

**FCC STREAMLINES AND CLARIFIES REQUIREMENTS FOR COMMON CARRIER
WIRELESS FOREIGN OWNERSHIP**

The Federal Communications Commission (“FCC”) recently adopted a *Second Report and Order*¹ that streamlines the policies and procedures applicable to foreign ownership of common carrier wireless licensees (*e.g.*, companies that provide mobile and/or fixed wireless phone and broadband services), common carrier wireless lessees, and aeronautical radio licensees (collectively, “licensees”).²

A licensee still must seek and obtain prior FCC approval of foreign ownership of a U.S. parent in excess of 25 percent by filing a petition for a declaratory ruling that such ownership is in the public interest. Nevertheless, the revised rules are intended to (1) reduce the regulatory costs and burdens imposed on licensees; (2) provide greater transparency and more predictability with respect to the FCC’s foreign ownership declaratory ruling filing requirements and review process; and (3) facilitate investment from new sources of capital while continuing to protect national security, law enforcement, foreign policy, and trade policy interests. The revised rules appear to reduce at the margin the burden on licensees seeking new declaratory rulings because foreign investors of less than five percent need not be specifically identified. Moreover, named foreign investors may increase their ownership significantly without seeking additional approval. However, notwithstanding the streamlining adopted in the *Second Report and Order*, the precise application of the FCC’s common carrier foreign ownership rules remains highly technical and requires expert advice.

The *Second Report and Order* makes the following changes to simplify the declaratory ruling process:

- Extends to *all* foreign investors an “open entry” policy, *i.e.*, a rebuttable presumption that foreign investment in U.S. licensees does not pose competitive concerns in the U.S. Prior to the *Second Report and Order*, this open entry policy was reserved for investors from WTO signatory nations.
- Streamlines FCC review of foreign investments by (1) requiring petitioners to identify only those foreign equity and/or voting interests that are greater than five percent, and, in certain situations, greater than ten percent;³ (2) allowing named non-controlling foreign investors that are approved in declaratory rulings to increase their equity and/or voting interests from

¹ *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 (rel. Apr. 18, 2013) (“*Second Report and Order*”).

² The FCC’s rules governing foreign ownership of broadcast licensees remain unchanged.

³ Among other required information, petitions for declaratory rulings must contain the name, address, citizenship, and principal business(es) of foreign investors, whether individuals or entities, as well as the percentage of equity and/or voting interests held to the nearest one percent. U.S. investors must provide the same information, but the disclosure threshold is ten percent.

time to time so long as control is not transferred (generally, provided that equity and/or voting interests remain at 49.99 percent or below); (3) allowing named foreign investors that are approved to acquire a controlling interest of less than 100 percent voting or equity ownership to increase their interest to 100 percent at some future time without additional approval; and (4) issuing new declaratory rulings for up to 100 percent aggregate foreign ownership for unnamed and future foreign investors holding interests of less than five percent each (or, in certain circumstances, less than ten percent each).

- Allows a licensee's subsidiaries and affiliates to rely on the licensee's foreign ownership ruling rather than having to file new petitions for declaratory rulings, provided that foreign ownership of the licensee and the subsidiaries and affiliates remains in compliance with the terms of the declaratory ruling issued by the FCC and the FCC's rules.
- Allows a licensee to introduce without prior approval new foreign-organized entities into the approved vertical ownership chain above the licensee's controlling U.S. parent or above a non-controlling U.S.-organized entity investing in the licensee, provided that the new foreign-organized entity is under 100 percent common ownership and control with a previously-approved foreign investor.
- Permits a licensee with a foreign ownership approval to add new services and new geographic service areas without seeking additional approval.

The FCC will continue to coordinate with the relevant Executive Branch agencies, including members of the Committee on Foreign Investment in the United States, regarding all petitions for declaratory rulings and license applications in which the applicant has foreign ownership exceeding the statutory limit. The FCC also will continue to accord deference to the agencies' views on matters related to national security, law enforcement, foreign policy, and trade policy that may be raised by a particular transaction. The *Second Report and Order* does not affect the FCC's ability to condition or disallow foreign investment that may pose a risk of harm to important national policies.

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The FCC estimates that these rule changes will reduce the number of petitions for declaratory rulings filed and the number of hours spent preparing petitions for declaratory rulings, but the FCC's foreign ownership rules remain extremely complex. If you have any questions or need assistance with foreign investments in FCC-regulated entities, please contact Michael G. Jones (202-303-1141, mjones@willkie.com), Mia Guizzetti Hayes (202-303-1197, mhayes@willkie.com), or the Willkie attorney with whom you regularly work.

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