly recognized that "foreign investment has been . . . an important source of financing for U.S. telecommunications companies, fostering technical innovation, economic growth and job creation."<sup>3</sup> Indeed, foreign investment has been critical to creating the robust competition we see in today's wireless marketplace.

On the other hand, while a foreign company can indirectly hold more than a 25 percent stake in a nationwide wireless carrier, cable operator, or Internet service provider, it has been all but impossible for a foreign entity to own more than 25 percent of a U.S. broadcast holding company. The end result? A British company has (at least for the time being) a 45 percent stake in our nation's largest wireless carrier, but that same British company is not allowed to hold a 45 percent stake in a single AM radio station in rural Kansas.

This disparity does not make any sense to me,<sup>4</sup> and it harms our nation's broadcasting industry. Foreign investment can be an "important source of financing . . . innovation, economic growth and job creation" for broadcasters, just as it has been for telecommunications carriers. I am therefore pleased that today's Declaratory Ruling takes a much-needed step towards leveling the regulatory playing field. As in the common-carrier context, the Commission will now engage in a case-by-case review of proposed foreign investment in broadcast holding companies that exceeds a 25 percent stake. This approach will give broadcasters more options for accessing capital while still allowing the Commission to safeguard national security.

Aside from boosting the broadcast industry, today's ruling is good news for another, equally important reason. It will increase minority ownership of broadcast outlets. Since joining the

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<sup>1</sup> See Remarks of Commissioner Ajit Pai before the NAB Radio Show (Sept. 19, 2012) (NAB Radio Show Speech), available at <http://go.usa.gov/Tj2G>.

<sup>2</sup> Declaratory Ruling at para. 6.

<sup>3</sup> See *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*, IB Docket No. 11-133, Second Report and Order, 28 FCC Rcd 5741, 5744, para. 3 (2013) (*Second Report and Order*); *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*, IB Docket No. 11-133, Notice of Proposed Rulemaking, 26 FCC Rcd 11703, 11705, para. 2 (2011).

<sup>4</sup> See NAB Radio Show Speech at 6; *Second Report and Order*, 28 FCC Rcd at 5840 (Statement of Commissioner Ajit Pai).

Commission, I have heard the same message over and over again when it comes to ownership diversity: The biggest obstacle to minority ownership in the broadcast industry is the lack of access to capital. That is why the Minority Media and Telecommunications Council and 30 other national minority and civil rights organizations have told us that permitting additional foreign investment in the broadcasting industry would be “one of the most significant steps the Commission could take” “[t]o reverse the decline in minority broadcast ownership.”<sup>5</sup> With an expanded ability to access capital from abroad, minority entrepreneurs will have a better chance of being able to enter into the broadcast industry or expand existing businesses. Indeed, this item demonstrates how regulation can serve as a barrier to minority ownership and how modernizing our rules can promote diversity.

Today’s decision also should help expand investment opportunities abroad for U.S. media companies. Some countries only permit foreign ownership in their broadcast markets by investors whose home nation provides reciprocity. Therefore, by liberalizing our approach to foreign investment in the U.S. broadcast industry, our own companies should have greater opportunities to participate in those nations’ media markets. And I hope that our efforts will encourage countries that currently impose more stringent restrictions on foreign investment to relax their own rules.

Finally, given our new Chairman’s well-known interest in history, I thought that it would be fitting to conclude this morning with a quote from one of my favorite historical figures, Winston Churchill: “[T]his is not the end. It is not even the beginning of the end. But it is, perhaps, the end of the beginning.” Put simply, this Declaratory Ruling does not finish the Commission’s work on this topic. Today, we have just taken the relatively easy step of updating our general policies to fit the times. Now, the harder work begins. We will have to develop additional procedures for applicants seeking to take advantage of this Declaratory Ruling. We will need to process the applications we receive. And we will have to formulate more specific substantive standards for analyzing those applications. As we go about these tasks, I hope that we will move promptly and stay focused on the important objective of maximizing investment in the broadcast industry.

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<sup>5</sup> Letter from the Minority Media and Telecommunications Council, *et al.* to Hon. Julius Genachowski, Chairman, FCC, *et al.*, MB Docket No. 13-50 (filed Apr. 15, 2013), *available at* <http://apps.fcc.gov/ecfs/document/view;jsessionid=5ZQTRnSXJkRtrZss32PgPGL3gGHf8yjL0v8GfWg27YbcGGvMZg3R!638063854!-817071755?id=7022281769>.

**STATEMENT OF  
COMMISSIONER MICHAEL O'RIELLY**

**Re: *Commission Policies and Procedures Under Section 310(b)(4) of the Communications Act, Foreign Investment of Broadcast Licenses, MB Docket No. 13-50***

Today marks my first Commission Open Meeting as a Commissioner and it is appropriate to start by expressing my deep appreciation to my new colleagues on the Commission. Chairman Wheeler, former Acting Chairwoman Clyburn, and Commissioners Rosenworcel and Pai have been especially welcoming. More importantly, my few days at the Commission have taught me that the true heart and soul of the Commission is the myriad of warm and helpful employees who bring their energy and commitment to this building every day.

