

ALERT

FCC Seeks Comment on Proposal to Clarify Foreign Investment Rule

February 26, 2013

On February 26, 2013, the Federal Communications Commission (FCC or Commission) released a Public Notice asking for comment on an August 31, 2012 letter submitted by the Coalition for Broadcast Investment (CBI). In its letter, CBI asked the Commission to clarify whether the agency will conduct a substantive, facts and circumstances-based evaluation of proposals for foreign investment in excess of 25% in the parent company of a broadcast licensee.

Section 310(b)(4) of the Communications Act prohibits an entity from holding a broadcast license if it is controlled, directly or indirectly, "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 ..., if the Commission finds that the public interest will be served by the refusal or revocation of such license."

The Commission historically has generally declined to exercise discretion under the final clause of Section 310(b)(4), and instead interpreted the provision as an outright prohibition on aliens holding more than a 25% equity stake or voting interest in the parent of a broadcast licensee. In an August 2012 rule making order, however, the Commission acknowledged that it has discretion under Section 310(b)(4) to permit foreign investment above the 25% benchmark if it finds such ownership to be in the public interest. Noting the potential shift in the FCC's interpretation, CBI asked the Commission to clarify how it will interpret Section 310(b)(4) going forward.

In its letter, CBI argues that the Commission's *per se* prohibition on above-benchmark foreign investment is inconsistent with the language of the Communications Act, which intended the 25% figure

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to be a "public interest yardstick" rather than a cap. CBI also points out that Americans today "live, work and play in a multichannel, multi-platform environment in which they can produce and consume content freely—locally, nationally, and internationally." CBI further states that evaluating additional foreign investment on a case-by-case, public interest basis would "enable local broadcast stations to join their cable, satellite and online counterparts in having the opportunity to gain access to significant new or additional sources of capital" and "provide new opportunities for minority businesses and entrepreneurs, whose access to the domestic capital markets has been limited" In a statement released shortly after the Public Notice, FCC Commissioner Ajit Pai called the Commission's current broadcast foreign investment policy "anachronistic, illogical, and bad for minority ownership."

Comments are due by April 15, 2013, with Reply Comments due by April 30, 2013.