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FCC Approves Rules that Loosen Limits on Foreign Ownership of Broadcast Companies

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The Federal Communications Commission unanimously approved new rules for granting television and radio broadcasters authority to exceed the 25% benchmark for foreign ownership and control of broadcast licensees. The new rules should make it much easier for broadcasters to obtain approval for non-US investment in their businesses.

Background

Over the last two decades, the FCC's approach to foreign investments in common carrier wireless licensees like Sprint and T-Mobile diverged from its treatment of foreign investments in broadcast licensees, even though the same statutory standard applies. The FCC readily has authorized foreign ownership and control of wireless and other common carrier businesses up to full ownership and control. In broadcasting, however, the FCC generally has treated the benchmark as if it were an absolute ceiling. The absence of a statutory basis for the disparate treatment of wireless carriers and broadcasters became a major factor driving the FCC to adopt new rules that narrow the gap. Under the new rules, the FCC intends to give parallel treatment to broadcasters and common carriers when it evaluates foreign investment above the 25% level, with some broadcast-specific distinctions. The FCC also modified outdated policies that artificially magnified the deemed foreign ownership percentages for companies with publicly traded stock.

The new rules

Although it retained the requirement to obtain prior FCC approval for foreign ownership or control of a broadcaster's parent corporation to exceed the 25% benchmark, the FCC's new procedures avoid the need to file repetitive requests for the same investor. Under the new rules, a broadcaster initially may seek approval for a specific controlling foreign investor to hold up to a 100% ownership and voting interest in a parent corporation, thereby avoiding the need to seek further authorization for subsequent increases in the foreign investor's interest. Similarly, once the FCC approves a foreign investor's minority interest, the approval will allow the identified investor to increase its voting and ownership interest to 49.9% without going back to the FCC. Once the FCC makes a foreign ownership ruling, the determination will apply both to any of the company's after-acquired broadcast properties and to any of its subsidiaries and affiliates that were covered in the ruling. Broadcasters will need to seek specific approval only for foreign individuals and entities with a greater than 5% ownership interest or, in some situations, greater than 10%.

Of particular importance to broadcasters, the FCC will apply broadcast ownership attribution rules to determine what interests broadcast licensees and their parent companies must consider in assessing foreign ownership compliance. The attribution rules define, in the ownership context, those types and levels of interests that the FCC views as raising reasonable concerns about the ability to influence broadcast operation and management. The application of broadcast attribution rules to broadcast foreign ownership interests will simplify broadcasters' evaluation of their existing foreign investment and their prospects for increased foreign investment.

The FCC's decision generally to apply its attribution standards to foreign ownership restrictions also addresses many of the difficulties that publicly traded broadcast companies have faced in assessing their compliance. Although the FCC has not yet released the specifics of its new procedures, the presentation at the FCC's open meeting emphasized that the new procedures should obviate the need for publicly traded companies to conduct periodic shareholder surveys or randomly sample shareholders. Instead, the FCC expects that broadcasters will be able to assess compliance under the new rules based on information that the broadcaster knows or reasonably should be expected to know about its shareholders. The FCC also formalized the agency's practice of recognizing a broadcaster's good faith efforts to comply with foreign ownership restrictions where the non-compliance is due solely to circumstances that were beyond the broadcaster's control and were neither known to the broadcaster nor reasonably foreseeable.

The FCC's long-overdue reform of its broadcast foreign ownership policies promises to encourage additional investment in US radio and television properties. FCC Commissioners suggested that the prospect of additional sources of investment may spur increased service for underserved populations and enable traditional broadcasting to thrive in an increasingly diverse and competitive media marketplace.

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