Before the United States House of Representatives
The Committee on Commerce
Subcommittee on Telecommunications, Trade and Consumer Protection

Testimony of the Honorable William E. Kennard, Chairman
Federal Communications Commission
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Introduction

I am pleased to be here today to address some of the complex and important issues raised by foreign investment in the United States telecommunications market, with particular focus on concerns raised by entities with substantial foreign government ownership.

At home and abroad, the United States has led a worldwide revolution to bring competition to the telecommunications sector. Domestically, this revolution has been made possible by Congress's foresight in enacting the Telecommunications Act of 1996, and the Commission's aggressive implementation of that Act. Internationally, the Commission acted decisively to extend the principles of competition to reform the antiquated system for delivering international services.

A key factor in enabling this revolution has been the Commission's vigorous defense of the public interest as mandated by the Communications Act, including in Section 310. The Commission has implemented this mandate through its procedures for reviewing applications for entry into the U.S. market by foreign telecommunications entities. The Commission's balanced and flexible use of the Communications Act and the Commission's procedures has enabled it to both protect the interests of consumers and national security, and at the same time take advantage of the stimulus of capital in our economy.

Message

My message to the Subcommittee this morning is simple:

First, the Commission should not prejudge any application that comes before it. Prospectively, I can say that we would give close scrutiny to any merger involving foreign government-controlled providers. Specifically, we would determine whether the proposed merger poses a very high risk to competition, or raises national security or law enforcement concerns.

Second, the Commission has full and sufficient authority to address the issues of both national security and domestic competition through the authority granted us by Congress in the Communications Act of 1934 and the Telecommunications Act of 1996. Commission policies implementing these statutes provide for a rigorous case-by-case review of foreign ownership with sufficient flexibility to address the particular competitive concerns raised by individual transactions.

Kinds of Applications

The bulk of applications before us that raise foreign entry issues request one of the following:

(1) permission to provide international services under Section 214;

(2) permission to exceed the 25% foreign ownership cap for spectrum licenses under Section 310(b)(4); and

(3) permission to merge a U.S. firm with a foreign firm, including a foreign firm controlled partially or entirely by a foreign government.

Governing Law

The prospect of foreign government control of a U.S. carrier may pose unique concerns. However, the standard we use to review such transactions is sufficiently flexible to take these concerns into account.

The Commission unanimously adopted its framework for analyzing whether entry into or investment in the U.S. market by foreign-owned firms is in the public interest in the 1997 *Foreign Participation Order*. [1] Under that framework, there is a rebuttable presumption that entry or investment by foreign-owned firms from WTO Member countries is in the public interest. The Commission undertakes a case-by-case analysis of all applications; however, to determine whether there are public interest factors that would overcome that presumption and compel the Commission to deny an application. In particular, the Commission assesses whether a transaction would pose a very high risk to competition in the United States that cannot be addressed by safeguards and that will thereby harm our domestic communications market and U.S. consumers.

[1] *See Rules and Policies on Foreign Participation in the U.S. Telecommunications Market*, IB Docket No. 97-142, *Market Entry and Regulation of Foreign-Affiliated Entities*, IB Docket No. 95-22, Report and Order and Order on Reconsideration, 12 FCC Rcd 23891 (1997) ("*Foreign Participation Order*"), *recon. pending*.

In some cases, the Commission may determine that a transaction is in the public interest, but that the application can only be granted subject to conditions that address competitive concerns. In fact, the Commission's regulatory framework includes competitive safeguards that apply to firms that are affiliated with dominant foreign firms. If as a result of its review of an application, the Commission concludes that these standard safeguards are not sufficient to address specific competitive concerns, the Commission may impose additional, tailored safeguards, or deny the application altogether. In other cases, the Commission may determine that entry cannot be "conditioned" sufficiently to protect the public interest. The Commission will then deny the application.

In addition to the competition concerns addressed as part of the Commission's public interest analysis, the Commission has always had, and continues to maintain, the ability to consider a range of public interest factors in considering whether to allow entry into and investment in the U.S. market by foreign-owned firms. These additional public interest factors include national security and law enforcement concerns. On these issues, the Commission accords deference to the expertise of Executive Branch agencies, such as the FBI and the Department of Defense.

Public Interest Features of Process

The United States has long welcomed foreign investment as a means of achieving a specific end: strengthening competition in the U.S. marketplace, to the benefit of U.S. consumers.

At the same time, the Commission has the tools at its disposal to ensure that foreign investment is in the public interest. The public interest requires that foreign investment not harm competition in the U.S. market or threaten national security and law enforcement concerns.

There are three essential features to this process that I hope the Subcommittee will keep in mind.

The procedures are <u>comprehensive</u>. They cover a wide range of public and national interests, and they include the concerns of the many agencies assigned to protect those interests.

The procedures are <u>flexible</u>. They permit us to weigh and balance, to amend and condition, to keep up with technology, and to remain in harmony with the nation's international obligations.

Finally, the procedures <u>work</u>. Increased competition, both from U.S. and foreign-owned firms, has not harmed the U.S. market, but has strengthened it, to the benefit of U.S. consumers. Today, U.S. consumers enjoy lower prices and better, more innovative services.

Closing

In sum, we have the tools we need to do the job. Use of them has allowed the entry of innovation and capital from abroad, while protecting national security and the interests of American consumers at home.

These tools also have been part of the success story of our nation's leadership in the development of competitive telecommunications markets.

Thank you.