HEINONLINE

Citation: 21 Bernard D. Reams Jr. & William H. Manz Federal Law A Legislative History of the Telecommunications of 1996 Pub. L. No. 104-104 110 Stat. 56 1996 the Communications Decency Act i 1997

Content downloaded/printed from HeinOnline (http://heinonline.org) Thu Mar 21 22:31:05 2013

-- Your use of this HeinOnline PDF indicates your acceptance of HeinOnline's Terms and Conditions of the license agreement available at http://heinonline.org/HOL/License

-- The search text of this PDF is generated from uncorrected OCR text.

TRADE IMPLICATION OF FOREIGN OWNERSHIP RESTRICTIONS ON TELECOMMUNICATIONS COMPANIES

HEARING

BEFORE THE

SUBCOMMITTEE ON
COMMERCE, TRADE, AND HAZARDOUS MATERIALS

OF THE

COMMITTEE ON COMMERCE
HOUSE OF REPRESENTATIVES

ONE HUNDRED FOURTH CONGRESS

FIRST SESSION

MARCH 3, 1995

Serial No. 104–9

Printed for the use of the Committee on Commerce



U.S. GOVERNMENT PRINTING OFFICE
89–105CC WASHINGTON : 1995

HeinOnline -- 21 Bernard D. Reams, Jr. & William H. Manz, Federal Telecommunications Law: A Legislative History of the Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996) including the Communications Decency Act i 1997

COMMITTEE ON COMMERCE

THOMAS J. BLILEY, JR., Virginia, *Chairman*

CARLOS J. MOORHEAD, California,
Vice Chairman
JACK FIELDS, Texas
MICHAEL G. OXLEY, Ohio
MICHAEL BILIRAKIS, Florida
DAN SCHAEFER, Colorado
JOE BARTON, Texas
J. DENNIS HASTERT, Illinois
FRED UPTON, Michigan
CLIFF STEARNS, Florida
BILL PAXON, New York
PAUL E. GILLMOR, Ohio
SCOTT L. KLUG, Wisconsin
GARY A. FRANKS, Connecticut
JAMES C. GREENWOOD, Pennsylvania
MICHAEL D. CRAPO, Idaho
CHRISTOPHER COX, California
RICHARD BURR, North Carolina
BRIAN P. BILBRAY, California
EDWARD WHITFIELD, Kentucky
GREG GANSKE, Iowa
DAN FRISA, New York
CHARLIE NORWOOD, Georgia
RICK WHITE, Washington
TOM COBURN, Oklahoma

JOHN D. DINGELL, Michigan
HENRY A. WAXMAN, California
EDWARD J. MARKEY, Massachusetts
W.J. "BILLY" TAUZIN, Louisiana
RON WYDEN, Oregon
RALPH M. HALL, Texas
JOHN BRYANT, Texas
RICK BOUCHER, Virginia
THOMAS J. MANTON, New York
EDOLPHUS TOWNS, New York
GERRY E. STUDDS, Massachusetts
FRANK PALLONE, JR., New Jersey
SHERROD BROWN, Ohio
BLANCHE LAMBERT LINCOLN, Arkansas
BART GORDON, Tennessee
ELIZABETH FURSE, Oregon
PETER DEUTSCH, Florida
BOBBY L. RUSH, Illinois
ANNA G. ESHOO, California
RON KLINK, Pennsylvania
BART STUPAK, Michigan

JAMES E. DERDERIAN, *Chief of Staff*
CHARLES L. INGEBRETSON, *General Counsel*
ALAN J. ROTH, *Minority Staff Director and Chief Counsel*

SUBCOMMITTEE ON COMMERCE, TRADE, AND HAZARDOUS MATERIALS

MICHAEL G. OXLEY, Ohio, *Chairman*

JACK FIELDS, Texas,
Vice Chairman
FRED UPTON, Michigan
PAUL E. GILLMOR, Ohio
JAMES C. GREENWOOD, Pennsylvania
MICHAEL D. CRAPO, Idaho
BRIAN P. BILBRAY, California
EDWARD WHITFIELD, Kentucky
GREG GANSKE, Iowa
DAN FRISA, New York
RICK WHITE, Washington
THOMAS J. BLILEY, JR., Virginia,
(Ex Officio)

W.J. "BILLY" TAUZIN, Louisiana
ELIZABETH FURSE, Oregon
EDWARD J. MARKEY, Massachusetts
RICK BOUCHER, Virginia
THOMAS J. MANTON, New York
SHERROD BROWN, Ohio
BLANCHE LAMBERT LINCOLN, Arkansas
PETER DEUTSCH, Florida
BART STUPAK, Michigan
JOHN D. DINGELL, Michigan
(Ex Officio)

HeinOnline -- 21 Bernard D. Reams, Jr. & William H. Manz, Federal Telecommunications Law: A Legislative History of the Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996) including the Communications Decency Act ii 1997

CONTENTS

	Page
Testimony of:	
Ginn, Sam, Chairman and Chief Executive Officer, AirTouch Communications	35
Hundt, Hon. Reed E., Chairman, Federal Communications Commission	15
Irving, Hon. Larry, Assistant Secretary for Communications and Information, Department of Commerce	10
Major, John, Senior Vice President and Assistant Chief Corporate Staff Officer, Motorola, Inc	42
Schmidt, Gregory M., Vice President, New Development and General Counsel, LIN Television Corp	48
Taylor, Hon. Gene, a Representative in Congress from the State of Mississippi	8
Vargo, John, President, Plexsys International Corp	50
Wondrasch, Paul J., Senior Vice President, AT&T Corp	38
Material submitted for the record by:	
Capital Cities/ABC, Inc., CBS Inc., National Broadcasting Corporation, Inc., and Turner Broadcasting System, Inc., prepared statement of	67
Department for Professional Employees, AFL-CIO, letter dated March 2, 1995 to Hon. Michael G. Oxley	56
Honig, David, Executive Director, Minority Media and Telecommunications Council, prepared statement of	70
Patton, Thomas B., Vice-President, Government Relations, Philips Electronics North America Corporation, prepared statement of	73

HeinOnline -- 21 Bernard D. Reams, Jr. & William H. Manz, Federal Telecommunications Law: A Legislative History of the Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996) including the Communications Decency Act iii 1997

HeinOnline -- 21 Bernard D. Reams, Jr. & William H. Manz, Federal Telecommunications Law: A Legislative History of the Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996) including the Communications Decency Act iv 1997

TRADE IMPLICATION OF FOREIGN OWNERSHIP RESTRICTIONS ON TELECOMMUNICATIONS COMPANIES

FRIDAY, MARCH 3, 1995

HOUSE OF REPRESENTATIVES, COMMITTEE ON COMMERCE,
SUBCOMMITTEE ON COMMERCE, TRADE, AND HAZARDOUS MATERIALS

Washington, DC.

The subcommittee met, pursuant to notice, at 9:35 a.m., in room 2123, Rayburn House Office Building, Hon. Michael G. Oxley (chairman) presiding.

Members present: Representatives Oxley, Fields, Gillmor, Crapo, Whitfield, Ganske, Frisa, White, Furse, Markey, Boucher, Manton, Brown, and Stupak.

Also present: Representative Klink.

Mr. OXLEY. The subcommittee will come to order. I would first like to thank and welcome our members and witnesses for attending the hearing today.

Today, the Subcommittee on Commerce, Trade, and Hazardous Materials addresses a problem which concerns our companies, consumers and country—protectionism in our telecommunications industry. While much of the ongoing debate over telecommunications is focused on domestic deregulation, international deregulation is also necessary to best serve the interests of American firms and families alike.

Today we live during the most exciting technological revolution in the history of our planet. The brave new era of the global village is here. The United States has spearheaded the continuation and advancement of this era with initiatives to promote free trade, such as GATT and NAFTA. Although telecomm technologies allow and encourage global cooperation, our telecommunications laws severely restrict it.

In the spirit of free trade and international competition, I have introduced H.R. 514, the Free Trade and Telecommunications Initiative, along with the gentleman from Virginia, Mr. Boucher. The initiative, if enacted, will repeal foreign investment restrictions on American telecommunications facilities, including broadcast, cellular, paging and microwave radio service networks.

Under section 310(b) of the Communications Act, foreign entities cannot hold an investment of more than 25 percent of such U.S.-based facilities. This World War I era law is an anachronism outpaced by international cooperation and converging communication technologies.

HeinOnline -- 21 Bernard D. Reams, Jr. & William H. Manz, Federal Telecommunications Law: A Legislative History of the Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996) including the Communications Decency Act 1 1997

When U.S. telecommunications firms approach foreign governments requesting market openings, these countries point to our restrictions as the justification for theirs. Often, other nations impose the same restrictions on foreign ownership as we do. Whether spoken or not, the mirror section 310(b) phenomenon is a recurring distressing reality for U.S. telecommunications companies.

Simply stated, our telecommunications firms cannot duly compete in foreign markets because of our own protectionist limitations, like section 310(b). Telecommunications is one of our Nation's most dynamic export industries, expected to account for one-sixth of our economy by the year 2000. The global telecommunications services industry alone will generate almost $1 trillion in revenue by decade's end.

The initiative is a key step to increasing the global presence and profitability of U.S. telecommunications firms. According to a recent Economy Strategy Institute survey, if international telecommunications markets were open to our companies, U.S. firm revenue could increase by $75 billion and approximately $3.6 billion in net income would be repatriated to our country.

By opening our telecommunications markets to free and open international competition, American consumers will surely benefit. They will be offered lower prices, higher quality and more choices in the telecommunications marketplace. Opening our telecommunications markets will also allow an influx of much needed resources to enter our economy. These resources can benefit our Nation in many ways, such as by creating American jobs, spurring domestic and international growth, financing the $250 billion national information infrastructure, helping reduce our national trade deficit, and providing our firms with expertise, experience and infrastructure.

H.R. 514 will not only further enhance our Nation's role as a leader in international free trade, but in international cooperation, as well. Unconditionally opening the U.S. telecommunications market to foreign investment and competition will create new jobs, spur economic growth and lower product prices.

If Congress continues to micromanage foreign trade and investment in the telecommunications industry, America's competitive advantage will suffer and our consumers and companies will pay the price.

I now recognize the gentleman from Virginia and the cosponsor of H.R. 514, Mr. Boucher.

Mr. BOUCHER. Thank you very much, Mr. Chairman. I want to commend you on your leadership and recommending to the Congress modification of the section 310(b) foreign ownership restriction and I am pleased to be joining with you and cosponsoring that measure.

In 1912, when the first foreign ownership restriction was adopted in our Nation's first Radio Act, it may have made sense. There were few means of electronic mass communication and safeguards to keep them out of foreign hands were perhaps appropriate.

The restrictions probably still made sense when they were carried forward as part of the 1934 Communications Act. The channels of mass communication were still few in number and the Nazi propaganda machine was then rolling in high gear.

HeinOnline -- 21 Bernard D. Reams, Jr. & William H. Manz, Federal Telecommunications Law: A Legislative History of the Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996) including the Communications Decency Act 2 1997

But the day when we had to fear foreign domination of our electronic media, with the attendant potential for espionage or propaganda, clearly has passed. Given the changes in the world since these early years, including the fall of the Soviet Union, the wealth of radio and television alternatives that we have available today and the expectant level of common carrier competition soon to arrive, it's absurd to think that the foreign ownership restrictions today are necessary in order to guard against some kind of national security threat.

In fact, removal of the restrictions would advance our national interest in at least two distinct ways. First, a removal would further diversify the sources of information available to the American public and this new diversity would be very much welcome just from an information origination standpoint alone. Second, upon removal of the restrictions, telecommunications companies in the United States would enjoy far greater access to foreign markets.

When U.S. companies today seek to invest abroad, other countries often bar the doors and cite as a rationale or a justification for that market closure our own section 310(b) restrictions. Given the technological and managerial expertise, and I would even say excellence, of America's telecommunications companies, I have no doubt that if we lower our barriers and invite robust global investment by U.S. and foreign companies alike, our companies will be the net winners and the American economy would, therefore, enjoy the net advantage.

To achieve that result, the most constructive approach is to lower our barriers on a reciprocal basis. By doing so, we can arm the U.S. Trade Representative with sufficient negotiating authority to pry open markets abroad to U.S. investment. In essence, we will say to other countries that their companies may invest in our market to the extent that our companies may invest in theirs. That approach is preferable, I think, to an outright repeal of section 310(b), which would carry the potential of granting fully open access to our market without the guarantee that we will get a correspondent market opening in other countries in return.

I look forward, Mr. Chairman, to the testimony of our witnesses this morning, particularly the administration witnesses, who I understand will endorse a reciprocal market opening for telecommunications entities other than broadcast companies. I will be very interested to learn of their underlying rational for making broadcast companies the exception to the general rule. I'm not persuaded that that exception is appropriate or required, but I'm willing to listen to their views with respect to that matter.

Mr. Chairman, I again want to commend you for the excellent work you have done in bringing this matter before us. I am pleased to be joining with you and cosponsoring legislation to create a more positive environment that will encourage foreign investment abroad by American telecommunications companies as we, at the same time, diversify the sources of information that will be available in this country to American consumers.

Thank you.

Mr. OXLEY. I thank the gentleman from Virginia for his continued leadership in this very critical area. I now recognize the Vice Chairman, Mr. Fields from Texas.

HeinOnline -- 21 Bernard D. Reams, Jr. & William H. Manz, Federal Telecommunications Law: A Legislative History of the Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996) including the Communications Decency Act 3 1997

Mr. FIELDS. Thank you, Mr. Chairman. I want to thank the Chairman and commend him for taking the lead on the implications of repealing section 310(b) of the 1934 Communications Act. The timing of this hearing is appropriate due to the fact that we will soon be considering a comprehensive reform of the Communications Act.

But, also, in regard to timing, I want to apologize to you, Mr. Chairman, and also to our witnesses. I'm going to have to leave in just a moment. We are appearing before the Rules Committee at 10 a.m. in preparation for securities litigation being on the floor next week. So I'm going to have to leave.

But I also want to, since I won't be here a little bit later, want to wish a happy birthday to the Chairman of the Federal Communications Commission. The timing of this hearing is also appropriate in that regard.

We all recognize, Mr. Chairman, that the United States competes in a fiercely competitive global telecommunications market. Our responsibility is to adopt policies that assure the ability of the domestic industry to remain competitive in the world market.

During this era of tremendous growth in telecommunications services, I think it's time that we take a close look at laws which might hinder the competitiveness of the U.S. industry. The market of telecommunications services in foreign countries is growing beyond our predictions. In some countries, the growth of basic telecommunication service is more than five times that of the United States. As a result, the growth potential for U.S. companies abroad is unparalleled.

Opportunities for the U.S. to lead the way in the growth of these markets, while, at the same time, expanding jobs in this country is just unimagined. We can grow more than we ever believed. Section 310(b) of the Communications Act originated in a time of war and was adopted to prevent alien control of broadcast media, thereby protecting U.S. national security interests.

Now, 61 years later, Congress should amend the law to account for the global changes which have occurred. And as the Chairman of the Telecommunications and Finance Committee, I'm reminded of what I used to say when I sold cemetery property door-to-door. I used to say it's not a question of if, it's just a question of when and where and under what circumstances. And I can say to you that in the coming weeks, as we bring a major telecomm reform measure before this subcommittee, the committee and the House, it's not a question of if. That is the when and the where and the circumstances and we will treat the subject matter of this hearing in that legislation.

I yield back, Mr. Chairman.

Mr. OXLEY. I thank the gentleman. Are other members seeking recognition? The gentleman from Massachusetts.

Mr. MARKEY. Thank you, Mr. Chairman, and I commend you for calling this hearing today. I think it will give us and the committee an excellent opportunity to explore the implications posed by a rapidly changing telecommunications marketplace.

I think it may also offer us some insight on how the more things change, the more things remain the same. The rationale for the foreign ownership restriction contained in the Communications Act of

HeinOnline -- 21 Bernard D. Reams, Jr. & William H. Manz, Federal Telecommunications Law: A Legislative History of the Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996) including the Communications Decency Act 4 1997

1934 stem from concern over national security. I believe that there are still national security implications to foreign ownership of key communication infrastructure in this country.

There were valid concerns decades ago and I believe many of the arguments are still valid today. This is especially true in the broadcast area. As we know, the French, amongst others, have some difficulty letting Mickey Mouse into their country, much less letting Michael Eisner own one of the biggest television stations in Paris or any other city in that country.

And those cultural concerns tied to the national security interests are a part of this discussion and I think it's important for us as we move forward to change our law, where appropriate, to give incentives for market opening opportunities for our industries, but to ensure that we do it in a way that does deal with the very real problems we are going to face in most of the countries around the world.

As most everyone in the industry knows, most foreign markets still remain largely closed to U.S. telecommunications companies. That's because most of them retain domestic telecommunications monopolies, similar to what we had in the country with AT&T through 1982.

Many countries are also dominated by government-run television and radio stations. Where we have made inroads is where the United States excels. In general, this is the case in the cellular and cable marketplaces. Why do foreign countries let us into these marketplaces? Because we largely invented these technologies and U.S. companies provide the best technology and service in the world.

In other words, where they need us, they let us in. Where they don't need us and they're already established, they box us out. I do not believe that simply repealing our restrictions will change this dynamic. In fact, the Communications Act restriction of 25 percent ownership is fairly generous when contrasted with many of our major trading partners.

Moreover, other trading partners have no technical legal restrictions on United States ownership. For example, Japan has no legal restrictions on our ability to purchase their telecommunications or broadcast system right now, but there is absolutely no chance that we would be able to actually purchase them in the marketplace. And we have to deal with that distinction between legal restrictions in our country and non-legal restrictions that exist in other countries.

The procedural and cultural impediments in these countries can amount to a de facto prohibition of U.S. telecommunications industry's ability to have meaningful ownership or an unhindered ability to compete. Again, merely repealing our restrictions will not change the situations in these countries.

I believe that making decisions with respect to lifting our ownership restrictions must take into account our national security concerns. And in addition, I believe that the public interest standard should continue to be our guide in these matters. I think that we can move forward and make substantial progress in changing the laws in our country to give incentives to other countries to change our laws, but I think that we have to be extremely careful as we

HeinOnline -- 21 Bernard D. Reams, Jr. & William H. Manz, Federal Telecommunications Law: A Legislative History of the Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996) including the Communications Decency Act 5 1997

move forward to give the tools to our government officials to guarantee that the barriers are taken down for our countries.

And I do believe, as well, that it's highly unlikely that the Germans, the French, the British, the Chinese, the Russians or others are ever going to allow us to purchase their television, their broadcast outlets, and we have to just deal with that as a cultural reality in most of the world and try to deal with the telecommunications issues that remain that can help our industry.

Again, I want to compliment you, Mr. Chairman, for holding this hearing. I think it's an area where we can make some tremendous progress this year.

Mr. OXLEY. I thank the gentleman from Massachusetts. His leadership in the past on telecommunications issues has been most valuable and I look forward to working with him on this and other issues of importance.