As most of you know, I arrived at the Commission last week fresh from my confirmation process. Let me share with you a reoccurring theme from my many meetings and conversations: both Republicans and Democrats want the Commission to bring greater certainty to the communications marketplace by making the decisions that are ready to be made.

Turning to the matter before us, the Commission has before it a declaratory ruling on section 310(b)(4) of the Communications Act of 1934 as it pertains to broadcast licenses. I do have some general thoughts with this item, which I will discuss, but they do not keep me from voting in favor of its adoption.

I am very familiar with the discussion over 310(b) and the interest by many parties to make alterations. It seems only fitting that my first Open Meeting addresses the same topic of one of my first hearings as a staff member of the then-House Commerce Committee.<sup>1</sup> At that time, the Congress debated a proposal to completely repeal 310(b).<sup>2</sup> Further, I spent the greater part of the last five-plus years working on various trade-related matters before the Congress.

The value of the ruling is to clarify that the Commission's approach to 310(b)(4) should not be interpreted as foreclosing the option of approving foreign ownership above 25 percent. It can be viewed as a restatement of the Commission's longstanding approach. For some, the item may *seem* as a change in policy for those who believed the Commission's prior approach was an irrebuttable presumption against any relief. In either scenario, U.S. broadcasters and foreign investors should know this Commission is now open to considering foreign entities holding capital stock of companies that control broadcast licenses exceeding 25 percent, perhaps up to a high of 100 percent.

The benefits of this clarification could be significant. With a successful application, U.S. broadcasters will have new sources of capital to operate in the dynamic and competitive video and audio marketplace. In some instances, greater foreign investment in the companies that control U.S. broadcast licenses may improve the financial footing of existing broadcasters or increase access to broadcasting for unique voices in the marketplace.

Equally important, 310(b) has been used over the years as a flawed excuse by other nations to retain indefensible trade barriers that harm U.S. companies. Bob Vastine of Georgetown University and former President of the Coalition of Service Industries commented recently that, "For years, it's [310(b)] been

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<sup>1</sup> Hearing "Trade Implication of Foreign Ownership Restrictions on Telecommunications Companies," Subcommittee on Commerce, Trade, and Manufacturing; House Commerce Committee, March 3, 1995.

<sup>2</sup> See H.R. 514, 104<sup>th</sup> Congress, <http://thomas.loc.gov/cgi-bin/query/z?c104:H.R.514>:

used rhetorically against us. When industry has gone in for the right to fully own in the insurance sector or some other sector, we've often had this thrown in our face.”<sup>3</sup>

## General Thoughts

### 1. Speedier Decision

I acknowledge that the Commission may have been hamstrung recently by the political process, but there should be ways to be more nimble and responsive for the relatively easy cases. We don't know what deals would or could have been done had this item been approved earlier than 14 months from the initial request. This is not in any way a criticism of the great staff that worked on this item; it is only a thought to be added to the process reforms being considered.

### 2. Could be More

The Commission's action today is commendable, it doesn't move the needle enough. It could have been more if it had been accompanied by an NPRM to further reform section 310(b)(4) as it applies to broadcast licensees. Components of reform could include shifting the burden to the Commission to justify blocking a deal; establishing a new level that would be acceptable under the public interest (e.g., 49 percent, 74 percent, or more); or simply providing more guidance on which applications may be more likely to be approved by the Commission. Recognizing that there are limits to declaratory rulings, the item's indication of potentially doing a further Commission proceeding sometime in the future seems empty.

### 3. Bigger Picture on Investment

While today's proceeding should be beneficial to some U.S. broadcasters, it is also useful to non-broadcasters. Removing trade and investment barriers has benefits outside of the broadcasting sector, as increasing trade and investment opportunities brings more jobs, improved economic growth and efficiencies of scale to the U.S. and international marketplace. I am surprised the record did not include more comment on this point; I am sure the Commission staff would have been happy to accommodate my thoughts in some capacity. To be clear, no criticism lies with the able staff, who have gone out of their way to help me, as any issue with incorporating these thoughts into the ruling lies with me and the timing of my arrival.

## Conclusion

All in all, this is a positive step and one I am pleased to support. I extend my appreciation to Former Acting Chairwomen Clyburn for her work on this item, Commissioner Pai for being an active instigator to initiate the item, and the Media Bureau staff for getting me up to speed in quick order.

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<sup>3</sup>“FCC Poised to Ease Foreign Investment Restrictions in Broadcast Sector,” *Inside US Trade*, November 1, 2013.