

Congress of the United States

Washington, DC 20515

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January 18, 2001

The Honorable William E. Kennard
Chairman
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

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Dear Chairman Kennard:

I am concerned that the FCC not interpret Section 310(a) of the Communications Act in any manner that would limit the United States' ability to honor our commitments made in the World Trade Organization Agreement on Basic Telecommunications ("Basic Telecom Agreement"). In the comments filed in the VoiceStream - Deutsche Telekom merger, one of my colleagues in the Senate has offered his view as to the proper interpretation of Section 310. That view, however, is not correct and is at odds with what the United States Trade Representative told the Congress at the time the Basic Telecom Agreement was signed, and what the United States told its trading partners during negotiations. If the FCC were to adopt my colleague's view, the FCC would substantially undermine the United States' credibility in all future trade negotiations.

The Administration has time and again made clear that Section 310 does not prohibit a foreign government-owned carrier from obtaining a controlling, indirect ownership interest in a U.S. wireless licensee, provided the FCC finds that ownership to be in the public interest. For example:

- In a February 1996 communication to the Negotiating Group on Basic Telecommunications, the U.S. clarified its WTO offer with respect to foreign ownership, expressly stating, "There is a limit on direct ownership, but it is one of form not substance. A foreign government (including a government-owned corporation), a non-U.S. national or a non-U.S. corporation or other business entity can directly own or control a U.S. holding company, which directly owns or control 100% of a U.S. corporation holding a common carrier radio license."¹
- In a 1997 response to a written question from Senator Bob Kerrey, Ambassador Barshefsky noted that Section 310(a) prohibited direct ownership of a radio license by a foreign government or its representative but then explained, "Section 310(b)(4) explicitly allows indirect ownership by all three -- a foreign government or its representative, an alien or its representative or a foreign corporation, unless the FCC determines that such ownership is not in the public interest. This is also reflected in the U.S. offer...."²

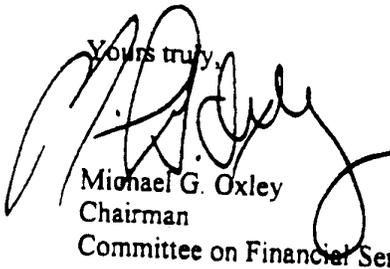
¹ WTO, Negotiating Group on Basic Telecommunications, Communication from the United States, Conditional Offer on Basic Telecommunications (Revision), S/NGBT/W/12/Add.3/Rev.1 (Feb. 26, 1996).
² 105 Cong. Rec. S1963 (1997).

- In addition, in March 1997, at hearing at which both USTR and the FCC Chairman testified, the United States Trade Representative stated, "The Administration believes, *as does the FCC*, that U.S. communications law provides authority to implement the U.S. commitments made under this Agreement, without any further legislative action."³ As I said at that hearing, I agree.

The Basic Telecom Agreement was a great achievement, opening telecommunications markets worldwide and strengthening competition in the U.S as well as abroad. The FCC must not now -- nearly five years after the U.S. first clarified its foreign ownership offer at the WTO and nearly three years after the Basic Telecom Agreement took effect -- reverse the United States' settled interpretation of Section 310 and place the United States in violation of its market access commitments under the Basic Telecom Agreement. If the FCC were to do so, it would harm U.S. credibility and cripple the United States' ability to enter into future trade agreements.

Please place a copy of this letter in the VoiceStream/Deutsche Telekom merger docket.

Yours truly,



Michael G. Oxley
Chairman
Committee on Financial Services

³ Prepared Statement of Ambassador Charlene Barshefsky, Hearing of the Telecommunications, Trade and Consumer Protection Subcommittee, House Commerce Committee, on "World Trade Organization Telecommunications Agreement." (March 19, 1997)(emphasis added).