I now recognize the gentleman from Kentucky, Mr. Whitfield.

Mr. WHITFIELD. Mr. Chairman, I waive my opening statement.

Mr. OXLEY. The gentleman from Washington State.

Mr. WHITE. Thank you, Mr. Chairman. I just have a couple of very brief comments. I just want to say how pleased I am to be able to participate in what I guess is the first hearing or the first salvo, at least, in our consideration of the major change in the telecommunication laws of the State, of this country.

The distinguished gentleman from Massachusetts talks about more things staying the same and how they change. I think he's paraphrasing the great French statement, "Plus la change, plus law reste, la meme chause." And I think it's an interesting observation to make at this hearing where we really are considering what the international implications should be of the sort of restrictions that we have on ownership of these entities in our country.

I can tell you that I have a great personal interest in this topic, the subject of telecommunications reform. There is a great interest in my district, with companies such as McCaw Cellular and US West and Microsoft and others that are very interested in it. It's a very important topic for the entire United States.

I congratulate you for holding this hearing and tell you how very much I'm interested in participating. Thank you, Mr. Chairman.

Mr. OXLEY. I thank the gentleman. The gentleman from Ohio.

Mr. BROWN. Thank you, Mr. Chairman. I applaud the Chair for raising the alien ownership issue and bringing it in front of this subcommittee and all the way to the Commerce Committee.

I have concern generally about our trade policy in this country. We rushed into the North American Free Trade Agreement without considering currency stabilization, without considering sort of esoteric issues like using Mexico as a platform, as an export platform, and sort of just dismissed those issues.

We rushed into GATT in a lame duck session of Congress with little debate, with little discussion of the complexities of international trade. While I see this particular issue, lifting alien ownership restrictions, as a great opportunity for American business to sell abroad, because clearly we have the best technology in the world, we have the potentially greatest opportunities, I also want to make sure that we, as a committee, and we, as Congress and as the American people, don't continue to practice trade as an aca-

HeinOnline -- 21 Bernard D. Reams, Jr. & William H. Manz, Federal Telecommunications Law: A Legislative History of the Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996) including the Communications Decency Act 6 1997

demic exercise, where we worship at the alter of free trade fundamentalism; that we do what other countries do, and that is practice trade according to national interests, according to what's best for workers and businesses in our country.

Our trade deficit continues to grow and grow and grow every month, every year, every decade in the last 25 or so years, and, yet, we continue to say, well, we just have to practice more free trade and it will get better. The fact is our trade policy is neither aggressive enough in terms of execution by the Executive Branch nor is it written in a way, the rules written in a way that are advantageous to the workers and the businesses in this country.

I just hope as we shape this bill in either this subcommittee or Mr. Fields' subcommittee and ultimately in the full Commerce Committee, that we will, again, practice free trade not as an academic ideological exercise, but that we practice trade based on American national interest for American workers, American jobs and American businesses.

I yield my time back.

Mr. OXLEY. The gentleman from Long Island.

Mr. FRISA. Thank you, Mr. Chairman. I look forward to working with you and the members of the subcommittee as we explore the proper ways to open markets, encourage free trade and unfettered competition. And I think on this side of the aisle, we approach that from the standpoint that all of those things are good and positive and the marketplace should thrive, and we want to ensure that that happens in the most timely fashion possible.

So I look forward to working with you and thank you for the opportunity for this hearing this morning.

Mr. OXLEY. I thank the gentleman. The gentleman from Idaho.

Mr. CRAPO. Thank you, Mr. Chairman. I don't speak French, so I think I'm going to just listen for the rest of the hearing.

Mr. OXLEY. I want to see how this comes out in the official transcript.

[The prepared statement of Hon. Thomas J. Bliley, Jr. follows:]

OPENING STATEMENT OF HON. THOMAS J. BLILEY, JR.

Thank you, Mr. Chairman. I want to commend the Chairman for holding such an important and timely hearing. As you know, this issue is just one of many very important issues that Congress must examine completely as we consider legislation to reform our telecommunications laws.

The benefits from expanded competition in the telecommunications field are endless. I am confident that as this industry continues to advance and develop, Americans firms will continue as topflight competitors in the international marketplace. The American people will also benefit by such advances in the telecommunication industry by the creation of jobs, improved technology and competition.

Despite all of the success that has occurred in this industry there still exists some farther work to be done. International and American telecommunications firms still face restrictive trading barriers that impedes further growth and prosperity. The U.S. is not completely free from blame. The Communications Act of 1934 limits foreign investment in U.S. broadcasting and common carrier firms to a specific percentage. These restrictions hurt our ability to force open foreign markets to U.S. competition.

As part of my involvement in the North Atlantic Assembly and through various international summits and meetings, I have been questioned repeatedly by our trading partners about the U.S. foreign ownership restrictions. It provides little comfort for us to claim that our markets are the most open in the world. Our trading partners see our foreign ownership restrictions as a blatant legal barrier to the American telecommunications market.

HeinOnline -- 21 Bernard D. Reams, Jr. & William H. Manz, Federal Telecommunications Law: A Legislative History of the Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996) including the Communications Decency Act 7 1997

The truth, however, is that the U.S. does provide one of the most open telecommunications markets in the world today. Unfortunately, many of our trading partners are either just beginning to open their markets or have not begun. Through the actions of government-owned telecommunications monopolies and protective practices, many nations restrict the ability of U.S. firms from entering their markets. This is not acceptable.

I believe that reducing foreign trade barriers also should be one of our main priorities as we open our markets. Some believe that we should consider a "reciprocity" approach, whereby we allow international investment in U.S. telecommunications industry on a competitive basis as other nations open their markets to U.S. firms. I think that there is merit to this approach, and we should look at the reciprocity issue very closely.

Americans know that given a level playing field, our industries and products can compete with any other foreign competitor. They also know that foreign competition, like any increase of competition, in our markets will only improve the quality of American products while lowering the cost of equipment and services. We should no longer suggest that protectionism in the telecommunications industry can be a reasonable policy as we enter the information age.

Some of my colleagues believe that our foreign ownership restrictions prevent a foreign entity from seizing control of our communications systems during a war or a national emergency. Let me mention that with the explosion of communications outlets through the growth in the television, cable, cellular, telephone, computer and similar industries, I do not believe that any entity has the ability to control our airwaves for the purpose of spreading anti-American propaganda. I think that the growth and diversity of the market provides satisfactory protection from such a foreign take-over. I also am quite confident that we currently have adequate safeguards on the books to prevent threats to our airwaves during a time of national peril.

I welcome our witnesses today, including Mr. Irving, who will be testifying on the Administration's position on the foreign ownership restriction. Thank you, Mr. Chairman.

Mr. OXLEY. We will now call our first witness, the Honorable Gene Taylor, from the State of Mississippi, our colleague. Welcome.

STATEMENT OF HON. GENE TAYLOR, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF MISSISSIPPI

Mr. TAYLOR. Thank you, Mr. Chairman. Having never testified from this side of a microphone, I appreciate the opportunity. I realize that coming before the subcommittee where the Chairman has sponsored a measure is much like the skunk at the proverbial garden party, but I'm here to testify against your measure.

I ask your panel to consider why is there such a rush for this 104th Congress to sell our national sovereignty. This issue, as my friend Mr. Brown mentioned, like NAFTA, like GATT, and, most recently, the $20 billion Mexican bailout, is ill conceived, serves the interests only of our competitors, and is against the wishes and the better judgment of the American people, the people that we are privileged to represent, the people who pay our salaries.

The testimony of your other witnesses today will confirm what you already know, that our country already has the most open telecommunications market in the world, and there is not a dire need to make it any more open.

It's a system that is open to competition, but a system that contains one important and fair caveat. That is if you want to enjoy the unlimited privileges of the American market, then you should share in the responsibilities of being an American. To allow those who do not share in its costs, the responsibilities or the duties that are associated with these national security assets and limited privileges of the American market is, in itself, a national security threat.

HeinOnline -- 21 Bernard D. Reams, Jr. & William H. Manz, Federal Telecommunications Law: A Legislative History of the Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996) including the Communications Decency Act 8 1997

It shows that the American Congress has learned nothing from its mistakes. After all, I'm sure that this same argument, that we need to open our markets so that Americans can have access to other foreign markets, was made back in 1968, back when Americans still made all of their color television sets, when they still made all of their stereos. Now we make none of them.

I'm sure that this argument was made back when all of our automobiles were made in America rather than two-thirds. I'm also certain that should this legislation pass, that the American market penetration into Japan and any of our other trading partners will be every bit as negligible for this product as it has been for American-made televisions or American-made stereos and automobiles. And in case this committee has forgotten what that penetration is, it's zero.

Mr. Chairman, as dismal as our Nation's one loss record on the international trade transactions has been, and, as Mr. Brown very correctly pointed out, it's now over $120 billion annual trade deficit, there's a far more important reason to scuttle this proposal and that's national security. Telecommunications, and particularly radio and television are the two most powerful ways to deliver a political message. Ask any Congressman. Ask any Presidential candidate. Ask them where their advertising dollars are spent and they will tell you it's on radio, it's on television, because that's where the people are. That's where public opinion is formed and that's how you get elected.

The power of television is not lost on our adversaries. In my lifetime, as a boy, it was first the North Vietnamese who used their limited access to the American living room via American television to influence American public opinion against that war. Most recently, it was the grotesque spectacle of a dead American ranger being dragged through the streets of Mogadishu by an angry Somali crowd that led to the American withdrawal from Somalia.

Think about it. A nation that was incapable of fielding a standing army drove this Congress, our President, and, by their direction, the world's only military superpower away from their shores through the power of television. If the televised sight of one dead ranger accomplished that, what could unlimited access to our airwaves accomplish for other foes?

What could North Korea's Kim or Iraq's Hussein accomplish with 24-hour access to a station that they owned here in this country? Or, for that matter, what could the Cali cartel choose to accomplish with just some of the billions that it has made to purchase an American television station? What if they chose to use that station to mock our Nation's efforts in the war on drugs or to glamorize the use of cocaine or crack?

Everyone in this room who holds an elected position knows how powerful television is. That is where you spend your money every 2 years, because it does influence public opinion and it can be used for right or it can be used for wrong. The people who passed this Act back in the 1930's realized that. It was true then, it's true now. Our stations should be an American asset, owned by responsible Americans and for the purpose of promoting the American agenda. To allow anyone else to use them, as to allow our country to be-

HeinOnline -- 21 Bernard D. Reams, Jr. & William H. Manz, Federal Telecommunications Law: A Legislative History of the Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996) including the Communications Decency Act 9 1997

come vulnerable to the wishes of those, would undermine the American way of life.

I would hope you will keep this testimony in mind as you make your decisions. Thank you, Mr. Chairman.

Mr. OXLEY. I thank our colleague from Mississippi for his statement. Any questions? We thank, again, the gentleman for appearing—I'm sorry. The gentleman from Ohio.

Mr. BROWN. Thank you, Mr. Chairman. Mr. Taylor, I think your testimony was on target. I think one of the compromises that I hear about this legislation as it makes its way through the process is that we demand reciprocity; that if investors in France are going to own a station in Biloxi, that investors in Biloxi ought to be able to have access to the French market.

First of all, are there ways of doing that, of really demanding that reciprocity and really allowing American investors into the broadcast media, particularly radio and television, in those countries? And if there are ways, does that deal with the national interest issue and security issue that you talk about?

Mr. TAYLOR. Well, Mr. Brown, in my humble opinion, I don't think this Congress can name one instance where we have been given a fair shake in another country while we have given them unlimited access to our markets. We've certainly seen it in the Merchant Marine. We've seen it in steel. We've seen it in automobiles and what was the American television industry and what was the American electronics industry.

So I don't really buy that argument. But most importantly, and, again, it happened in just the last Congress, if the image of one dead American ranger can allow a country that doesn't even have a standing army to run the world's only military superpower out of its country, what could 24-hour access do for somebody like Hussein or like Kim or any other of our potential adversaries.

Mr. OXLEY. Again, we thank the gentleman from Mississippi for being with us. I'll now ask our next distinguished panel to come forward. The Honorable Reed Hundt, the Chairman of the Federal Communications Commission; the Honorable Larry Irving, Director of the National Telecommunications Information Administration.

Welcome, gentlemen. Let me also wish a happy birthday to the gentleman, Mr. Hundt. I understand it's his 47th birthday. I just wanted to get that on the record.

Mr. HUNDT. Thank you.

Mr. OXLEY. Counsel informs me that protocol-wise, Mr. Irving will be first to testify. It's good to have you back again on the Hill. As many of you know, Mr. Irving worked a number of years for the gentleman from Massachusetts and the committee. It's good to have you back. Please feel free to proceed.

STATEMENTS OF HON. LARRY IRVING, ASSISTANT SECRETARY FOR COMMUNICATIONS AND INFORMATION, DEPARTMENT OF COMMERCE; AND HON. REED E. HUNDT, CHAIRMAN, FEDERAL COMMUNICATIONS COMMISSION

Mr. IRVING. Thank you very much, Mr. Chairman. It's a pleasure to be here this morning to testify on the issue of foreign ownership and foreign investment restrictions imposed on telecommunications companies pursuant to section 310(b) of the Communications Act.

HeinOnline -- 21 Bernard D. Reams, Jr. & William H. Manz, Federal Telecommunications Law: A Legislative History of the Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996) including the Communications Decency Act 10 1997

This hearing on H.R. 514, as introduced by you, Mr. Chairman, Chairman Fields, and your colleagues, Representatives Boucher, Fields, Hastert, Tauzin and Paxon, is very timely because the effort to open worldwide markets reflects the interest of U.S. telecommunications providers and equipment vendors in expanding into overseas markets and developing a global information infrastructure, or GII.

As companies expand globally, more jobs are created and U.S. companies' competitiveness is boosted. This, in turn, strengthens our domestic economy and increases the range in quality of telecommunications and information services available to consumers at lower prices. Only opening competitive markets will foster the development of a GII. The administration strongly supports legislation lifting our foreign investment restrictions for countries that open their telecommunications markets to U.S. companies.

Last weekend, the United States met in Brussels with the G-7 nations and the Commission of the European Union for a Ministerial Conference on the Information Society. This conference, proposed by President Clinton, and sponsored by the European Commission, was the first formal exchange of regulatory and policy views by all of the G-7 nations on changes needed to move the GII vision forward.

The administration has played a leading role in advancing international consensus based upon five principles, articulated by Vice President Gore last year in Buenos Aries; private investment, competition, open access, universal service, and flexible regulations. These principles formed the basis for cooperation among the G-7 partners at the Brussels conference.

And the ministerial meeting did more. It sent a clear message that all countries must open their markets to more competition or be left behind in a technological revolution. In his keynote address at the G-7 conference, Vice President Gore stressed the administration's support for achieving competition and opening telecommunications markets. Vice President Gore stated more specifically that, first, we, the G-7 countries, must drop our barriers to foreign investment together.

For more than 60 years, the United States has had limited restrictions on foreign investment in certain telecommunications services. In this respect, we're going to change and change this year. Whether by new law or new regulation, we intend to open foreign investment in telecommunications services in the United States for companies of all countries who have opened their own markets.

Vice President Gore also stressed that development of the information society cannot be approached through a piecemeal process. He committed the administration to continue work on multiple fronts to increase international competition. Mr. Chairman, at the same time the United States pursues—while we pursue multilateral trade negotiations in the GATS under the auspices of the World Trade Organization, the United States also will continue efforts to liberalize foreign markets through other international organizations.

Mr. Chairman, we support the thrust of the hearing and indeed the goals of H.R. 514, to achieve open telecommunications markets

HeinOnline -- 21 Bernard D. Reams, Jr. & William H. Manz, Federal Telecommunications Law: A Legislative History of the Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996) including the Communications Decency Act 11 1997

worldwide. Currently there are only a handful of countries—Great Britain, Chile, New Zealand, Sweden, a couple of others—that demonstrate a high level of private investment, liberalization and robust competition. While other countries are beginning to introduce some competition, the majority do not yet allow competition in basic voice telephone networks or services.

We believe, however, that as more countries open their markets, momentum and demand will build both from national and multinational companies, as well as increased global alliance, and create a powerful force, pushing the remaining countries toward competitive and open markets.

Thus, while the thrust of H.R. 514 is consistent with the administration's desires to achieve open markets, our approach would differ slightly from the approach taken in the legislation. We suggest that a determination of whether a particular country has opened itself to foreign investment in the telecommunications sector should be made; in fact, appropriately only can be made by the Executive Branch, which is experienced in making such decisions.

Of course, any exercise of authority under this approach would be exercised consistent with any existing U.S. Treaty obligations. We are concerned that if section 310(b) limits are simply lifted unilaterally, there will be insufficient incentives for other countries to open their markets and expand the benefits of competition.

The administration would like to work with this committee and the Congress to craft legislation providing flexible and appropriate negotiating leverage that will give other countries positive incentive to open their markets to competition and foreign investment.

Further, we recommend that section 310(b) restrictions on broadcast licenses remain in place, especially in view of the public trustee concept applied to broadcasting in this country. Foreign ownership for broadcast licenses present different questions than other types of radio spectrum licenses. Historically, foreign control of limited broadcast information outlets, particularly in time of war, was a principal consideration in adopting section 310(b).

Today the same concerns exist; namely, the foreign control of a broadcast license confers control over the content of broadcast transmissions. Therefore, the administration believes that we should not be too hasty in lifting restrictions on the amount of foreign influence over or control of broadcast licenses which exercise editorial discretion over the content of their transmissions.

I would like to note that I have with me today Don Abelson, Assistant U.S. Trade Rep, who accompanied the U.S. delegation to Brussels, and who just returned from the WTO in Geneva. I would also like to correct the record. In my written testimony, I stated that more than 20 countries are involved in the WTO negotiations. Actually, 38 countries are presently involved. Modesty precludes me from stating that all of those new countries joined because of the Vice President's speech, but maybe a few of them took heed of what he was saying.

Finally, on behalf of the administration, I would like to join the Chair and Chairman Fields in wishing Reed Hundt a happy birthday.

[The prepared statement of Hon. Larry Irving follows:]

HeinOnline -- 21 Bernard D. Reams, Jr. & William H. Manz, Federal Telecommunications Law: A Legislative History of the Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996) including the Communications Decency Act 12 1997

PREPARED STATEMENT OF LARRY IRVING, ASSISTANT SECRETARY FOR COMMUNICATIONS AND INFORMATION, U.S. DEPARTMENT OF COMMERCE

Mr. Chairman and Members of the Subcommittee: Thank you, Mr. Chairman. I am pleased to be here this morning to testify on the issue of foreign investment restrictions imposed on telecommunications companies pursuant to Section 310(b) of the Communications Act. This hearing on H.R. 514—as introduced by you, Chairman Oxley, along with Chairman Fields and your colleagues Representatives Boucher, Hastert, Tauzin, and Paxon—is most timely.

