

FCC May Ease The Way For Foreign Investment In Telecom

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Catherine Wang



Jeffrey Strenkowski

At its October open meeting, the Federal Communications Commission announced a notice of proposed rulemaking that considers ways to facilitate foreign investment in the telecommunications industry, including in broadcast media, a sector in which foreign ownership has been actively discouraged because of the potential for foreign influences on the content of broadcast transmissions.

The NPRM does not explicitly propose changes to the “Team Telecom” process (i.e., the often protracted and intrusive executive branch review of foreign investment in the telecommunications industry for law enforcement and national security issues), but it does signal the FCC’s openness to changes that would reduce or eliminate barriers to foreign ownership without compromising national security, law enforcement, or other policy goals.

Accordingly, we encourage industry to press for changes that would streamline costly, inefficient and intrusive requirements and procedures that discourage foreign investment in broadcast and telecommunications entities. The filing date for comments and reply comments in response to this NPRM will be announced soon.

Greater Flexibility and Streamlining for Approvals of Foreign Investment in Media

According to the FCC, a new approach to the process is necessary to “facilitate investment from new sources of capital at a time of growing need for capital investment in this important sector of our nation’s economy.” The proposed rules would alter the way that the FCC implements the Communications Act of 1934 requirement that allows the FCC to grant permission for licensed broadcasters and common carriers to exceed 25 percent indirect foreign ownership.

The NPRM specifically proposes to allow broadcast licensees to request and receive approval for a controlling parent of the licensee to have up to 100 percent (equity and voting) foreign ownership, subject to an FCC public interest review. The NPRM also proposes to allow an approved controlling foreign investor to increase its ownership to 100 percent and to allow any approved noncontrolling foreign investor to increase its interest in the U.S. parent to up to 49.99 percent in the future without requiring an additional FCC petition. Additionally, the proposed rules would make clear that licensees would not require approval of any noncontrolling foreign investor with an interest of 5 percent or less (or 10 percent or less in certain circumstances).

Traditional Broadcast Attribution Rules Would Apply

The NPRM proposes that broadcast licensees be afforded the benefits of a streamlined review process previously granted to common carriers but be held to the broadcast attribution criteria and thresholds for disclosure of the principal U.S. and foreign owners, rather than the thresholds applicable to common carrier licensees. Under that approach, broadcast licensees asking to exceed the 25 percent indirect limit generally would not require approval or disclosure for foreign entities below 5 percent or nonvoting interests. All general partners and “noninsulated” limited partners and limited liability company interests would be attributable, except for those limited partners and LLC interest holders that meet the insulation criteria and that certify that they are not materially involved in management or operations of the entity’s media interests.

Calculating Foreign Ownership of Public and Widely Held Companies Could be Simplified

Prompted by a recent case in which a party was compelled to seek FCC approval to exceed the 25 percent indirect ownership limit because it could not prove that foreign entities do not beneficially own or vote more than 25 percent of its shares, the NPRM also seeks public input on how foreign ownership should be determined and calculated, with an aim to provide some relief to widely held or publicly traded companies that may not have information on their shareholders’ identities. Among questions about other potential measures, the NPRM asks whether the FCC should accept information regarding shareholder street addresses, perhaps coupled with participation in the Depository Trust & Clearing Corporation’s SEC-100 program (which provides monitoring of foreign-owned shares in separate accounts) as a proxy for determining shareholder citizenship.

FCC Wants to Hear Proposals to Reform Team Telecom National Security Review and Other Streamlining

Finally, the FCC seeks comment on any additional reforms that can further streamline the review of foreign ownership, while ensuring that important national security, law enforcement, trade policy, and other public policy goals continue to be met. This catch-all solicitation for ideas opens a valuable opportunity for parties to propose changes to the FCC’s common carrier foreign ownership process and/or the Team Telecom process.

Opportunity for Potential Investors to Shape Ownership Regulations to Remove Barriers

This FCC proceeding will be an important one for entities interested in investing in the U.S. broadcast and telecommunications sector. If adopted, the proposals in the NPRM could significantly lower the regulatory barriers for foreign investment in the broadcast industry and open new reforms of the Team Telecom review process. We encourage industry to file comments with the FCC to propose ways to streamline the FCC’s foreign ownership review procedures that currently discourage foreign investment

in broadcast and telecommunications entities.

—By Catherine Wang and Jeffrey R. Strenkowski, Morgan Lewis & Bockius LLP

Catherine Wang is a partner and Jeffrey Strenkowski is of counsel in Morgan Lewis' Washington, D.C., office.

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