

**STATEMENT OF
COMMISSIONER MIKE O'RIELLY**

Re: Commission Policies and Procedures Under Section 310(b)(4) of the Communications Act, Foreign Investment of Broadcast Licenses, MB Docket No. 13-50

Today marks my first Commission Open Meeting as a Commissioner and it is appropriate to start by expressing my deep appreciation to my new colleagues on the Commission. Chairman Wheeler, former Acting Chairwoman Clyburn, and Commissioners Rosenworcel and Pai have been especially welcoming. More importantly, my few days at the Commission have taught me that the true heart and soul of the Commission is the myriad of warm and helpful employees who bring their energy and commitment to this building every day.

As most of you know, I arrived at the Commission last week fresh from my confirmation process. Let me share with you a reoccurring theme from my many meetings and conversations: both Republicans and Democrats want the Commission to bring greater certainty to the communications marketplace by making the decisions that are ready to be made.

Turning to the matter before us, the Commission has before it a declaratory ruling on section 310(b)(4) of the Communications Act of 1934 as it pertains to broadcast licenses. I do have some general thoughts with this item, which I will discuss, but they do not keep me from voting in favor of its adoption.

I am very familiar with the discussion over 310(b) and the interest by many parties to make alterations. It seems only fitting that my first Open Meeting addresses the same topic of one of my first hearings as a staff member of the then-House Commerce Committee.¹ At that time, the Congress debated a proposal to completely repeal 310(b).² Further, I spent the greater part of the last five-plus years working on various trade-related matters before the Congress.

The value of the ruling is to clarify that the Commission's approach to 310(b)(4) should not be interpreted as foreclosing the option of approving foreign ownership above 25 percent. It can be viewed as a restatement of the Commission's longstanding approach. For some, the item may *seem* as a change in policy for those who believed the Commission's prior approach was an irrebuttable presumption against any relief. In either scenario, U.S. broadcasters and foreign investors should know this Commission is now open to considering foreign entities holding capital stock of companies that control broadcast licenses exceeding 25 percent, perhaps up to a high of 100 percent.

The benefits of this clarification could be significant. With a successful application, U.S. broadcasters will have new sources of capital to operate in the dynamic and competitive video and audio marketplace. In some instances, greater foreign investment in the companies that control U.S. broadcast licenses may improve the financial footing of existing broadcasters or increase access to broadcasting for unique voices in the marketplace.

Equally important, 310(b) has been used over the years as a flawed excuse by other nations to retain indefensible trade barriers that harm U.S. companies. Bob Vastine of Georgetown University and former President of the Coalition of Service Industries commented recently that, "For years, it's [310(b)] been

¹ Hearing "Trade Implication of Foreign Ownership Restrictions on Telecommunications Companies," Subcommittee on Commerce, Trade, and Manufacturing; House Commerce Committee, March 3, 1995.

² See H.R. 514, 104th Congress, <http://thomas.loc.gov/cgi-bin/query/z?c104:H.R.514>:

used rhetorically against us. When industry has gone in for the right to fully own in the insurance sector or some other sector, we've often had this thrown in our face.”³

General Thoughts

1. Speedier Decision

I acknowledge that the Commission may have been hamstrung recently by the political process, but there should be ways to be more nimble and responsive for the relatively easy cases. We don't know what deals would or could have been done had this item been approved earlier than 14 months from the initial request. This is not in any way a criticism of the great staff that worked on this item; it is only a thought to be added to the process reforms being considered.

2. Could be More

The Commission's action today is commendable, it doesn't move the needle enough. It could have been more if it had been accompanied by an NPRM to further reform section 310(b)(4) as it applies to broadcast licensees. Components of reform could include shifting the burden to the Commission to justify blocking a deal; establishing a new level that would be acceptable under the public interest (e.g., 49 percent, 74 percent, or more); or simply providing more guidance on which applications may be more likely to be approved by the Commission. Recognizing that there are limits to declaratory rulings, the item's indication of potentially doing a further Commission proceeding sometime in the future seems empty.

3. Bigger Picture on Investment

While today's proceeding should be beneficial to some U.S. broadcasters, it is also useful to non-broadcasters. Removing trade and investment barriers has benefits outside of the broadcasting sector, as increasing trade and investment opportunities brings more jobs, improved economic growth and efficiencies of scale to the U.S. and international marketplace. I am surprised the record did not include more comment on this point; I am sure the Commission staff would have been happy to accommodate my thoughts in some capacity. To be clear, no criticism lies with the able staff, who have gone out of their way to help me, as any issue with incorporating these thoughts into the ruling lies with me and the timing of my arrival.

Conclusion

All in all, this is a positive step and one I am pleased to support. I extend my appreciation to Former Acting Chairwomen Clyburn for her work on this item, Commissioner Pai for being an active instigator to initiate the item, and the Media Bureau staff for getting me up to speed in quick order.

³“FCC Poised to Ease Foreign Investment Restrictions in Broadcast Sector,” *Inside US Trade*, November 1, 2013.