The effort to open worldwide markets reflects the interest of U.S. telecommunications providers and equipment vendors in expanding into overseas markets and developing a Global Information Infrastructure (GII). As companies expand globally, more jobs are created, and U.S. companies' competitiveness is boosted. This, in turn, proves benefits to the American public at large by strengthening the economy, as well as providing an increased array of telecommunications and information services, at lower prices and higher quality, around the globe. As the focus of U.S. industry increasingly has shifted from the domestic marketplace to the broader international arena, we too must focus on the global picture.

Legislation should be crafted to ensure that the American public realizes the benefits from expanded competition. Only open and competitive markets—not closed markets—will foster the development of a GII that brings the citizens of the world closer together. Thus, the Administration strongly supports lifting our foreign investment restrictions for other countries who open their telecommunications markets to U.S. companies.

Last weekend the United States met in Brussels with representatives of Japan, Great Britain, France, Italy, Germany, Canada, and the Commission of the European Union (EU) for a Ministerial Conference on the Information Society. This Conference, which was proposed by President Clinton, and sponsored by the European Commission, was the first time that the G-7 nations met to exchange views on the policies and regulatory changes needed to move the GII vision forward.

At the first World Telecommunication Development Conference in March 1994, Vice President Gore called upon every nation to help build the GII by using the following principles as building blocks: private investment; competition; open access; universal service; and flexible regulations.

The Administration has played a leading role in advancing international consensus on these issues. In fact, a few days prior to the G-7 conference, NTIA released the *Global Information Infrastructure: Agenda for Cooperation,* which identifies the steps the United States, in cooperation with other nations, can take to make the vision of a GII a reality. These steps include recommendations regarding market access.

The G-7 conference on the Information Society resulted in a number of accomplishments that will go a long way in helping to stimulate the development of the GII. The Vice President's five basic principles were embraced by the G-7 member nations as part of a set of principles they adopted. These principles form the basis for cooperation among the G-7 Partners to realize common goals. The nations agreed to work together to develop solutions for protecting privacy, improving information security, encouraging creativity, and protecting intellectual property. One immediate consequence of the decisions taken at the meeting will be the initiation of 11 key pilot projects demonstrating technological applications that will help ensure that each nations' citizens have access to the benefits of the new information age.

The Ministerial meeting sent a clear and highly important message that all countries must open their markets to more competition or be left behind in the technological revolution.

In his keynote address at the G-7 conference, Vice President Gore stressed the Administration's support for achieving competition, and opening telecommunications markets. Vice President Gore stated more specifically that:

> First, we [the G-7 countries] must drop our barriers to foreign investment together. For more than 60 years the U.S. has had limited restrictions on foreign investment in certain telecommunications services. In this respect, we are going to change and change this year. Whether by new law or new regulation, we intend to open foreign investment in telecommunications services in the United States for companies of all countries who have opened their own markets.

Vice President Gore also stressed that the development of the information society cannot be accomplished through a piecemeal approach. He committed the Administration to continue work on multiple fronts to increase international competition

HeinOnline -- 21 Bernard D. Reams, Jr. & William H. Manz, Federal Telecommunications Law: A Legislative History of the Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996) including the Communications Decency Act 13 1997

and promote an open, multi-faceted GII for foreign investment. As Vice President Gore stated in his keynote address last weekend:

> The governments represented here and others have an historic opportunity to open telecommunications markets around the world in the negotiations within the General Agreement on Trade and Services. The deadline for these negotiations is April 1996.

The General Agreement on Trade in Services (GATS) negotiations are open to all members of the World Trade Organization, which is presently composed of 116 countries. Presently, more than twenty countries are negotiating and more than thirty additional countries are participating as observers. The United States' key objective is to persuade our trading partners to open their basic telecommunications markets to competition. In its GATS negotiating strategy, the United States is also emphasizing the need for commitments on pro-competitive regulatory principles that will ensure open competition. These commitments would provide for economical interconnection, competition safeguards, transparent rulemaking and enforcement processes, and an independent regulator. Commitments on these pro-competitive regulatory principles are necessary to guarantee competition once a market access agreement is reached in the GATS process.

At the same time that the United States pursues multilateral trade negotiations in the GATS, under the auspices of the World Trade Organization (WTO), the United States will continue its efforts to liberalize foreign markets through international organizations such as the OECD (Organization for Economic Cooperation and Development), APEC (Asia-Pacific Economic Community), CITEL (the Inter-American Telecommunications Commission of the Organization of American States), and the ITU (International Telecommunication Union).

POSITION ON H.R. 514

Again, we support the thrust of the hearing and indeed the goal behind H.R. 514 to achieve open telecommunications markets worldwide. We welcome this opportunity to discuss the Administration's views on the best way to achieve our mutual goal. The GII cannot reach its fullest potential without the seamless interconnection of networks and services, as well as open access for service providers and users. At the domestic level, the U.S. experience with telecommunications liberalization provides evidence that the ample benefits of competition strongly outweigh the challenges of achieving full and open competition here and abroad.

Competition has increased telephone penetration in the United States, improved infrastructure development, created new jobs, and increased economic growth. The widespread provision of improved customer services, often at lower costs, has been the ultimate result. The Administration believes that increased customer choice and lower prices can and should be expanded to international markets.

With the increasing number of alliances and proposed alliances between U.S. and foreign corporations, we can not overlook the fact that many overseas markets continue to remain closed to U.S. companies, despite the great strides and positive examples set by those countries which have been opening their markets. Currently, there are a handful of countries (for example, Great Britain and Chile) that demonstrate a high level of private investment, liberalization, and robust competition. These pro-competitive countries could potentially work independently or in concert to promote greater regulatory flexibility, market access, and competition. While many other countries have progressively introduced competition in customer premises equipment, value-added services, private networks, and satellite and mobile networks, and services, the majority do not yet allow competition in basic voice telephone networks or services.

Clearly, in our examination of Section 310(b) we must recognize that many countries are in the process of change, but progress will be varied among countries and will evolve over time. We believe, however, that as more countries open their markets, momentum and demand will build both from national and multinational companies, as well as increased global alliances and create a powerful force pushing the remaining countries toward competitive and open markets.

Thus, while the thrust of H.R. 514 is consistent with the Administration's desire to achieve open markets, we are considering a slightly different approach to carry out the Vice President's announcement that we intend to open foreign investment in telecommunications services in the United States for countries that have opened their telecommunications markets. We suggest that a determination of whether this goal has been achieved for a particular country should be made by the Executive Branch, which is experienced in making such decisions. Providing such authority through legislation is a critical step to facilitate the United States' goal of opening

HeinOnline -- 21 Bernard D. Reams, Jr. & William H. Manz, Federal Telecommunications Law: A Legislative History of the Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996) including the Communications Decency Act 14 1997

foreign markets through our GATS negotiations. Of course, any exercise of authority under this approach would be exercised consistent with any existing U.S. treaty obligations.

We hope that the net result of the approach proposed by the Administration will be to provide a greater array of services at competitive prices to users around the world. We fear that if section 310(b) limits are simply lifted unilaterally, there will be insufficient incentives for other countries to open their markets and expand the benefit's of competition worldwide. Thus, we would like to work with this Committee and the Congress to craft legislation that provides flexible and appropriate negotiating leverage and that will give other countries positive incentives to open their markets to competition and foreign investment.

Further, we recommend that Section 310(b) restrictions on broadcast licenses remain in place, especially in view of the public trustee concept applied to broadcasting in this country. Foreign ownership for broadcast licenses presents different questions than for other types of radio spectrum licenses. Historically, foreign control of limited broadcast information outlets, particularly in time of war, was a principal consideration in adopting the 310(b) restrictions. Today, the same concerns exist, namely that foreign control of a broadcast license confers control over the content of widely available broadcast transmissions. Therefore, the Administration believes that we should not be too hasty in lifting restrictions on the amount of foreign influence over, or control of, broadcast licenses which exercise editorial discretion over the content of their transmissions.

This concludes my testimony. I would be pleased to respond to any questions you may have.

Mr. OXLEY. We thank the gentleman and now recognize the Chairman of the Federal Communications Commission, Mr. Hundt.

STATEMENT OF REED E. HUNDT

Mr. HUNDT. Thank you very much. Mr. Chairman, I would like to congratulate you today. It's my first opportunity to appear before you since you've become the Chairman of the subcommittee and I would like to congratulate you on assuming that post.

I would like to congratulate you, second, for raising the important issues presented in H.R. 514. I think that it's very, very important to our entire country and, indeed, the world economy for you to raise these issues, and I congratulate you.

Third, I would like to congratulate you for selecting this auspicious day for this hearing. I refer not to the serendipitous fact that it is the birthday of the visibly aged Chairman of the tiny little FCC, but, rather, because this is the birthday of Alexander Graham Bell. Alexander Graham Bell is, of course, the Papa Bell who begot Ma Bell, who, in turn, begot the Baby Bells. So frequently represented in the halls of this Capitol.

Alexander Graham Bell, it should be noted, however, was born in Edinburgh, Scotland, and then moved to Canada. And when Alexander Graham Bell obtained his patent for the invention of the telephone, he was not, in fact, an American citizen. So it might be said that Alexander Graham Bell was an example of foreign ownership of the idea of our communications system, if not the original corporate entity, and it is neat, right and proper to celebrate his birthday by examining the question of foreign ownership.

I would like to urge you, Mr. Chairman, at the very least, to succeed in rewriting section 310 in two respects. There may be other respects in which it should be addressed, but in at least two respects. First, I would like to urge you to rewrite it so as to state the following; in the event that a foreign entity wishes to acquire more than 20 percent interest in an American communications license, either directly or indirectly, that application should be grant-

HeinOnline -- 21 Bernard D. Reams, Jr. & William H. Manz, Federal Telecommunications Law: A Legislative History of the Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996) including the Communications Decency Act 15 1997

ed only if it is deemed by the Federal Communications Commission to meet the public interest.

Second, I would like to urge you to mandate that in considering the public interest, the FCC examine specifically the following factor, but not only the following factor; namely, is there effective market access in the primary markets of the applicant. So that if the application comes from country A, our examination would be of the primary markets of the firm in country A. They may, in some instances, be only in one country. In other instances, the primary markets may be in more than one country.

I am suggesting that this specific mandate necessarily result in a case-by-case approach. I also think it is neat, right and proper that the USTR should be able to exercise an overriding judgment on this issue by stating that multilateral negotiations could compel a different result in some specific instance.

Mr. Chairman, reasonable people should and ought to consider all suggestions for reaching the goals set forth by you and Congressman Boucher and the others in H.R. 514, but we should all recognize the great importance of what you're doing here today and what you're proposing to do with our statute.

For Mr. Bell, communications was not just an invention, it was a gift. It was his family's career to teach the deaf to speak. And as historians well know, it was that activity which caused him to be interested in inventing the telephone, which permitted people who were deaf by reason of distance from each other to be able to speak to each other. The telephone for Mr. Bell was a gift. It is a gift that has grown our economy. It is a gift that has benefitted our society.

The Vice President and Secretary Brown, Assistant Secretary Irving, the rest of the American delegation at the G-7 meeting in Brussels were made well aware that this is a gift that can and should be given to the peoples of the world and it will be best given by a worldwide compact to extend the gift of communications into all economies and to wrap around the world in the great nerve of intelligence that Nathaniel Hawthorne wrote about at the invention of the telegraph.

To do this, we need to have an effective strategy and we need to begin here by rewriting section 310 to give us the tools to extend this gift around the world, and that is why I again hardily commend you for holding this hearing.

Thank you very much.

[The prepared statement of Hon. Reed E. Hundt follows:]

PREPARED STATEMENT OF REED E. HUNDT, CHAIRMAN, FEDERAL COMMUNICATIONS COMMISSION

Mr. Chairman and Members of the Subcommittee: It gives me great pleasure to appear before you today. You have asked me to testify on an issue of great significance to the communications industry: the future of the foreign ownership restrictions in Section 310 of the Communications Act of 1934. I commend you for focusing on this very important issue.

The question of foreign ownership restrictions is at the top of the agenda internationally. I believe that action in this area is essential, and the faster the better. That is why I particularly commend you, Chairman Oxley and Chairman Fields, as well as Congressman Boucher, for bringing the issue forward by your introduction of H.R. 514 so early in this legislative session. Chairman Pressler's draft proposal is similarly significant because it brings the important issues surrounding foreign ownership into focus on the Senate side.

HeinOnline -- 21 Bernard D. Reams, Jr. & William H. Manz, Federal Telecommunications Law: A Legislative History of the Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996) including the Communications Decency Act 16 1997

I. HISTORICAL PERSPECTIVE

Foreign ownership limitations in the United States have historically been grounded in national security concerns. The current limitations had their origins in the Radio Act of 1912, which responded to U.S. Navy concerns over national security risks of foreign-owned coastal radio transmitters. The Radio Act of 1927 extended mandatory limitations from direct FCC licensees to their parent companies. The revised statute also responded to a security loophole in the former rules: two high powered stations on the East Coast licensed to American subsidiaries of German corporations had violated U.S. neutrality orders during the opening days of World War I by transmitting warnings to two German naval vessels.

The early foreign ownership limitations ultimately were incorporated into the Communications Act of 1934. The new statute introduced the notion, in Section 310(b)(4), that the public interest may permit foreign ownership in a U.S. holding company in excess of the established limits. In 1974, the Communications Act of 1934 was amended to expressly limit Section 310(b)'s foreign ownership provisions to licensees of radio facilities used for broadcast, common carrier and aeronautical services, which were considered to raise particular national security concerns.

II. COMMUNICATIONS TODAY IS A GLOBAL MARKET

I have just returned from Brussels where I attended the first G-7 meeting ever to focus on a single industry: the Communications Industry. Nothing could more powerfully demonstrate the central role this industry plays in the world economy.

The industry is in the midst of a profound transformation. Communications providers and users are taking a global perspective. Both U.S. and foreign communications service providers are developing strategies to serve their customers' needs through both international alliances and direct entry into foreign markets. The communications market is becoming global.

A competitive global marketplace offers significant benefits for U.S. consumers and the U.S. economy. U.S. consumers will enjoy reduced rates, increased quality, and more innovative communications services. U.S. companies will become successful global competitors.

But we cannot achieve a competitive global market if foreign communications markets are closed to U.S. competition. Foreign investment can enhance the competitiveness of our markets, but our companies must also be able to compete effectively in the foreign investors' home countries. Unrestricted entry by foreign carriers from closed markets into the U.S. market will do more to inhibit competition than enhance it.

These concerns recently lead the FCC to initiate a comprehensive rulemaking proceeding addressing foreign entry into the U.S. market under Sections 214 and 310(b)(4) of the Communications Act of 1934. Our goal is to determine the best way to regulate foreign access to the U.S. communications market in order to promote global competition. The key to our rulemaking is a proposal that, when considering foreign requests to enter the U.S. market, the Commission consider whether the primary markets of the foreign applicant offer effective market access to U.S. industry.

I believe our rulemaking is a step in the right direction. But I also believe that legislation to accomplish these goals would be even better. It would send a clearer, more powerful, more permanent message to the rest of the world. Vice President Gore played a leadership role at the recent G7 meeting by challenging other countries to join us in dropping barriers to foreign investment. The introduction of H.R. 514 parallels this goal. I hope you will continue in this direction by enacting legislation which reforms the foreign investment provisions of Section 310(b) to better reflect today's global environment.

III. CURRENT ISSUES CONCERNING SECTION 310

Let me now discuss what can be done to shift the focus of Section 310 from its original national security rationale to an approach which better accommodates these global trends.

The most important reason to review Section 310 is that this provision currently makes it harder for U.S. companies to gain access to overseas markets. Yet I have come to believe that, with some modification, Section 310 can become an effective tool to open markets abroad and create additional competition within the United States.

A modified Section 310 can I believe, create enormous incentives for foreign governments to open their markets to U.S. industry—bringing more growth and jobs to the U.S. economy. This would allow more competitors into the U.S. markets as

HeinOnline -- 21 Bernard D. Reams, Jr. & William H. Manz, Federal Telecommunications Law: A Legislative History of the Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996) including the Communications Decency Act 17 1997

markets open overseas—bringing lower prices and better services to U.S. consumers and businesses.

The application of Section 310(b) is limited to certain categories of wireless licenses. Many services, such as separate international satellite systems and private mobile radio services, are not covered. Thus, the restrictions are more limited than is commonly believed. Nevertheless, it cannot be denied they can be a significant deterrent to foreign investment and foreign competitors.

As importantly, foreign governments view Section 310 as closing the U.S. market to their companies. Section 310 has become a metaphor for a closed U.S. market. It has become an excuse to go slowly on embracing competition and opening foreign markets to U.S. competitors. I seldom attend an international gathering or bilateral negotiation without hearing the United States criticized for Section 310.

The European Union, for example, has recently argued that, since most U.S. carriers use some form of radio facility to supplement their wireline telecommunications facilities, any foreign equity investment will be subject to the restrictions of Section 310. The European Union, therefore, views the U.S. communications market as essentially closed.

This dramatically overstates the truth. But it does not dramatically overstate the problem we face.

The negative foreign perception of Section 310 impedes the U.S. Government's efforts to demonstrate the openness of the U.S. market and to advance the goal of global liberalization. It hinders the efforts of U.S. companies to enter foreign markets. Indeed, certain foreign governments have incorporated, or are proposing to incorporate, parallel investment limitations in their own regulatory frameworks. Finally, in this global environment, Section 310 may unnecessarily impede U.S. companies' ability to attract investment.

Why not, then, simply eliminate Section 310? For all the criticism of the United States, foreign markets typically are much more closed than our own. In Europe, basic local, domestic long distance, and international switched voice services generally are provided by monopolies. Likewise, most E.U. member states impose significant restrictions on foreign investment. Wireless services generally are subject to limited competition and foreign participation is often restricted. In the E.U., there are a few notable exceptions to this rule. In other regions, most markets are also closed, though again, there are important exceptions in each region.

I believe it is in the public interest for U.S. companies to have access to overseas markets. I believe a revised Section 310 can help open those markets to U.S. industry.

Now is the time to act. U.S. communications companies are the most competitive in the world. And the U.S. vision of competition is beginning to spread like wildfire overseas. But it is not yet clear that U.S. companies will be given a full and fair opportunity to compete abroad. And there cannot be real competition if the best competitors—U.S. competitors—are excluded. The European Union will open its basic markets to competition in 1998, if not sooner. Will U.S. companies be included? Will U.S. companies be included as competition comes to Asia and Latin America? We must do our best to ensure that the answer is yes.

IV. COMMENTS ON SECTION 310

In my view, a Section 310(b) that links effective access to overseas markets to access to our markets would more effectively address today's "public interest" concerns about foreign access to the U.S. communications market than the existing statute. The prospect of access to our market—which represents about 25 percent of the global telecommunications market—should be so enticing that other governments are compelled to open their markets to U.S. industry. But it is important that any such approach be flexible so that it is market opening, not market closing.

First, I believe any new legislation which incorporates the concept of market access should be forward-looking. It should allow the United States to take into account new developments in foreign markets. For example, the FCC should be able to approve a transaction with the precondition that planned changes in foreign markets occur. This would eliminate one of the difficulties often associated with a reciprocity approach: who goes first? The answer is, we go together.

Second, I would also suggest that any new legislation not require "mirror image" reciprocity. Markets depend not just on business conditions but on regulatory frameworks. And no two countries have identical regulatory frameworks. I would further suggest that new legislation should not require an identical market to be open in order to allow a transaction to proceed under Section 310(b). The focus should be first on similar markets, and then on other communications markets. I would sug-

HeinOnline -- 21 Bernard D. Reams, Jr. & William H. Manz, Federal Telecommunications Law: A Legislative History of the Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996) including the Communications Decency Act 18 1997

gest that they both be weighed in determining whether the public interest would be served by a particular transaction.

Third, I believe that an effective market access approach should offer more than a simple yes or no answer to a proposed transaction. In other words, a transaction need not be simply approved or denied. We should be able to grant access to the extent foreign access is available to U.S. entities.

Fourth, I would also respectfully suggest that any forthcoming legislation make effective market access an important, but not necessarily an outcome determinative factor. The statutory mandate for service authorization has always been the "public interest." I believe that the "public interest" should continue to be the touchstone. The public interest standard should include effective market access, but should not be synonymous with it.

Moreover, there may be at stake issues of vital public concern relating to national security, trade, foreign and economic policies. I believe any restructuring of Section 310 must recognize that critical responsibilities fall within the historic expertise of Executive Branch agencies such as the Office of the U.S. Trade Representative, the Department of State, the Department of Justice and the Department of Commerce. Committing delineated roles to these agencies and the FCC would do much to ensure that the law's purpose is fulfilled effectively.

One can imagine a case where, despite an open market abroad, the national security would suggest disapproving a transaction. On the other hand, one can imagine a case where a foreign market is not sufficiently open—but the proposed transaction would be so important for competition here that it should be approved. My suggestion to you of a more flexible approach would retain the discretionary authority for the FCC to respond appropriately, with the guidance of the Executive Branch, to both situations.

Finally, I would reiterate that I am not suggesting that the current public interest analysis be discarded. Rather, I propose merely adding market access as an explicit factor to be considered. This may be of particular significance, for example, for those who wish to raise in the public record other relevant factors for consideration by the Commission in its evaluation of a particular application.

Let me now turn for a moment to Section 310(a). I believe that the general restrictions contained in Section 310(a), which prohibit foreign governments or representatives of foreign governments from holding radio licenses, remain valid. I, however, would urge you to consider a minor modification of Section 310(a) to exempt satellite newsgathering facilities from that section, leaving the Commission discretion to deny licenses in cases where foreign governments refuse U.S. news organizations access to their countries.

The continued availability of overseas satellite newsgathering capability by U.S. broadcasters is fraught with uncertainty because of this provision. Many foreign newsgathering organizations are part of their governments. Therefore, Section 310(a) prohibits us from licensing them to do satellite newsgathering in the United States. Thus, they often prohibit or threaten to prohibit U.S. broadcasters from doing satellite newsgathering overseas. And the ironic part is that few overseas broadcasters even have the facilities to do satellite newsgathering here. But they know we cannot license them, so they will not license our broadcasters. Thus, while it appears a minor modification, its import is far greater to the U.S. broadcasters.

Finally, I ask that if you choose an approach to Section 310 which includes an effective market access approach you vest the FCC with the discretion—as does the current Section 310(b)(4)—to determine on a case-by-case basis whether the standard is met. I ask this for three reasons.

First, as you well know, in the area of communications it is not enough to say there will be competition or open markets. Competition on paper does not count. Only competition in the market counts. A market can proclaim itself open or competitive, but whether it is in practice depends upon access charges, interconnection, numbering schemes and the like. While other agencies may be capable of determining whether a foreign market is legally open to U.S. competitors, only the FCC has the depth of regulatory and technical day-to-day expertise, as well as resources, required to assess whether individual foreign countries afford effective market access in practice, and not just in theory.

Our domestic experience in addressing issues such as interconnection, unbundling, equal access, and tariffing requirements would prove valuable in this analysis. We conduct a similar analysis today when determining whether foreign markets are "equivalent" to ours in allowing international private line resale, and in assessing the public interest in transactions such as British Telecom's investment in MCI. In saying this, I do not diminish the contributions that can be made by other agencies. In fact, our proposed rulemaking explicitly would require us to seek

HeinOnline -- 21 Bernard D. Reams, Jr. & William H. Manz, Federal Telecommunications Law: A Legislative History of the Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996) including the Communications Decency Act 19 1997

the views of the Executive Branch in making the effective market access determinations.

Second, the FCC's open notice and comment procedures afford an important opportunity for interested parties to provide the FCC with valuable first-hand information about encounters with foreign regulatory regimes and actual practices in foreign countries. This open process ensures that all industry segments and applicants are treated fairly and that our deliberations are nondiscriminatory. It also sets an important positive example of an open, fair process for foreign governments seeking to develop their own regulatory processes.

Third, if you agree that we should have a flexible approach (i.e., the ability to take changing circumstances into account, and the ability to grant conditional or partial approvals) it is hard to see how an agency which does not issue the approvals could administer the test.

Finally, let me stress one last consideration. I fully support the administration's position that this approach to market-opening and greater competition should only be an interim measure. The GII demands more than piecemeal liberalization. So I support the objective of obtaining a successful GATS agreement by April 1996 that will liberalize, on a multilateral basis, all investment barriers. I want to acknowledge the leadership role that the United States Trade Representative's Office has in conducting these negotiations on basic telecommunications services within the World Trade Organization ("WTO"). I hope that our discussions here today on Section 310 will ultimately be superseded by USTR's successful conclusion of a multilateral agreement within the WTO and subsequent ratification by Congress, which would then eliminate the need for any alternative piecemeal approach toward global liberalization.

CONCLUSION

Mr. Chairman, I want to thank you again for the opportunity to appear before this subcommittee and testify about this important issue. I also look forward to working with you, the other members of the Subcommittee, and the full Committee as the legislative process moves ahead. I would be happy to answer any questions that you may have about my testimony.

Mr. OXLEY. Thank you, Chairman Hundt, for your testimony. Let me begin with a question to Mr. Irving. That is, rather than discriminate against broadcasters, isn't there a way to ensure that foreign investment in broadcast licensees does not threaten national security?

For example, consider the Exxon-Florio statute, particularly the committee for Foreign Investment in the United States, which was created by the Exxon-Florio law. Couldn't the committee review and address the problem, if, indeed, there is a problem?

Mr. IRVING. We think there is, indeed, a problem and certainly that approach is one possible approach if you decide to further open broadcasting industries to foreign ownership. However, it should be noted that we do not have a bar presently to foreign ownership. We have restrictions. We permit 20 to 25 percent, depending upon the structure of the entity, presently in broadcast ownership.

Our concern is that no other country in the world does or is likely to significantly expand beyond that 20 or 25 percent. It is not part of the WTO talks on basic telecommunications. It is unlikely to be part of a multilateral framework. It would necessitate a case-by-case analysis in every instance and, perhaps most importantly, might not give the protections to the American people that the administration and, I suggest, many members of Congress feel the American people need.

It may be our most fundamental freedom, the freedom of free speech and information. We don't want to, at this time, give that freedom away without considerable thought.

And, Mr. Chairman, if I might, at a time when we are looking very closely, reexamining all of our broadcast rules, talking about

HeinOnline -- 21 Bernard D. Reams, Jr. & William H. Manz, Federal Telecommunications Law: A Legislative History of the Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996) including the Communications Decency Act 20 1997

reexamining national ownership rules, talking about what we're going to do with regard to further spectrum allocation to HDTV, we're not certain that it's appropriate to further lift restrictions on broadcast ownership.

Mr. OXLEY. Let me follow-up then, if I can, Mr. Irving. If we repeal section 310(b), Exxon-Florio would still be very much in effect. That is, if there were a perceived unfriendly entity that sought to purchase a broadcast licensee, there would still be that protection of the committee under Exxon-Florio, would there not?

Mr. IRVING. I would suggest that that's likely. However, internationally things change so quickly. I think none of us would have suspected 3 years ago that we might be in Somalia. I don't think 7 months before the Kuwait incident many of us thought we'd have the type of relationship we have with Iraq. I'm not certain that any of us at this point can determine what's going to happen in any international marketplace and the global marketplace, but ideas really are important and they really do get to who we are as Americans.

We have significant concern over changing those rules and giving majority ownership.

Mr. OXLEY. Now we're into content, so let me ask both of you a content question. That is in both of your testimony, you caution against lifting the foreign ownership restrictions on broadcast licensees because of the editorial discretion which could be influenced by such ownership.

Could you be more specific in your concerns with respect to foreign influence over content? Isn't it a fact that we would have the same concerns with newspapers, with cable? How about Hollywood? The majority of Hollywood production studios are owned by foreigners. I haven't seen or been aware of any particular effort to propagandize those products.

Mr. Hundt, what do you think about it in terms of the content argument?

Mr. HUNDT. Well, I think the content argument is the one we hear in Europe much more than we hear in this country. It is the Europeans who generally are speaking and are concerned about the invasion of American content into their markets.

Mr. OXLEY. You're making the argument on the cultural side.

Mr. HUNDT. That's what they say and we consistently tell them don't worry about it, the communications revolution means greater ability of expression for all cultures, countries, ethnic groups, language groups.

Mr. IRVING. I think I should note that while the administration's testimony does speak to the broadcast ownership and content issues, I don't know that the Chairman's does. So maybe I should pick that question up. It's precisely because we do not have content regulation in this country that the administration is concerned about changing our broadcast ownership rules.

In most other nations of the world, there are some—there is much more government involvement in the broadcasting industry. We made a choice, we believe the correct choice, that the United States government should never be involved in what broadcasting or any other media send out to the American people. We also, however, made a choice, and we think a correct choice again, that there

HeinOnline -- 21 Bernard D. Reams, Jr. & William H. Manz, Federal Telecommunications Law: A Legislative History of the Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996) including the Communications Decency Act 21 1997

should be some limitations over control of that media precisely because we don't allow, permit or want government involvement.

Mr. OXLEY. How do you make that argument then in the face of cable and newspapers where we make no effort to control the editorial content, and correctly so. Are you saying that there is some special relationship of broadcasting versus the dissemination of newspapers or other information that is somehow sacrosanct?

Mr. IRVING. I wouldn't say it's sacrosanct, but I think there is a special relationship with broadcasters. Broadcasters have and always have had a public trustee responsibility that newspapers and cable operators don't have to the American people.

Broadcasters uniquely use the public airwaves that were given to them, through licenses, for free. They may have purchased broadcast stations or traded amongst themselves, but the U.S. taxpayer receives no payment for the use of those public airwaves.

There is a public trustee responsibility. It is a different responsibility than a newspaper publisher or a cable operator has.

Mr. OXLEY. Well, let's say that a foreign entity does buy a broadcasting license. They still fall under the public responsibilities requirement, as annunciated by the Chairman of the FCC, isn't that correct?

Mr. IRVING. Yes, sir, they do.

Mr. OXLEY. And you have a great deal of faith in the FCC to carry out those responsibilities.

Mr. IRVING. With regard to the public interest responsibility, yes, but the public interest responsibilities and the response of the FCC do not include the FCC getting involved with the content carried by an individual broadcaster, except in very limited circumstances.

Mr. OXLEY. Well, I guess the question comes down to whether we trust the public to make determinations in the marketplace as to whether they're being bamboozled or whether there's information out there that would be of a nature that would be propaganda. In the past, we've always trusted the market and I think we are better off trusting the market.

Let me now turn to the gentleman from Virginia, Mr. Boucher.

Mr. BOUCHER. Thank you very much, Mr. Chairman. Mr. Irving or perhaps Mr. Hundt, I know both of you have been engaged in discussions with our telecommunications companies and have participated in gatherings in other countries where some of these subjects, I'm sure, were also addressed.

Can you comment on the extent to which U.S. companies have been seeking to make investments in markets overseas and have been restricted in that ability in significant part because of the presence of our section 310(b) restrictions here?

Mr. IRVING. I would suggest that section 310(b) is often cited as a reason that restrictions are—that there are restrictions placed on our U.S. companies. I would also suggest that for some countries, it is a difficulty. I will take one example. We have had bilaterals with the Argentines, the Chileans, the Russians, the French, the British.

On at least a couple of occasions, as I was performing my responsibilities in preparation for the G-7 conference, I've had members of the French and British delegations in particular say that they would probably, in the telecomm sector, be able to open their mar-

HeinOnline -- 21 Bernard D. Reams, Jr. & William H. Manz, Federal Telecommunications Law: A Legislative History of the Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996) including the Communications Decency Act 22 1997

ket to a much greater extent if we made significant changes with regard to section 310(b).

I must confess that I have never heard any representative of any foreign government make that same statement with regard to broadcasting entities. But with regard to the telecommunications sectors, common carrier industry, many of my colleagues, Mr. Hundt's colleagues, on a global basis said that section 310(b) does create some problems. If we were to reduce our barriers, if we were to try to create a more reciprocal market, that would be helpful to them with their national legislatures and with their ministers of communications and industry.

Mr. BOUCHER. So based on your experience, you would confirm then that the section 310(b) restrictions do, in fact, pose some problems for U.S. companies seeking to invest overseas, at least insofar as they are seeking investment in telecommunications, apart from broadcasting concerns.

Mr. IRVING. That has been my experience, yes, sir.

Mr. BOUCHER. Mr. Hundt, would you care to comment?

Mr. HUNDT. Congressman, I'd like to take your question and point out another facet of the merit of the review that you have initiated in H.R. 514. Many foreign communications firms very much desire to enter our market, by consortium or joint venture or some form of participation with American communications firms. They wish to do so because communications is an international product. They wish to do so to share expertise. They wish to do so for a number of reasons.

It would be a very healthy thing for us if those firms were motivated to encourage their own governments to open their markets by the fact that their wishes to participate in our market were contingent on the opening of their markets.

Mr. BOUCHER. Thank you very much. Do you have any comment on the assertion that I made earlier in my opening statement that based on the excellence of the technical and managerial capabilities contained within U.S. telecommunications companies, that if we invite a robust global climate for free investment, that our companies would be the net winners and our economy would enjoy the net advantage?

Mr. HUNDT. Well, I think we have every reason to expect that that is the case. We do, in fact, encourage, as the Vice President puts it, development of a global information infrastructure. One of the key principles in that is that all countries would be open to competition and foreign investment, and that is one of the key purposes of the multilateral negotiations that the Trade Representative's Office is pursuing.

We do that with confidence, we do that with zeal, we do that with a belief that it will be best for the American economy and for the world economy.

Mr. IRVING. I would like to also say we agree completely. If you look at what is happening in the world now, as countries begin to build up infrastructures, begin to liberalize trade, they realize that they need new technologies and they turn to U.S. companies. I saw this traveling with the Secretary on trade missions or traveling for other purposes in terms of policy discussions. In Argentina you find a huge presence of GTE. In Chile, MCI has a fantastic presence.

HeinOnline -- 21 Bernard D. Reams, Jr. & William H. Manz, Federal Telecommunications Law: A Legislative History of the Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996) including the Communications Decency Act 23 1997

In Russia, US West and other U.S. companies. In India, US West just scored a contract. In China, AT&T is very involved. United Kingdom, Nynex, Continental Cablevision and others.

There are tremendous opportunities for U.S. companies globally. We want to do everything we can in the Department of Commerce and throughout the administration to promote those opportunities.

Mr. BOUCHER. Thank you very much. Let me just ask a question with regard to your recommendation that we open the market with respect to telecommunications, but not with respect to broadcast. I would assume that by broadcast, what you are referring to is radio, television, both AM and FM radio and television. You don't intend to carry it beyond that, do you?

Mr. IRVING. No. It would be existing restrictions on AM, FM and television.

Mr. BOUCHER. Mr. Irving, I understood you to say that your primary problem with allowing broadcast to be open also for foreign investment relates to the fact that there are very few, if any other countries that would allow American investment in broadcast entities in those nations and that we would be essentially the only Nation, therefore, to provide that kind of market openness.

Is that it or is it your concern about the fact that broadcasters originate content? What really drives you to that conclusion?

Mr. IRVING. I think it's a combination of both. It does not come up often, unlike conversations I've had about opening up other parts of the telecomm sector to greater competitiveness, to greater foreign investment.

It does not come up often in my conversations, at least my conversations I have with my counterparts in the international community. There is a also a concern on the part of the administration, for national security reasons, related to content, with regard to giving over the American people's spectrum that is used for deploying information to a foreign national with complete editorial discretion.

Mr. BOUCHER. My time is up. Let me ask, with the Chairman's indulgence, one brief follow-up. Cable today is not subject to the foreign ownership restrictions of section 310(b) and, yet, cable originates content and we really haven't had any problem in that area. I, for one, don't think we would with broadcast.

Let me address your other concern and ask you a question. Suppose that we were to have a reciprocal market opening with respect to broadcast and make it sector-specific, saying that we would only allow broadcast openings with respect to this country for foreign investment, to the extent that the country which is the home of the company seeking this investment allowed opening for foreign investment in its broadcast market.

If we made it that sector-specific, would that satisfy your concern?

Mr. IRVING. It would be better, but it would probably not satisfy the concerns of the administration.

Mr. BOUCHER. All right. Thank you. Thank you, Mr. Chairman.

Mr. OXLEY. I now recognize the gentleman from Kentucky, Mr. Whitfield.

Mr. WHITFIELD. Thank you, Mr. Chairman. Mr. Irving, I notice in your testimony that you indicated that whether by new law or new regulation, the administration intended to open foreign invest-

HeinOnline -- 21 Bernard D. Reams, Jr. & William H. Manz, Federal Telecommunications Law: A Legislative History of the Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996) including the Communications Decency Act 24 1997

ment in telecommunications. I suppose you feel that you can proceed whether or not we change this law or not. Is that correct?

Mr. IRVING. That was not my statement. That was a quote from the Vice President. In the Vice President's speech last week in Brussels, he did state that. And his illusion to new regulation is an illusion to the fact that while this committee is presently looking at legislation, as are your counterparts in the Senate, we also are involved in a notice of proposed rulemaking before the Federal Communications Commission, at which they are also talking about market opening mechanisms, reviewing what they can do as a regulatory agency with regard to allowing, permitting, encouraging greater foreign investment in the telecommunications sector.

Mr. WHITFIELD. Is there some mechanism under the General Agreement on Tariffs and Trade that it could be opened up without our taking action here?

Mr. IRVING. We could do some things under the GATS, and negotiations we're presently undertaking could lead to greater market opening, yes.

Mr. WHITFIELD. And it is true, I suppose, that there is some exception for foreign holding companies under the 1934 Act. I mean, is there an exception that holding companies can actually own more than 20 or 25 percent?

Mr. IRVING. Direct ownership is 20 percent. Ownership through a holding company I believe is limited to 25 percent. I'm getting into Mr. Reed's bailiwick a little bit there, but I believe that's correct.

Mr. HUNDT. That is correct. Actually, direct ownership greater than 20 percent is flatly prohibited. This provision requires people who wish to go above 20 percent to write around it or structure their deals around it so as to create the holding company, Congressman, that you just referenced.

That particular two-step process was one of the two things I urged that you fix. I think there should be a 20 percent trigger for the public interest review, regardless of the form of the corporate structure. And I think that the examination of these transactions ought to go to the substance of these structures, not to the form.

Mr. WHITFIELD. Mr. Chairman, I yield back my time.

Mr. OXLEY. I recognize the gentleman from Ohio, Mr. Brown.

Mr. BROWN. Thank you, Mr. Chairman. Chairman Hundt, in the past, Congress occasionally has given the Executive the tools—not often, not often enough, but occasionally given the Executive the tools to pry open foreign markets when we think there's not been the reciprocity that we as a government, we as a Nation think there should be.

I'd give as an example Super 301, which the President has threatened to use from time to time. But the question is even with these tools, there's a real reluctance for the Executive Branch to use these tools, these tools or weapons to really guarantee and pry open those foreign markets.

If, in fact, we move in this legislation, as people are predicting that we will, towards a reciprocity kind of arrangement, how do we really make sure that we have an activist enough Executive Branch that when our businesses and ultimately our workers and our jobs are penalized or are threatened or are simply not given op-

HeinOnline -- 21 Bernard D. Reams, Jr. & William H. Manz, Federal Telecommunications Law: A Legislative History of the Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996) including the Communications Decency Act 25 1997

portunities that we should have, how do we write the bill so that we have an activist enough Executive Branch to require fair play?

Mr. HUNDT. Well, I'm suggesting a two-part answer to your question, Congressman. First, with respect to the FCC, I would mandate that the FCC make a public record in subject transaction that it either has or has not found effective market access in the primary markets of the foreign applicant. Filings would be made there. They would be transparent. There would be an opportunity for anyone to put evidence into the record, and that would include, but not be limited to an opportunity for Congress to express its views. I think that would go some distance toward accomplishing the purpose that you have outlined.

But, second, with respect to the Executive Branch, I think Congress already has given substantial tools to the Executive Branch. They are wielded typically by USTR. I think they are wielded very aggressively and very effectively, if I can offer an observer's judgment.

What I'm suggesting here is that those tools could be wielded in this context by way of USTR having the ability to override, where it wished to do so, an FCC determination of effective market access. I think that would be the sort of second part of the way to accomplish the purpose that you annunciated.

Mr. BROWN. I think that's a good answer. Mr. Irving, I don't have a lot of confidence except in some very—one very visible case recently with China, that we in this country—and I don't blame this President. I think that it's been a—I think it's been a problem with Chief Executive after Chief Executive in this country of an unwillingness to stand up for American workers and American businesses and trade issues.

But the recent case in China, where our government stood up for Hollywood, but doesn't seem for the rest of the country to be willing to use section 301 and to use our trade weapons in automobiles and in steel and in anti-dumping issues and all of that.

Give me some assurances that the administration, particularly with the interest of the Vice President on this issue, will really step forward on these kinds of issues and protect American interests.

Mr. IRVING. I believe that there's no strong—I cannot give you as strong a statement as I feel. I know the Vice President, Secretary Brown, U.S. Trade Representative Kantor, Secretary Rubin, we have an inter-governmental, inter-Executive Branch working group on these issues presently. I happen to head that group, but virtually every Federal agency with an interest in these issues meets—we've been meeting regularly to respond to the NPRM and also to provide guidance to the Vice President, the Secretary, the President and others with regard to what the administration policies might be.

Around that table there is an absolute commitment to ensuring that markets are opened for U.S. companies in the telecommunications sector. It is 10 percent of the U.S. economy now. It is going to be a larger part of the global economy. Those companies that control these technologies will create jobs, will improve the quality of living for their people.

The Assistant U.S. Trade Rep Abelson, Ambassador McCann, others who sit around that table, we are focused and committed,

HeinOnline -- 21 Bernard D. Reams, Jr. & William H. Manz, Federal Telecommunications Law: A Legislative History of the Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996) including the Communications Decency Act 26 1997

under the leadership of Vice President Gore and Secretary Brown and others, to make sure this happens.

There's only one place in which I'd quibble. I believe that the U.S. Trade Rep and others in the Executive Branch should make the initial determination of market access. It's what they do, they are very good at it, they have the requisite skill, they have the requisite technical and regulatory authority to do it.

Mr. BROWN. Thank you.

Mr. OXLEY. The gentleman from Washington State.

Mr. WHITE. Thank you, Mr. Chairman. Mr. Irving, I had a question or two to ask you about this issue of content and whether we really have to be concerned about content if we allow foreign ownership of broadcast or other media entities.

What sort of views—let's say we got rid of this restriction and we allowed full foreign ownership of broadcast entities and other entities. What sort of views would we have to be concerned about that we might have then on our broadcast airwaves that we don't have now?

Mr. IRVING. I'm not sure that I can answer what particular views might be broadcast. I think, though, the American people and the Congress and the Executive Branch would be better served if we never had to reach that conclusion.

Again, today we allow 20 to 25 percent. The question is whether or not there is a need, if there is some overreaching policy objective that we need to reach by going beyond that.

Mr. WHITE. I think I tend to disagree with you. Our whole system of information in this country is based on the First Amendment. It is based on the theory of as many views as we can get, as much diversity of opinion as we can get is good for us.

Now, what views would a foreign owner give us that we don't want our people to hear?

Mr. IRVING. I would be very loathe to say there's any view that we'd be loathe to hear. I would say that who controls the public's airwaves, who has an ownership right, a majority ownership right in the public airwaves is something that this administration is focused on and concerned about.

Mr. WHITE. But it's not so much then from a content standpoint because you think maybe we should hear all views.

Mr. IRVING. I've never—I hope I've stayed away. I've tried to stay away from content, except in responding to questions.

Mr. WHITE. I understand. I know, and I'm probably trying to take you where you don't want to go.

Mr. IRVING. Yes, sir.

Mr. WHITE. Let me ask you another question. The case of France has come up a couple of times. It's partly my fault. And as I understand it, there is no foreign ownership of broadcast or other media outlets in France, is there? There's no U.S. company that owns any of the French television stations or radio stations or anything like that.

Mr. IRVING. Not that I am aware of. There is a chart. I think that they, by law, would permit it, but I don't know that, in fact, there is any.

Mr. WHITE. Because it strikes me—and I think Chairman Hundt's point was an excellent one that you will never find a coun-

HeinOnline -- 21 Bernard D. Reams, Jr. & William H. Manz, Federal Telecommunications Law: A Legislative History of the Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996) including the Communications Decency Act 27 1997

try that feels like it's more aggrieved by foreign cultural influences than France. They don't allow any foreign ownership, and yet they've got precisely the concern that we think we're concerned about. They think they're being overrun by American culture and even with these restrictions, they can't do anything about it.

Mr. IRVING. They actually have a 20 percent ownership limitation on broadcast ownership, precisely the same limitation we have. But they go further and they do get involved. They have a Minister of Culture and Heritage, Minister Toubon, who I had the chance to meet just toward the end of last year. I've talked to some of his staff subsequently. One of his jobs is to make sure that there's a quota with regard to non-EC content on their airwaves.

We don't have that. We should never have that.

Mr. WHITE. But, see, that's my point. They've gone so far. They've done—they've gone even further than us and it still doesn't work, does it? I mean, aren't we still—the French consumer wants to hear what a lot of American cultural offerings might offer and I don't see how we can stop that in their country or country. People are going to want to hear what they have to hear.

Mr. IRVING. We're not asking to stop content. We think that the one thing that we should always do as a free society is ensure that anybody has the right to get their content on.

As we move, as this committee and other committees move toward opening up video for the telephone companies, as cable companies expand their capacity, we think that whoever wants to get on those networks should be allowed to get on those networks. We encourage that. We draw the line at the public's airwaves. We still believe they belong to the American people and should continue and that foreign ownership should be permissible, but the limitations in law now, we think are appropriate at this time.

Mr. WHITE. Okay. I understand that. Chairman Hundt, let me ask you a question or two. Do you get a lot of applications right now where you have foreign ownership of broadcast or other entities that's a problem and do you have to go through a lot of analysis now to rule on these issues?

Mr. HUNDT. You included broadcast and other entities in your question and the answer would be yes.

Mr. WHITE. And do you find yourself denying a lot of these applications or do most people comply with the rules?

Mr. HUNDT. We find that it is necessary for us under the current state of the law to develop a more sophisticated approach and a clearer set of precepts for guiding our decisions. That is why we commenced—I would like the record to reflect we commenced after this bill was introduced—a notice of proposed rulemaking in which we would lay out our own rules on this issue so that they could be more clearly understood and applied.

However, we very much hope that that rulemaking will be, so to speak, superseded by legislation because we think it is better to send a louder, clearer and more permanent message on this subject by having legislation.

Mr. WHITE. Isn't it a pretty complicated process right now to track the various holding companies and ownerships and how many foreigners you have in any particular corporation? Isn't that

HeinOnline -- 21 Bernard D. Reams, Jr. & William H. Manz, Federal Telecommunications Law: A Legislative History of the Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996) including the Communications Decency Act 28 1997

a fairly difficult process to figure out what the foreign ownership really is?

Mr. HUNDT. Well, it is not terribly much more difficult than most of the tasks that we have. I will give you probably the most——

Mr. WHITE. I can't feel too sorry for you. But do you think it's complicated or not? I recognize you have a lot of hard jobs.

Mr. HUNDT. Well, I don't mean to sound presumptuous, but I don't think we have a difficult time doing it. No, I don't. I think that an example is, for example, the British Telecomm investment in MCI that everybody is somewhat aware of. That was an investment which took BT's ownership over 28 percent. It was necessary to look at the structure of the deal, but we were able to look at the substance and see that that was the effect.

Mr. WHITE. Do you have to look at the individual nationality of certain shareholders? For example, if XYZ Corporation comes to you for a license, do you have to find out how many of their shareholders are aliens?

Mr. HUNDT. It's possible. It depends on the number of shareholders.

Mr. WHITE. So you've got a system for, in a publicly-held corporation, to figure out what proportion of their shareholders might be foreign owned.

Mr. HUNDT. Yes, we do. This is an obligation that the applicants very quickly assume and give us all the data that we need.

Mr. WHITE. And you feel like you're able to verify that and it's not a problem.

Mr. HUNDT. Absolutely right.

Mr. WHITE. So if you had success administering this 20 and 25 percent limit, do you think you could just as easily administer a 30 or 35 or 50 percent limitation, if we decided to do that?

Mr. HUNDT. I'm quite confident that we could.

Mr. WHITE. Okay. Let me ask you just one other question, since I have just a little bit more time. What benefits—aside from the fact that this idea that we might hear foreign ideas and stuff coming in, if we had foreign ownership of these entities. Are there other advantages that you see from foreign ownership, more foreign ownership of these entities in our country?

Mr. HUNDT. I think that there is a worldwide search for capital in the communications markets right now. I think that capital will go to those countries whose markets are competitive, that's number one; number two, whose consumers are sophisticated and willing to purchase, that's the number two thing; and, number three, whose governments are willing to tolerate such capital infusions based on appropriate conditions.

Mr. WHITE. So you think the primary benefit is that we'd attract capital, that would allow us to build things which otherwise would not be built and provide better services for our consumers.

Mr. HUNDT. It's a terrifically important benefit.

Mr. WHITE. Thank you. Thank you, Mr. Chairman.

Mr. OXLEY. The gentleman from the Upper Peninsula.

Mr. STUPAK. Thank you, Mr. Chairman. Mr. Irving, in your testimony you mention that Great Britain, Chile and New Zealand were in the forefront of opening up and, correct me if I'm wrong, but did you say just their voice telephone service?

HeinOnline -- 21 Bernard D. Reams, Jr. & William H. Manz, Federal Telecommunications Law: A Legislative History of the Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996) including the Communications Decency Act 29 1997

Mr. IRVING. They are moving in—various countries are doing more things. The United Kingdom, in some areas, is slightly more liberal than we are. They allow things that we don't have. There are residents in London who actually have a choice of residential telephone provider. We don't have that here. In Chile, they have a robustly competitive long distance market. They just had a price war that would have rivaled anything happening in the United States.

New Zealand is opened in other areas. Sweden has a robustly competitive market in some areas. Some of those countries are in residential telephony, some are in long distance telephony. It's a mixture.

Mr. STUPAK. But how about radio and TV? Do they allow foreign ownership of their radio and TV?

Mr. IRVING. There is not much foreign ownership of radio and TV in most of the world. In fact, I was slipped a note by my colleagues, and so I don't want to say this is an original thought, but the United Kingdom, France, Spain, Portugal, Germany, most nations of the world, there's a tradition of government-owned television. They are only now moving toward a public ownership concept.

So there is an evolution process that has to take place across the world. We want to help push that evolution process, but we're still in the nascent stages of that evolutionary process.

Mr. STUPAK. That was my concern. They are subsidized by their government, which brings me to my next question. It seems to me when we were negotiating GATT, one of the problems was the film industry and that there was going to try to be some kind of a consideration given to the U.S. film industry and it was going to be part of the GATT treaty, but it was not because of objections, especially from the Europeans, of allowing the free, competitive market of U.S. films and they refused to drop their subsidies, especially France, of their film.

If you are going to have true free trading, then neither government should be subsidizing a certain industry. And in GATT, we tried to get assurances and protections for the filmmaking industry and aerospace and we were unable to do that in GATT. So my question is why would we want to now open up section 310. If we could not get the guarantees for filmmaking and aerospace in GATT, what guarantees are we going to get of fair competition and treatment underneath this opening of section 310?

Mr. IRVING. With regard to telecommunications, we think we can get those types of assurances. We believe that a negotiating team on the GATS agreement would get those assurances. I don't know that we're ever going to satisfy some with regard to issues involving audio/video content.

I think there was a breakthrough last week at the G-7. I think that people are beginning to agree, and we agree, that diversity of content is very important. Reflecting cultural diversity is very important. Where we draw the line is government mandates. Where we draw the line is locking out content of any kind. We don't want to lock out content in this Nation. We don't think other nations should lock it out.

Mr. STUPAK. But if you're going to have fair competition, then these other governments have to stop subsidizing their television

HeinOnline -- 21 Bernard D. Reams, Jr. & William H. Manz, Federal Telecommunications Law: A Legislative History of the Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996) including the Communications Decency Act 30 1997

and radio stations. Until they do that, I am really skeptical whether or not there will be a free open market in the telecommunications system.

And with all due respect, when we started talking on GATT, for the last 2 years I've been here, it was always we were going to take care of this problem, especially with the filmmaking, and it never comes to fruition. And I'm very skeptical that this openness that we need for telecommunications—and I'm not against it, but the openness we need to create the competitive markets will just never come.

Mr. IRVING. There is an analogy to what we're doing in other parts of the telecommunications review, and that is we often need competitive safeguards. We would certainly need competitive safeguards in this area, as well.

Mr. STUPAK. Thank you. I have nothing further.

Mr. OXLEY. The gentleman from Iowa, Dr. Ganske.

Mr. GANSKE. I guess my question is addressed to Mr. Hundt. I can picture opponents of increasing the competition in this area painting scenarios, for instance, in Desert Storm if Suddam Hussein owned news organizations like CNN and was able to control content, raising national security concerns.

I know that you've addressed some of this in your testimony. How would you answer those critics?

Mr. HUNDT. I can't imagine any circumstance in which an FCC would deem that it was in the public interest to have an antagonistic enemy nation own a communications license, any communications license, whether it was PCS or broadcast.

Mr. GANSKE. Wouldn't the President have certain powers that could take care of that in those special circumstances?

Mr. HUNDT. I think that there are numerous statutory provisions that would address this, but I'm saying specifically if you simply have the threshold public interest test, I can't conceive of that being in the public interest.

Mr. GANSKE. I think the other main question that people have is which goes first, the horse or the cart. If you open up your market, do you have a bargaining advantage in terms of saying to other countries "we've opened up ours and now you open up yours?" Other people argue that we should hold the option of opening up our markets if they open up theirs.

It seems to me that your testimony is basically in the direction of if we open up our markets, then we will have an additional bargaining advantage in terms of requesting other countries to open up theirs. Is that correct?

Mr. HUNDT. Yes, it is. I use the term "effective market access" because I'm attempting to think of some words to capture the idea that there would be an analysis of the other country's market and in that analysis there inevitably would be pressure, I think we can say it candidly, on that other country to recognize and encourage openness so as to support its own country's applicants' desire to enter our market.

Now, the reciprocity issue I think is a trade term that connotes more of a negotiated agreement and reciprocity I think is a term that evokes more the USTR effort to negotiate typically multilateral agreements, and I meant to capture that interest by speaking

HeinOnline -- 21 Bernard D. Reams, Jr. & William H. Manz, Federal Telecommunications Law: A Legislative History of the Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996) including the Communications Decency Act 31 1997

of the possibility of a USTR override, so to speak, of any FCC decision with which they disagreed.

Mr. GANSKE. If we were to entertain legislation to change this, would you recommend that there be some type of time limit on that legislation so that we could then examine after a period of time whether, in fact, the markets were opening?

Mr. HUNDT. I'm not sure if I quite follow your question. Are you thinking that there would be a sunset for the provision?

Mr. GANSKE. Right.

Mr. HUNDT. No. I think I would encourage you to write legislation that you would hope would be sufficiently flexible to endure the next 10 or 20 years of profound change in international communications.

Mr. GANSKE. I suppose that if there were something like a sunset, it would severely dampen efforts to open international markets. I mean, people don't want to make business decisions that way.

Mr. HUNDT. That's exactly right.

Mr. GANSKE. Yes, Mr. Irving.

Mr. IRVING. If I could, I'd like to say a little bit about where the administration comes down. We have a slightly different approach, I think, being addressed by your questions. We believe that market access determinations would only be an interim measure. We believe we really should go toward a global marketplace where all of the nations, through the GATS, what we're doing at WTO, would open up markets simultaneously around the world.

We would all agree that on telecomm markets, all of these markets would be open, we would allow investment, and we would continue to ensure that those markets are open through the traditional enforcement mechanisms that the Executive Branch has.

In the interim, while we are moving toward that multilateral framework, what we would suggest is that—while we do believe that the FCC is capable of making determinations of foreign ownership and where it exists, when it comes to actual market access decisions based on trade and telecomm and national security policy determinations, such as how open a market is, the administration believes that the Executive Branch has the authority and expertise to make those decisions and should communicate those determinations to the FCC, which then, under its public interest determinations, would take those views into account.

But who should actually make market access determinations focusing on trade, telecomm, national security? We believe that the appropriate authority for those types of decisions should not reside with an independent agency, but should reside in the Executive Branch.

Mr. GANSKE. Thanks for your comments.

Mr. OXLEY. The gentleman from Pennsylvania.

Mr. KLINK. I thank the Chairman. First of all, Mr. Irving, let me congratulate you. I came in a little bit late, but I appreciated your response when Chairman Oxley was inquiring about the difference between movies and newspapers and broadcast. And you are absolutely correct.

Those of us that are in broadcast understand that—and I was for many years—that you are, in fact, bestowed the ability to broadcast

HeinOnline -- 21 Bernard D. Reams, Jr. & William H. Manz, Federal Telecommunications Law: A Legislative History of the Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996) including the Communications Decency Act 32 1997

on the public airwaves. We, as American citizens, license the broadcasters and, you're right, no direct fee is paid for that. But there are certain responsibilities that go along with that.

To that direction, I would just like—because my later years in broadcasting, I wasn't as directly involved in some of these issues as I had been earlier.

Mr. Hundt, do we still have the emergency broadcast system existing in this country?

Mr. HUNDT. Yes, sir.

Mr. KLINK. To what extent would the integrity of that emergency broadcast system to serve the citizens of this country be impacted by foreign ownership?

Mr. HUNDT. I don't think it would be impaired. I think that the assumption behind my answer would be that foreign equity would not cause disobedience to our laws.

Mr. KLINK. So you have no concerns that there would be any additional risk at time of national emergency just because foreign entities may own vast numbers of broadcast holdings throughout very intricately located spots of this Nation. You don't see any possibility of damage from that.

Mr. HUNDT. There are national security interests involved in our communications properties. I don't think there's any question about it. I think that the public interest examination that I have been urging certainly should at all times include national security concerns.

Mr. KLINK. I am a little bit interested in the fact that I had not heard this brought up in this discussion before. I mean, I've heard discussions about us being able to make investments in other countries and having a return on our investment and all of those things, but as someone who entered the broadcasting industry back in the 1960's, before deregulation, this was very important.

We took those issues very important. If there was a national flood, if there was any other kind of emergency, it didn't have to be a military attack on our Nation. There were many different circumstances in which broadcasters are called upon immediately to give and to relay information. I am very concerned that we—not that something may happen, but that we can be assured that the integrity of our broadcast system can be held whole.

I haven't heard any discussion about that here today. I don't know if we're just assuming that, if we're taking it for granted that that integrity is going to be held intact, or if we, indeed, have assurances that will be held intact.

Mr. IRVING. Congressman, I apologize for not raising it and I assure you that in any future discussions about this issue, I will raise it and I appreciate your raising it this morning.

Mr. KLINK. Thank you. The other question that I would have is having sat around my share of editorial meetings at radio stations and TV stations and having probably worked at more radio stations than I spent numbers of years in the radio industry, there is a difference in content from just one ownership to another ownership. We have a little thing called the First Amendment that does prohibit us from telling people what they can and can't say and I'm very grateful for that amendment. I think that the framers of our

HeinOnline -- 21 Bernard D. Reams, Jr. & William H. Manz, Federal Telecommunications Law: A Legislative History of the Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996) including the Communications Decency Act 33 1997

Constitution had all of our best interests at heart when they did that.

However, there have been some discussions in recent years of a renewal of the Fairness Doctrine to make sure that, indeed, all opinions are not locked out, that we have diversity of content. If we are talking about opening our markets up and giving people access to our airwaves, is this something that the administration has thought at all about doing? To make sure that we can at least have all sides of each issue presented equally and fairly.

Mr. IRVING. Historically, the administration has supported reinstitution of the Fairness Doctrine.

Mr. KLINK. Has it come up in particular—in accordance with the idea of opening ownership to foreign ownership?

Mr. IRVING. No, it has not, but probably because we have posed so strongly the idea of opening up foreign ownership in the broadcast media.

Mr. KLINK. All right. I yield back the remainder of my time.

Mr. OXLEY. The gentleman from Ohio.

Mr. GILLMOR. Thank you, Mr. Chairman. Mr. Hundt, you have responded to the question on the Iraq situation, that you couldn't conceive that an agency would ever authorize a purchase by an antagonistic country. What do you do—when you have a situation where an ally or at least a friendly country—which, Iraq was not too long ago, purchases a broadcaster, and then turns antagonistic? How would you handle that situation?

Mr. HUNDT. Well, there's certainly every reason to believe that these licenses that are granted by the FCC under today's rubric could be revoked under such circumstances. After all, they can be revoked for far less significant violations than that.

Mr. GILLMOR. I came in late and I missed some of the testimony and I apologize if this has been covered before, but I take it you do support the reciprocity concept that other countries could acquire only to the extent that we can.

Mr. HUNDT. Yes.

Mr. GILLMOR. And should that be by statute or do you think that's something that can be handled administratively?

Mr. HUNDT. I have urged this committee to rewrite section 310 so as to have it be memorialized in the statute.

Mr. GILLMOR. Thank you.

Mr. HUNDT. Yes, sir.

Mr. OXLEY. I thank our distinguished panel for their testimony today. It's always good to have them here and we appreciate it.

Mr. IRVING. Mr. Chairman, I apologize only in that the only notable with whom I share a birthday is Ringo Starr, a mediocre drummer of a great band.

Mr. OXLEY. Speaking of foreign ownership, alien ownership.

Mr. HUNDT. Thank you very much.

Mr. OXLEY. We want to go to our next panel. Mr. Paul Wondrasch, from AT&T; Mr. John Major, not the Prime Minister, but the gentleman from Motorola; Mr. John Vargo, from Plexsys International Corporation; Mr. Sam Ginn, from AirTouch Communications; and, Mr. Gregory Schmidt, from LIN Television Corporation.

HeinOnline -- 21 Bernard D. Reams, Jr. & William H. Manz, Federal Telecommunications Law: A Legislative History of the Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996) including the Communications Decency Act 34 1997

Gentlemen, welcome to the subcommittee. We appreciate your being here. We will begin with Mr. Sam Ginn, who is Chairman and CEO of AirTouch Communications in California. Welcome, Mr. Ginn.

STATEMENTS OF SAM GINN, CHAIRMAN AND CHIEF EXECUTIVE OFFICER, AIRTOUCH COMMUNICATIONS; PAUL J. WONDRASCH, SENIOR VICE PRESIDENT, AT&T CORP.; JOHN MAJOR, SENIOR VICE PRESIDENT AND ASSISTANT CHIEF CORPORATE STAFF OFFICER, MOTOROLA, INC.; GREGORY M. SCHMIDT, VICE PRESIDENT, NEW DEVELOPMENT AND GENERAL COUNSEL, LIN TELEVISION CORPORATION; AND JOHN VARGO, PRESIDENT, PLEXSYS INTERNATIONAL CORP.

Mr. GINN. Thank you very much, Mr. Chairman. I would first like to congratulate you for raising these issues. I can tell you from my own experience that the issues that we face as we try to penetrate these world market are real and that section 310(b) needs to be changed.

Now, it seems to me, as I listened to the earlier debate, that the end result is pretty much agreed to, and that is that we need open markets and we need a rapid evolution to the competitive model. How we get there, it seems to me, led to quite a bit of discussion. My own experience would suggest that we just eliminate section 310(b) all together and that we put a provision in the bill that deals with the rogue countries who refuse a path towards liberalization.

I would also include in the bill requirement for a multilateral and bilateral negotiations aimed at opening markets, and I would empower the International Bureau of the FCC and the USTR to implement this task.

Now, my position on this is that we could get this project done sooner if we take that approach. Let me speak from my experience in wireless communications. Access is a problem in some countries. Access is a problem in France, for instance, where word went out that if your partner is going to be AirTouch, you won't win, simply because we had been so successful in other countries of Europe.

But access in wireless is increasingly available to American companies. If you take my own experience, we operate systems in Germany, Sweden, Japan, Belgium, Portugal. We are in the process of constructing cellular systems in South Korea, in Italy and in Spain. And we are in competition for systems in India, Singapore and Canada.

So access is increasingly not an issue, but ownership is. Now, I guess the way to explain this is to simply take you through a meeting that I have all the time with the minister of a foreign government, and the discussion goes something like this. Mr. Minister, American technology is the best in the world. We have superior concepts of design. Our engineering principles are the best. Our construction techniques are the most efficient. We know how to operate these systems. Our marketing techniques are the best in the world and the software that supports these systems is unequaled anyplace on earth. So we bring to you a capability to get your infrastructure up and working now.

HeinOnline -- 21 Bernard D. Reams, Jr. & William H. Manz, Federal Telecommunications Law: A Legislative History of the Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996) including the Communications Decency Act 35 1997

And they say to me that's precisely what we need. And I say, fine, I'd like to own the system, since I bring all of the capability. And they say to me, no, you can only own 25 percent of this system. And I say why is that and they say to me that's what your country demands of us. You only allow our companies to own 25 percent in the United States and so long as that rule applies, we're going to hold you to 25 percent in our country.

So what I would then suggest is that we take them up on that proposition and that we simply eliminate the prohibition and that we get busy negotiating open access in those countries. Matter of fact, I would simply summarize and say that if we do that, we will be viewed as taking leadership and we will remove the excuse that I hear so often around the world, that that's what you do to us.

Thank you, Mr. Chairman.

[The prepared statement of Sam Ginn follows:]

STATEMENT OF SAM GINN, CHAIRMAN AND CHIEF EXECUTIVE OFFICER, AIRTOUCH COMMUNICATIONS

My name is Sam Ginn. I am Chairman and Chief Executive Officer of AirTouch Communications.

Thank you Chairman Oxley for the opportunity to speak before the committee today at this critical moment in our industry's history. Many of the world's governments are now realizing the great power inherent in a competitive model of industrial development, and are opening their telecommunications markets to competition, private ownership, and foreign investment right at this moment. We must move quickly to take full advantage of these potential opportunities as they arise.

In order for wireless companies to be in the best position possible for these opportunities, I urge support for the liberalization of the wireless communications foreign ownership restrictions in Section 310(b) of the Communications Act. This is the position both of AirTouch, and the Cellular Telecommunications Industry Association, a nationwide association of the wireless industry, of which AirTouch is a member.

AirTouch is the nation's largest stand-alone wireless telecommunications company. We serve 1.5 million cellular customers in the U.S., and over 1.5 million additional cellular customers internationally. Our international customer base grew 143 percent last year alone.

International investment is a key component of our business strategy. AirTouch currently has interests in broadband wireless communications ventures in: Germany, Sweden, Japan, Belgium, Portugal, South Korea, and Italy. We have systems under construction in Italy, South Korea, and Spain in which AirTouch provides leadership for design, engineering, and installation.

Although AirTouch is seeking expanded ownership opportunities in many of these countries, and continues to seek new ownership opportunities elsewhere, foreign ownership restrictions have in many cases prevented us from further investment in these and other ventures.

American investment in global markets is beneficial, both for the U.S. wireless industry and the U.S. national interest. We are world leaders in customer service, communications technology, the build-out and operation of communications networks, and consumer marketing. Investing in both emerging and growing global wireless communications markets allows American companies to put to their best use the key strengths of American business.

Because of this position of leadership, American wireless companies are highly desired partners in international ventures. There are many attractive opportunities for American investment abroad. When American companies participate in ventures abroad, we raise the standards of service and quality demanded by consumers worldwide. Working with our partners, AirTouch initiated a 24 hour a day, seven days a week customer service line in Germany. It was unheard of at the time. It is now a standard our competitors are trying to meet.

Because we are the world's leaders in customer service and quality, this gives us even greater opportunity to grow in the future as worldwide consumer demand for American-style service and quality increases.

By participating in numerous businesses abroad, AirTouch is in the unique position of having experience working with all the world's wireless technologies. We have become experts in their application.

HeinOnline -- 21 Bernard D. Reams, Jr. & William H. Manz, Federal Telecommunications Law: A Legislative History of the Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996) including the Communications Decency Act 36 1997

As a result, AirTouch can put into perspective all options in global debates over technical standards, and bring field-tested experience to these discussions.

Foreign investment in U.S. companies is also directly beneficial to the U.S. national interest. Foreign investment provides additional capital available for R&D and the build-out of networks, jobs for American workers, new technology, and exposure to skills and best practices we can use to improve our methods of doing business.

Foreign ownership restrictions limit our opportunities. U.S. restrictions inhibit our ability to invest and expand abroad. Foreign governments tend to mirror U.S. government treatment of their firms doing business in the U.S. Therefore, U.S. restrictions on foreign investment for wireless telecommunications create difficulties for U.S. firms trying to invest abroad.

These difficulties can take many forms. In addition to formal investment limits, there is informal foreign government pressure on our potential partners not to partner with U.S. firms. There have been outright denials of opportunities, or the reduction of allowable levels of participation below desired or economically efficient levels. We at AirTouch have been faced with arbitrary limits, and proscribed from participating in high-value lines of business such as cellular, and permitted only to participate in businesses such as paging.

In Spain and Portugal, for example, we have faced government-imposed arbitrary limits on percentage of ownership. In France, we have consistently been precluded from entry into high-value lines of business, or had our ownership levels restricted. When the most recent wireless licenses were awarded, our potential partners told us they were contacted informally and told they would not receive licenses if they had AirTouch as anything but a very limited partner. SBC only became a partner in the Societe Francaise du Radiotelephone by trading assets in its Washington, DC cellular properties, not by competitive bidding.

The United Kingdom provides an example of an alternate approach. Its government has declared unilateral openness. There are no foreign ownership restrictions. As a result, there has been an influx of new competitors and the creation of a very competitive market. Their economy has ample capital investment, their wireless market new service offerings and broad partnerships.

Current U.S. ownership policies, and similar policies in other nations, inhibit our growth and our chances of making the global wireless industry as open as possible to U.S. interests.

U.S. policymakers should liberalize 310(b) restrictions now, and expect similar liberalization from our trading partners. This is a critical time in the wireless industry, and because communications plays a unique role in the nation's overall economic development, a critical time for the entire economy as well. Changes happening now will shape the wireless industry and U.S. industrial and economic progress for decades to come. The window of opportunity for licensing in many global markets is open now, and will remain open for the next decade. We are undergoing a period of rapid technological change. There is widespread global privatization, and many markets are now being created and developed.

The U.S. wireless industry has a once-in-a-lifetime opportunity to shape the world's wireless industry in a way that supports U.S. investment and interests. Some countries are at this very moment determining their national foreign ownership rules. U.S. action now should help move these countries toward liberalization.

One example is Japan. The Japanese government has been willing to open its wireless telecommunications markets to our investment, and I must express my appreciation for their efforts. We have worked well together, and established strong relationships. In my opinion, the Japanese government would be open to permitting greater levels of foreign investment in wireless telecommunications if U.S. policymakers liberalized our limits on Japanese investment. This would allow companies like ours to increase our equity in a very attractive market.

Taiwan is now determining what their national foreign ownership policy will be, and analysts tell me the debate could go either way: toward openness or restrictiveness. Our prompt action, here in the U.S., could encourage their policymakers to establish an open market.

American wireless companies are the world's leaders. Potential partners around the world seek our expertise, our technology, and our capital. Our interests are often limited, however, by restrictive foreign ownership policies of other governments. These may be either formal or informal, but both have the same effect in practice. Many of the foreign ownership restrictions we face are in direct response to U.S. foreign ownership restrictions.

It is in our nation's best interest to move first, to lead the way toward worldwide market openness. We are in a better position than our foreign competitors to take advantage of increased openness, to export our expertise, our capital, and our tech-

HeinOnline -- 21 Bernard D. Reams, Jr. & William H. Manz, Federal Telecommunications Law: A Legislative History of the Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996) including the Communications Decency Act 37 1997

nology. Companies like ours can use openness to contribute our strengths, get equity, and return dividends to the U.S. economy.

If we are going to do this, our time is now. The window of opportunity will only be open for so long.

Mr. OXLEY. Thank you, Mr. Ginn. Our next witness is Mr. Paul Wondrasch, Senior Vice President for Global Planning for AT&T, a small mom-and-pop company.

STATEMENT OF PAUL J. WONDRASCH

Mr. WONDRASCH. Thank you, Mr. Chairman and members of the subcommittee. First, let me thank you for the opportunity to appear before you today to discuss the issue of foreign ownership restrictions in telecommunications. I have submitted written testimony and respectfully request that it be included in the hearing record.

Today I'd like to focus my comments in three areas; the importance of opening foreign telecommunications markets, the need to create effective market opportunities for U.S. firms in foreign markets, and, finally, the proposed repeal of section 310(b) of the Communications Act.

Mr. Chairman, competition, as we all know, is the engine that drives lower cost, stimulates innovation in products and services, and delivers real choice to consumers. But outside the United States, this engine of innovation and choice is derailed by closed markets and outdated monopoly policies.

The need for full and effective global market access is critical for international telecommunications services. The provision of those services, by their very nature, necessitates a presence in the United States and the foreign country to complete any call. Without a foreign presence, a U.S. carrier cannot provide end-to-end service. When foreign carriers enter the United States without opening their home markets, they are given the ability to provide end-to-end international services, while the United States service providers are denied that opportunity.

We support the opening of telecommunication markets worldwide. We believe that any country that offers U.S. carriers full and effective access to its market should have open access to U.S. markets. In particular, any foreign carrier whose home country allows U.S. carriers full and effective market access in basic switched telecommunications should be free to invest in the United States without being subjected to foreign ownership restrictions.

We have been actively engaged in efforts to penetrate those markets around the world for the past decade. At the same time, we have frequently raised the issue of potential unfair competition from foreign competitors who gain entry into the U.S. market. AT&T, therefore, supports removal of the section 310(b) restrictions, but only as the result of the successful conclusion of the ongoing GATS negotiations, which are predicated on competition and effective market access for U.S. firms.

We also believe the same result could be obtained in the short term through bilateral negotiations that achieve effective market access.

To help U.S. industry obtain the best possible result in the GATS negotiations, the United States should not remove the section

HeinOnline -- 21 Bernard D. Reams, Jr. & William H. Manz, Federal Telecommunications Law: A Legislative History of the Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996) including the Communications Decency Act 38 1997

310(b) foreign ownership restrictions unilaterally. The United States is already the most competitive telecommunications market in the world. As a result, it has fewer concessions to offer other countries in return for their commitment for comparable market access.

An important, maybe even critical potential concession by the United States is the removal of the foreign ownership restrictions. AT&T is hopeful that these negotiations will produce an agreement that gives U.S. carriers effective access to global communications markets. As was said earlier, Vice President Gore, in Brussels at the G-7 last Saturday, said these negotiations represent a historic opportunity to open telecommunications markets around the world.

But AT&T is also aware of the fact that the United States has an extremely difficult task. Negotiations on basic telecommunications are taking place now because it was not possible to reach agreement on those issues during the uruguay round. At that time, other countries were, for the most part, unwilling to open their basic telecommunications markets in any meaningful way.

We are extremely pleased that on the February 17, the FCC released a notice of proposed rulemaking focusing on the issue of foreign carrier entry into the United States. In the rulemaking, the FCC is considering replacing its current approach with a consistent, effective market access test for companies affiliated with foreign carriers and section 214 applications and in section 310(b) waiver requests.

We believe it is imperative that the FCC conclude that rulemaking and establish a uniform requirement that foreign governments provide the U.S. firms effective market opportunities before any other foreign-based carriers are allowed to enter the U.S. market and before those that are already here are allowed to expand their operations.

In closing, the notion of comparable market access is an equitable one. It's a simple recognition of the fundamental fairness of requiring foreign governments to afford U.S. telecommunications carriers similar opportunities as those enjoyed by foreign-based carriers in the United States.

Open markets around the world are essential if U.S. carriers are to compete on a level playing field with foreign carriers to supply customers with global telecommunications services. The issues briefly discussed in my testimony are consistent with those reached in the recently published Economic Strategy Institute study, "Crossed Wires-How Foreign Regulations and U.S. Policies are Holding Back the U.S. Telecommunications Services Industry."

Mr. Chairman, I respectively request that the study be included in the hearing record.

Mr. OXLEY. Without objection.

[The information referred to is retained in subcommittee files.]

Mr. WONDRASCH. I thank you for inviting me and I would certainly be pleased to answer any questions that you might have.

[The prepared statement of Paul J. Wondrasch follows:]

STATEMENT OF PAUL J. WONDRASCH, SENIOR VICE PRESIDENT, AT&T CORPORATION

Mr. Chairman and Members of the Subcommittee: My name is Paul J. Wondrasch. I am Senior Vice President of AT&T Corp. I would like to thank you for the opportunity to discuss the issue of foreign ownership restrictions in tele-

HeinOnline -- 21 Bernard D. Reams, Jr. & William H. Manz, Federal Telecommunications Law: A Legislative History of the Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996) including the Communications Decency Act 39 1997

communications. My testimony will focus on AT&T's views concerning the need to open global telecommunications markets and to ensure that U.S. carriers have effective market access abroad in order to serve their customers' current and future international telecommunications needs. I will also explain why the repeal of Section 310 (b) of the Communications Act at this time, would make the task of opening foreign markets even more difficult, to the detriment of U.S. interests.

Anyone who went through the competitive revolution in the United States over the last ten years understands the benefits of competition to customers, and what is good for customers is good for industries and countries. As U.S. business expands internationally, our customers increasingly demand the same high quality and access to information from their international telecommunications services that they have come to expect domestically. But our customers' access to high-quality services overseas is often limited by regulatory and legal practices that are no longer relevant to the global telecommunications industry as it currently exists. Most foreign markets have been unable to match the pace and breadth of change in the United States. Traditional closed-market prohibitions are simply incompatible with the promise of technological innovation and the continuing vitality of providers of these new services.

The catalyst which will bring vitality to global telecommunications services is full and effective market access by all service providers, regardless of national identity. We need a global market that provides customers with competitive choices—a market where communications companies are free to cross national borders to give customers the services they want. In the vast majority of the countries of the world, this type of market access simply does not exist today.

The need for competition is beginning to be recognized just about everywhere. Some countries have recognized the changed circumstances of the industry and are adjusting accordingly. However, not much concrete action has been taken by most countries outside of the United States to remove barriers to competition in basic services.

The barriers to entry into these markets go far beyond restrictions on foreign ownership. While some countries do impose explicit restrictions on foreign ownership of telecommunications operators, even countries that do not have in fact kept their basic voice telecommunications markets firmly closed to any and all competitors.

Germany, for example, has no legal foreign ownership restrictions, but the government-owned carrier, Deutsche Telekom has a statutory monopoly over public, switched voice communications, both domestically and internationally. In addition, Deutsche Telekom, controls interconnection to the local distribution facilities, and therefore manages the way in which its "competitors" can access customers for the limited services where competition is legally allowed.

Most countries, concerned about the effect of competition on their national carrier and their national economies, are moving only cautiously toward opening their closed markets. For example, the majority of foreign telecommunications operators are government-owned, and few countries have established independent regulators. Even those that profess to embrace procompetitive policies have failed to develop regulatory policies that require the monopoly provider to make access to essential facilities available to potential competitors on terms that would permit the development of effective competition. In addition, few countries provide for the separation of monopoly and competitive services providers or employ other safeguards that would help to ensure that competitive services are not subsidized with monopoly revenues.

Of course, such countries have the sovereign right to manage their telecommunications markets in ways that they perceive will best serve their national interests. However, when individual countries exercise their sovereign rights and choose to keep their telecommunications markets closed to U.S. carriers, the U.S. should consider that fact in deciding whether the entry of a foreign carrier from that country into the U.S. telecommunications market is in the U.S. public interest.

While the size and openness of the U.S. telecommunications services market has attracted competition from all over the industrialized world, that open door policy has not generated comparable progress in other countries. Foreign carriers want not only the freedom to compete in the United States, but also freedom from competition with U.S. carriers in their home countries.

The need for effective market access is a critical issue because of the unique nature of international telecommunications services. The provision of international telecommunications services, by its very nature, absolutely necessitates a presence in two countries simultaneously to complete a call. Because other countries, in the exercise of their sovereign rights, have granted monopoly status over all traffic into and out of their country to one national carrier, U.S. carriers have been forced to

HeinOnline -- 21 Bernard D. Reams, Jr. & William H. Manz, Federal Telecommunications Law: A Legislative History of the Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996) including the Communications Decency Act 40 1997

provide international services through alliances with monopoly foreign telephone administrations.

However, multinational corporate customers for international telecommunications services increasingly demand a single source of supply—providing "end-to-end", global, high-quality seamless services, including international services and domestic services originating both in the U.S. and in foreign countries. Competition for these customers' telecommunications business is fierce from both U.S. and foreign carriers. Foreign carriers have a significant competitive advantage over U.S. carriers, however, when they enter the U.S. market and offer services originating in the United States, while also controlling overseas markets that are closed to U.S. carriers.

Moreover, the ability of a foreign carrier that controls a closed overseas market to make an equity investment in a U.S. carrier creates the financial incentive for the foreign carrier to discriminate in favor of its U.S. affiliate. Other U.S. carriers, which must rely on the foreign carrier in order to offer services between the U.S. and the home country of the foreign carrier, can be severely disadvantaged by such discrimination.

The economic distortions that have arisen in the international telecommunications services market can only be resolved through the opening of foreign markets and achieving free and nondiscriminatory market access. Fully competitive global markets in telecommunications would foster economically rational pricing and business decisions to the benefit of both carriers and consumers throughout the world.

AT&T supports the opening of telecommunications markets world-wide and believes that any country that offers U.S. carriers full and effective access to its market should have open access to the U.S. market. In particular, AT&T believes that any foreign carrier whose home country allows U.S. carriers full and effective market access in basic switched telecommunications should be free to invest in the U.S. telecommunications industry without being subject to any foreign ownership restrictions.

There is, at present, no international convention or treaty that requires a country to allow open, competitive market in basic telecommunications services. There is hope, however, that this can be achieved through the basic telecommunications negotiations now getting underway within the GATS. As Vice President Gore said at the G-7 Conference in Brussels last Saturday, these represent "a historic opportunity to open telecommunications markets around the world." These negotiations are a major piece of unfinished business from the Uruguay Round of multilateral trade negotiations. Basic telecommunications have been set aside for separate negotiations in the Negotiating Group on Basic Telephony (NGBT), with a deadline for completion of April, 1996.

AT&T believes the GATS negotiations can produce an agreement that will give U.S. carriers effective access to global telecommunications markets. However, we have no illusion that this will be an easy task. Trade negotiations on basic telecommunications are taking place now because it was not possible to reach agreement on these issues after years of negotiations in the Uruguay Round. At that time, other countries were, for the most part, simply unwilling to open their basic telecommunications markets in any meaningful way.

Since these issues were last discussed in GATS, more countries have begun active consideration of open markets and competition in telecommunications. AT&T, therefore, believes that the GATS participants should now be better positioned to take advantage of this great opportunity to transform the global telecommunications industry.

AT&T fully supports removal of the U.S. foreign ownership restrictions as part of a GATS agreement providing full and effective market access abroad for U.S. carriers. They should also be removed on a bilateral basis for individual countries that open their markets to competition by U.S. carriers.

To help the U.S. telecommunications industry obtain the best possible result in the GATS negotiations, the U.S. should not remove its foreign ownership restrictions unilaterally. Because the U.S. is already the most open and competitive telecommunications market in the world, it also has fewer concessions to offer other countries in these negotiations in return for their removal of their barriers to competition. An important potential concession by the U.S. is the removal of the foreign ownership restrictions.

Thus, to maintain U.S. negotiating leverage at this critical time, AT&T recommends that, rather than remove the foreign ownership restriction completely, Congress should enact legislation to permit the foreign ownership restriction to be waived for any foreign carrier whose home country enters into a multilateral or bilateral trade agreement providing U.S. carriers with effective market access in basic telecommunications services.

HeinOnline -- 21 Bernard D. Reams, Jr. & William H. Manz, Federal Telecommunications Law: A Legislative History of the Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996) including the Communications Decency Act 41 1997

Effective market access means the ability to provide basic international and long-distance telecommunications services, on both a resale and facilities basis, with safeguards to ensure that competition is fair. Necessary safeguards include the existence of standard terms and conditions for non-discriminatory, cost-justified interconnection, and allowing customers to choose alternative carriers on an equal basis. These safeguards also include the separation of monopoly from competitive operations, or the existence of other safeguards to prevent cross-subsidization.

AT&T also believes that the Federal Communications Commission should apply consistent effective market access criteria in evaluating applications from foreign carriers to enter the U.S. market. On February 17, the FCC released a Notice of Proposed Rulemaking focusing on the issue of foreign carrier entry into the U.S. The FCC is considering in this rulemaking whether to include an "effective market access" inquiry in deciding whether to grant entry to companies affiliated with foreign carriers through facility authorizations under Section 214 of the Communications Act and through Section 310(b)(4) waiver requests.

AT&T believes that it is imperative that the FCC conclude this Rulemaking—and set uniform criteria that will encourage foreign governments to provide U.S. firms effective market opportunities—before any other foreign-based carriers are allowed to enter the U.S. market, and before those already here are allowed to expand their operations.

A long delay in clarifying these regulatory policies would amount to "closing the barn door after the horse is gone." Foreign-based carriers that hold monopolies, or near monopolies, in their home markets of Canada, the U.K., Spain, Hong Kong and Australia have already entered the U.S. international market. Carriers from France and Germany have applications pending before the FCC to enter the U.S. Foreign carriers, many of which are government-owned monopolies, that enter the U.S. while U.S. carriers are unable to obtain effective access to the home markets of the foreign carriers are, in effect, bypassing the GATS negotiations process.

The concept of effective market access is a fair and equitable one. It is simply a recognition of the fundamental fairness of requiring foreign governments to afford U.S. telecommunications carriers similar opportunities to those enjoyed by foreign-based in the U.S. Effective market access abroad would allow U.S. carriers to respond more fully to customer demands for a single world-wide source of supply for their global telecommunications requirements. Most importantly, Mr. Chairman, effective market access abroad is essential if U.S. carriers are to compete on a level playing field with foreign carriers that offer services originating in the U.S.

Once again, on behalf of AT&T, thank you for the opportunity to share AT&T's perspective on these important issues.

Mr. OXLEY. Thank you, Mr. Wondrasch. Our next witness is Mr. John Major, Senior Vice President and Assistant Chief Corporate Staff Officer, from Motorola. Mr. Major, welcome.

STATEMENT OF JOHN MAJOR

Mr. MAJOR. Mr. Chairman and members of the subcommittee, I am John Major, of Motorola. As has already been noted, I am not the Prime Minister. I apologize for that shortfall. Nevertheless, I thank you for this opportunity to provide our views on foreign ownership restrictions in section 310(b) of the Communications Act and on your overall telecommunications effort.

You are to be commended for your efforts to develop legislation to reform the 1934 Communications Act. It is appropriate for the Congress to set policies which will guide this industry in the next century and we at Motorola thank you for your leadership.

In the broader telecommunications reform legislation, Motorola is very interested in the rules for the elimination of BOC line-of-business restrictions. We vigorously support open and competitive domestic markets in which all entities have the opportunity to participate.

Just as we seek fair rules of the road abroad so we can compete against local companies there, we support U.S. telecommunications policies which will remove the barriers to local exchange entry, per-

HeinOnline -- 21 Bernard D. Reams, Jr. & William H. Manz, Federal Telecommunications Law: A Legislative History of the Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996) including the Communications Decency Act 42 1997

mit full and fair competition in these markets, and allow the Bell Operating Companies to enter the manufacturing and long distance markets when this competition and appropriate safeguards are in place.

There must be parity in the way these rules apply to manufacturing and long distance businesses. Mr. Chairman, this hearing is an important reminder that while we have significantly liberalized our domestic telecommunications markets, some restrictions on foreign investment remain and should be reviewed in light of the current status of telecommunications trade. We appreciate your initiating this review.

Global satellite systems provide for the emergence of remarkable and dynamic new economic force. Telecommunications will reshape our society and bring us closer together as a global community. This global vision, led by Motorola to develop and launch the Iridium project, a network of 66 satellites orbiting close enough to the earth to permit small hand-held phones to send and receive voice data and other communications.

Literally, a person can call and be called anywhere in the world at any time using pocket-sized equipment. This project could not have succeeded with Motorola as the sole investor. It is a global system. It will operate in virtually every country in the world and it must obtain licenses from these countries before it can operate in their borders.

It is a capital intensive system. Over $3.3 billion will be spent to launch and initiate the service. Because broad participation was imperative, Motorola sought and obtained global financial participation. Iridium has now been licensed and foreign investment restrictions ultimately did not apply because the FCC determined that these MSS systems, global satellite systems, were not common carrier activities.

But years ago when we developed this system and the business plan and filed applications, we could not predict how the FCC would rule in 1994. The potential application of section 310(b) complicated the financial picture and distracted us as we dealt with the business realities of developing our global system. That experience has led us to conclude that section 310(a) and (b) should have no bearing to the grant of licenses for global satellite systems. These are global networks which, by their very nature, should and will have globally diverse investment and management.

It's worth noting that we are joined in this conclusion and recommendation by the other big LEO licensees; Loral/Qualcomm, TRW, and also by Teledesic. For those of you that are familiar with the Big Leo proceedings, this is somewhat of a historic unanimity amongst us in this highly competitive field.

Of course, most license applications before the FCC do not involve a global satellite system. In these more frequent situations, it is appropriate for the United States to consider the relative openness of their markets in making its licensing determination. Foreign entities should not be barred and by conditionally modifying section 310(b), our goal is to encourage the continued and accelerated opening of foreign markets to U.S. companies.

Today, section 310 is effectively a bar to entry and there's no advantage for the United States to maintain the section in this form.

HeinOnline -- 21 Bernard D. Reams, Jr. & William H. Manz, Federal Telecommunications Law: A Legislative History of the Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996) including the Communications Decency Act 43 1997

Conditionlized liberalization would create an incentive for our trading partners to open their market as a means to gain added entry in the United States.

At the same time, it could strengthen the hand of U.S. trade negotiators who are in the midst of negotiations under the World Trade Organization to open markets for basic services. Our trading partners have cited section 310 as a U.S. barrier and its conditional repeal would remove this complaint, while signaling our continued resolve regarding U.S. action where key markets remain closed to U.S. companies.

Unconditional repeal of section 310(b) could impede competition in U.S. markets and that should be prevented. In a domestic telecommunications reform context, your committee is seeking the appropriate terms and conditions so that the BOC's local exchange monopoly power cannot subsidize competitive ventures or otherwise disadvantaged competitors who do not have that market power.

In the same way, you should be concerned that where foreign companies enjoy protection at home, they could enter U.S. markets and use their advantages at home to subsidize activities here to discriminate against U.S.-based companies. With these considerations in mind, the FCC recently advised Comsat, for example, that it would look carefully at the structure of MRSATP before allowing that service to be offered in the United States in competition with our Big LEO systems.

We are suggesting a procedure——

Mr. OXLEY. Please summarize, Mr. Major.

Mr. MAJOR. Thank you. We are suggesting a procedure of analogous opportunities, looking to local service, long distance service and wireless services.

Mr. Chairman, thank you again for your leadership and for the opportunity to be heard on this important matter.

[The prepared statement of John Major follows:]

STATEMENT OF JOHN MAJOR, SENIOR VICE PRESIDENT AND ASSISTANT CHIEF CORPORATE STAFF OFFICER, MOTOROLA, INC.

Mr. Chairman and members of the Subcommittee, I am John Major, Senior Vice President and Assistant Chief Corporate Officer of Motorola, Incorporated.

Motorola is one of the world's leading providers of wireless communications, semiconductors and advanced electronic systems and services. Major equipment businesses include cellular telephone, two-way radio, paging and data communication, personal communications, automotive, defense and space electronics and computers. Communication devices, computers and millions of consumer products are powered by Motorola semiconductors. Motorola was a winner of the first Malcom Baldrige National Quality Award, in recognition of its superior company-wide management of quality processes.

You and your Co-Chairman, Mr. Fields, and others on the committee are to be commended for your efforts to develop legislation to reform the 1934 Communications Act. It is appropriate for the Congress to set the policies which will guide this industry into the next century. There are contentious and complex issues to be resolved, but they are so very important to our societal and economic well-being, and on behalf of Motorola I thank you for your leadership.

In the broader telecommunications reform legislation, Motorola is very interested in the rules which will guide the elimination of the BOC line of business restrictions. We vigorously support an open domestic market in which all entities have the opportunity to participate. Just as we seek fair "rules of the road" abroad so that our products can compete against those of local companies, we support U.S. telecommunications policy which removes the barriers to entry into U.S. local exchange markets, permits full and fair competition in these markets, and allows the Bell Operating Companies to enter the manufacturing and long distance markets when this

HeinOnline -- 21 Bernard D. Reams, Jr. & William H. Manz, Federal Telecommunications Law: A Legislative History of the Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996) including the Communications Decency Act 44 1997

competition and the appropriate safeguards are in place. There must be parity in the way these rules apply to the manufacturing and long distance lines of business.

Mr. Chairman, your legislation, H.R. 514, is an important reminder that while the U.S. has significantly liberalized our telecommunications markets, some restrictions on foreign investment remain and should be reviewed in light of the current status of telecommunications trade. We appreciate your initiating this review.

GLOBAL SATELLITE SYSTEMS

In recent decades we have witnessed the emergence of a remarkable and dynamic new economic force—telecommunications. As many experts have observed, it will reshape our society—in some respects we already can see and are realizing this transformation. The proliferation of portable cellular telephones is a case in point. In many other ways we have yet to appreciate where this revolution will take us and the vistas it will open for future generations. We can be certain that it will be a critical element of U.S. economic well-being and that it will be a critical force in uniting the world through rapid and ubiquitous communications.

At their recent and historic meeting on global telecommunications, the Ministers of the Group of Seven industrialized countries issued a communique in which they committed to promote "universal service to ensure opportunities for all to participate."

At Motorola this global vision led us to develop the Iridium project—a network of 66 satellites which will orbit the globe close enough to the earth to permit small hand-held phones to send and receive voice, data and other communications. Literally, it will allow a person to call and to be called anywhere in the world, at any time, using pocket sized equipment. This project could not have succeeded with Motorola as the sole investor. It is a global system; it will be capable of operating in virtually every country in the world—and it must obtain licenses from these countries before it can operate within their borders. Hence, broad participation in the venture was imperative, and Motorola sought and obtained global financial participation.

Importantly, investments by strategic foreign partners are essential in order to facilitate operation and licensing in key foreign markets. As the FCC recently explained:

> ...these systems are inherently global, and extremely expensive....Because of their global nature, many systems are raising capital in international markets. As such, it is reasonable to expect that investors will want to be involved with system operation, particularly if the system will be accessed from the investor's jurisdiction. We concur that this foreign participation is likely to improve the likelihood of receiving a grant of space station access by foreign administrations.

Iridium and two other "Big LEO" satellite systems received their FCC licenses in January of this year. Our experience with this licensing process has led us to conclude that Section 310(a) and (b) should have no bearing on the grant of licenses for global satellite systems. We are joined in this conclusion and in the recommendation for change by the other Big LEO licensees, Loral/Qualcomm and TRW, and by Teledesic. These are global networks which by their very nature should and will have globally diverse investment and management. Ultimately section 310(b) did not apply to the Big LEO's when the FCC found this was not a common carrier service. But Motorola could not predict this 1994 finding when we initiated the venture years before, and there is always the possibility that a later FCC decision could overturn the finding and thereby trigger the application of these foreign investment barriers. The potential application of Section 310 needlessly complicated and distracted our planning, and it remains a concern for the time being.

We believe that there will be an increasing number of global satellite systems, and the U.S. would encourage such systems to seek their system license in the U.S. by eliminating the Section 310 barrier to substantial foreign investment. This change then would encourage the likely benefits of such U.S. "residence" including job creation and technological leadership.

All of the currently licensed Big LEO systems are U.S.-based companies with a long history of developing satellite and radio communications technologies for both government and commercial applications. Each one chose to file a satellite system application with the FCC and thereby maintain U.S. sponsorship for its international system. Due to the global nature of these systems, any one of them could have decided to request a license from another country and thereby bypass the U.S. licensing process. Indeed, there are several competitive mobile satellite systems—such as Inmarsat-P—which are currently being sponsored by foreign governments.

HeinOnline -- 21 Bernard D. Reams, Jr. & William H. Manz, Federal Telecommunications Law: A Legislative History of the Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996) including the Communications Decency Act 45 1997

Motorola believes that the foreign ownership restrictions are a disincentive for maintaining the technologies being developed for global satellite systems in the United States. These systems are extremely capital intensive, requiring their proponents to go to the global financial markets for both debt and equity financing. There simply is not enough money available in this country to finance these systems.

Rather than facing the prospect of restrictions on foreign ownership inherent in applying for a U.S. space system license, future applicants may decide to go abroad for a system license to a country which allows unlimited participation by foreign companies and PITT's. It truly would be unfortunate if U.S. based companies felt compelled to apply outside the United States for a satellite system license, taking their new and innovative satellite technologies with them in the process.

Even with the elimination of the foreign ownership restrictions in Section 310 for global satellite systems, the FCC has other authority under Title II of the Communications Act by which it may condition U.S. entry by foreign based satellite systems on the ability of U.S. licensed global satellite systems to gain access to the home markets of those foreign entities.

For example, several years ago the FCC determined that it was in the public interest to protect American Mobile Satellite Corporation from foreign based competition by precluding Inmarsat's entry into the United States for the provision of land Mobile Satellite Services. It did not need to rely upon Section 310 to take this action. More recently, the FCC indicated that it would consider denying Inmarsat-P access into the United States if that company's investors—which are primarily foreign PTT's—refuse to allow U.S. licensed global satellite systems access to their markets, and again, Section 310 was not an issue in this determination.

It is important for the FCC to remain attentive to the Inmarsat-P matter as it has the potential for substantial damage to nascent U.S. systems, like the Iridium system. The FCC's sentiments were echoed in a recent letter from the Assistant Secretary for Communications and Information of the Department of Commerce, Mr. Larry Irving, to the Chairman of the FCC, Mr. Reed Hundt, in which Mr. Irving indicated that an NEC/OSTP interagency committee conditioned its support for the Inmarsat-P affiliate proposal "on the development, implementation and enforcement of principles for fair and open competition in the marketplace." Indeed, Mr. Irving noted the committee's continued concern "that Inmarsat signatory investors in [Inmarsat-P]—many of whom are monopoly service providers in their national markets—could effectively block market access to other LEO systems."

In sum, the value of global satellite systems lies in being able to access the public switched telephone network while traveling virtually anywhere in the world and in being able to provide instantaneous communications in cases of emergency or natural disasters. These systems must gain access to a substantial number of foreign markets if they are to be successful. This requires significant investment by foreign strategic partners which would be facilitated by eliminating the potential application of all foreign ownership restrictions to global satellite systems.

CONDITIONAL LICENSING AUTHORITY

Of course, most license applications before the FCC do not involve global satellite systems, and we believe that, while foreign entities should not be barred from seeking authority to operate within the U.S., it is appropriate for the U.S. to consider the relative openness of their markets in making its determination. By modifying Section 310 in this way, our goal is to encourage the continued and accelerated opening of foreign product and service markets to U.S. companies.

Section 310(b), as currently written and administered, is effectively a bar to open entry, and there is no advantage for us in maintaining the section in this form. Rather, conditional liberalization would seek to establish an incentive for our trading partners to open their markets as a means to gain added entry in the U.S., while encouraging important foreign investment and participation in U.S.-based ventures.

Some form of conditionality is sound for the following reasons: First, the United States could benefit from the availability of a positive bargaining chip in our bilateral trade and investment negotiations. Although the Congress created valuable negotiating tools specific to the telecommunications sector in 1988, those tools have been of somewhat limited utility and have necessitated a highly public, contentious process that exposes complainants to possible foreign counter-retaliation, pressure and censure. We believe that our negotiators need other tools, especially to pry open foreign basic telecommunications services markets.

A new regime for careful, case-by-case consideration of Section 310(b) applications, based on specified market access criteria, might encourage foreign governments to

HeinOnline -- 21 Bernard D. Reams, Jr. & William H. Manz, Federal Telecommunications Law: A Legislative History of the Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996) including the Communications Decency Act 46 1997

undertake market reforms in telecommunications or to accelerate those already initiated. This in turn will benefit U.S. companies because experience has shown that greater openness in the services markets creates new offerings and demand for the types of equipment Motorola and other U.S. telecommunications manufacturers produce.

Second, on the multilateral front, the U.S. Government is in the midst of negotiations under the World Trade Organization to open markets for basic services. Our trading partners repeatedly have pointed to Section 310 restrictions as a barrier to their ability to do business freely in the United States and as evidenced that our telecommunications services market is not, in fact, fully open. Conditional liberalization could provide a tool for the multilateral trade negotiations, which are scheduled to conclude in April 1996, while retaining some control over how that tool is used.

Third, the retention of some short-term leverage through Section 310(b) would serve as a signal to our trading partners that the U.S. will no longer implement further opening of its telecommunications market without reciprocal action on their part. Following the divestiture of AT&T, the vigorous deregulation policies of the U.S. opened our telecommunications market in the 1980's to a multiplicity of U.S. and foreign service providers and manufacturers. U.S. companies have not enjoyed the same access in foreign markets, many of which remain largely closed to foreign companies.

Complete repeal of Section 310(b), with no strings attached for our trading partners, would be another example of our "disarmament," and could encourage the view abroad that the U.S. Government no longer intends to deal aggressively with foreign trade barriers to its telecommunications industry.

Finally, we believe unconditional removal of the Section 310(b) provisions would inhibit U.S. market competition, rather than fostering it. The FCC echoed this view in its February 7, 1995 Notice of Proposed Rulemaking on market access in which it stated, "In a truly competitive global market, entry of foreign carriers into the U.S. international market would be procompetitive. However, unrestricted entry by foreign carriers from closed markets into the open U.S. market has the potential to inhibit competition..."

Just as we are concerned that domestic monopoly power can be used to subsidize competitive ventures and to impede and discriminate in access to service and produce opportunities in the monopoly market, we should be concerned that foreign monopoly conditions could adversely affect competitive U.S. markets.

As an alternative to near-term repeal of Section 310(b), Motorola would suggest that the Committee consider a revision designed to increase access to the U.S. market in exchange for corresponding access abroad. Through careful tailoring of such revision, the United States can maximize its positive leverage to expand business opportunities worldwide while retaining ample investment opportunities for U.S. firms.

When an application is received by the FCC, the interagency process, led by the United States Trade Representative (USTR), would make a finding of "analogous opportunities" in similar market segments. Such market segments could cover broad categories, for example, "local service," "long distance service" and "wireless service" and would provide a reasonable degree of flexibility to our government decision-makers.

These determinations regarding analogous opportunities would be led by the United States Trade Representative, in consultation with other Executive Branch agencies, including the FCC. As the U.S. Government's prime spokesperson in bilateral and multilateral trade and investment negotiations, the USTR should have oversight over a process that will affect its negotiating leverage, for example, in current multilateral basic telecommunications services negotiations. However, USTR naturally will rely heavily upon the inputs and expertise of other agencies, including the FCC, in making this determination.

The Commission would be guided by the USTR-led determination on market access, with the ability to act otherwise under its public interest mandate, for example, in the event that other policy factors appropriately weigh more heavily than market access concerns. And, because potential investors need a degree of certainty, we would recommend the entire process—from the Commission's placing of the application for radio station license on public notice through the review of market opportunities until final FCC decision, should take no more than 120 days. Once a license is granted, it should not be subject to withdrawal, even in the unlikely event of subsequent changes in foreign market conditions. If investors know they will receive a thumbs-up or thumbs-down decision within a specified time period, they are more likely to apply and to view the process as a fair one, genuinely intended to serve our goal of greater market openness.

HeinOnline -- 21 Bernard D. Reams, Jr. & William H. Manz, Federal Telecommunications Law: A Legislative History of the Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996) including the Communications Decency Act 47 1997

FOREIGN OFFICERS AND DIRECTORS

Finally, we believe the current Section 310(b) requirement that license holders must obtain waivers whenever they add foreign directors or officers serves no useful purpose in a multinational corporate world. This waiver requirement is a substantial paperwork burden to U.S. companies, including Motorola, with no commensurate public information need or interest being served. We would therefore recommend that it be eliminated.

These proposals are offered for your consideration. Again, Mr. Chairman, we thank you for your leadership and we look forward to working with you and the members of the subcommittee.

CONCLUSION

Motorola has been at the forefront of U.S. efforts to open foreign markets. We have been active both here and abroad in selling technologically superior telecommunications products, and we have worked closely with the U.S. and foreign governments to achieve changes in telecommunications policies and regulations which will promote trade and investment. Motorola is committed to the world marketplace, and supports the best possible investment regimes to achieve a free flow of telecommunications services and products.

Through its proposed revisions to Section 310, including limited relief from the foreign ownership restrictions for global satellite systems and foreign officers and directors, Motorola is seeking to create new opportunities that ultimately will lead to greater telecommunications investment and trade in the United States as well as abroad.

Thank you.

Mr. OXLEY. Thank you, Mr. Major. Our next witness is Mr. Gregory Schmidt, Senior Vice President of LIN Television in Providence, Rhode Island. Welcome, Mr. Schmidt.

STATEMENT OF GREGORY M. SCHMIDT

Mr. SCHMIDT. Thank you, Mr. Chairman. Good morning. LIN Television owns and operates commercial television stations in eight markets located throughout the United States and has stations affiliated with all of the major networks—and let me correct my written testimony and thereby become the first person this morning to use the F word—except the Fox network.

My opening remarks have been stated far more articulately by both the Chairman and Mr. Boucher this morning and let me just summarize even more succinctly where we are on this.

Our problem with section 310 is that it is both under-inclusive and over-inclusive. It is under-inclusive because it applies only to broadcasters. From the perspective of a broadcast company, fighting for its life against cable companies, video stores, direct broadcast satellites and wireless cable companies, and anticipating the eminent entry of the RBOCs, it is clear that this statute is firmly grounded in a vision of the American telecommunications and home video infrastructure, which simply no longer exists.

Not surprisingly, it has failed in its apparent purpose of keeping our channels of communications and programming services exclusively in the hands of American citizens. The substantial capital flows into the home video business, the Hollywood studios and the cable industry from foreign sources is manifest.

Section 310 is also over-inclusive because it is overkill. It embodies an across-the-board presumption that foreign ownership of each and every broadcast license in the country at any time is a threat to our national security or our national character. Broadcasting does occupy a special place in the American communica-

HeinOnline -- 21 Bernard D. Reams, Jr. & William H. Manz, Federal Telecommunications Law: A Legislative History of the Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996) including the Communications Decency Act 48 1997

tions firmament and any licensee, foreign or not, will have to satisfy the public interest obligations of a broadcast license.

It is possible to conceive of some highly unusual circumstances in which broadcast stations or other important instruments of mass communications could be misused or manipulated in ways which are contrary to the national security or other important national interests.

For this reason, it may be appropriate to adopt some sort of fail-safe mechanism, empowering the government to intervene in particular egregious cases where there is a demonstrable threat to the national security. But an across-the-board presumption of the current type is unwarranted. If it were ever warranted, it is clearly unwarranted today.

There is also the issue that has come up repeatedly today of exactly what interests the statute serves and the extent to which you can go beyond the national security and talk about preservation of national character. I think it has been observed today that that is a very slippery slope that gets us into serious First Amendment troubles and ends up eventually with something approaching a ministry of culture.

We are in an integrated world market, both in ideas and in capital, and we believe the question should be why Hollywood studios or global giants such as Time Warner should be able to benefit from those infusions of foreign ideas and capital while local broadcasters and networks cannot do the same.

Thank you very much.

[The prepared statement of Gregory M. Schmidt follows:]

STATEMENT OF GREGORY M. SCHMIDT, VICE PRESIDENT, NEW DEVELOPMENT AND GENERAL COUNSEL, LIN TELEVISION CORPORATION

Good morning, Mr. Chairman, and thank you for the opportunity to present the views of LIN Television Corporation on the important role that foreign capital can play in the development of our telecommunications infrastructure. LIN Television owns or operates commercial television stations in 8 markets located throughout the United States and has stations affiliated with all of the major networks.

The foreign ownership restriction in Section 310(b) of the Communications Act is like many other parts of the 1934 Communications Act—it may have served a worthwhile purpose when it was enacted; it may have even worked, more or less, for the past 60 years. But the vast changes in both the communications industry and in the global economy have overtaken it. The statute no longer makes sense: (1) it is premised on a view of our communications industry that no longer exists; (2) it does not serve the purpose its supporters claim—to keep foreign owners away from American communications industry; and, (3) it needlessly discriminates against American broadcasters by depriving them of foreign capital which is made available to competing video providers.

The anachronistic nature of Section 310 is apparent on its face: among the many competing home video providers in today's home video marketplace, it applies only to broadcasters. From the perspective of a broadcast company fighting for its life against cable companies, video stores, direct broadcast satellites and wireless cable companies, and anticipating the entry of the RBOC's, it is clear that the statute is firmly grounded in a vision of the American home video infrastructure which simply no longer exists.

Not surprisingly, given its narrow scope, the statute has failed in its apparent purpose of keeping our channels of communications and programming services exclusively in the hands of American citizens. Just in the last few years we have seen substantial foreign investments in the home video business (Phillips/Blockbuster), in the Hollywood studios (Matsushita/MCA; Sony/Columbia; Toshiba and Itochu/Time Warner Entertainment) and in the cable industry (Jones/Bell Canada).

Section 310(b) was enacted to "insure the American character" of broadcast licensees, a rather amorphous and ill-defined objective. It has been enforced more rigor-

HeinOnline -- 21 Bernard D. Reams, Jr. & William H. Manz, Federal Telecommunications Law: A Legislative History of the Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996) including the Communications Decency Act 49 1997

ously in the context of broadcasting than with respect to common carriers, presumably because broadcasters have more control over the content of their communications. That fact, of course, could well be changed forever by this Congress. Nor is it all clear that foreign investment has any effect on content. Despite the substantial foreign investments in that most American of content producers—Hollywood—can we honestly say that American culture has been noticeably affected, much less, in some vague fashion, subverted? The answer, we believe, is clearly no.

Section 310(b) also reflects the implicit assumption, undoubtedly true in 1934, that there would be relatively little foreign capital available for investment in American communications and that the competitive consequences of depriving broadcasting of access to foreign capital would be slight. The integrated nature of the world capital markets and the massiveness of the international capital flows now clearly belie that assumption. Why should the Hollywood studios or global giants such as Time Warner be able to expand their production and distribution capabilities through the use foreign capital while neither local broadcasters nor their networks can do the same?

Broadcasting does occupy a special place in the American communications firmament. And any licensee, foreign or not, will have to satisfy the public interest obligations which accompany a broadcast license. It is possible to conceive of highly unusual circumstances in which broadcast stations and other important instruments of mass communication could be misused or manipulated in ways which are contrary to national security or other important national interests. For this reason, it may be appropriate to maintain a "fail-safe" mechanism, empowering the government to intervene in particular, egregious instances where there is a demonstrable threat to the national security. But Section 310(b) is overkill: it embodies an across-the-board presumption that foreign ownership of each and every broadcast license in the country at any time is a threat to our national security or our national character. This presumption, if it were ever warranted, is clearly unwarranted today.

The bottom line is that the peculiar form of discrimination reflected in Section 310(b) has become very costly at the same time that the benefits have become more and more speculative. In our view, the time has come for all radio licenses to be open to foreign ownership.

We would also support imposition of a reciprocity requirement. While my company does not at this time have plans to invest in foreign markets, we are acutely aware of the difficulties many of our communications brethren have had in surmounting protectionist ownership limits and policies, as well as foreign content restrictions. We believe that we should use every tool available to us to clear away these impediments to the free flows of information and capital.

In conclusion, we believe the time has come to eliminate any broad proscription against foreign investment in broadcast licensees and to recognize that the broadcast industry is as worthy a recipient of all kinds of capital investment as are its many competitors and that it will need this capital to participate fully and compete vigorously in the new global communications market.

Mr. OXLEY. Thank you. Our final witness on this panel is Mr. John Vargo, President of Plexsys International Corporation in Herndon, Virginia. Welcome.

STATEMENT OF JOHN VARGO

Mr. VARGO. Thank you, Mr. Chairman. Plexsys, located in Virginia, is a manufacturer of cellular infrastructure equipment. We thank you for the opportunity to address the subcommittee today as it looks into section 310(b) of the Communications Act.

We are an example of a small innovative company that has been able to succeed with its product overseas in developing nations. We generate approximately 80 percent of our sales in the overseas market and our products and U.S. standards have been used to open up areas for amps communication, such as Moscow, Soviet Georgia, Turkmenistan and other locations of that nature.

The telecommunications market is not only a big player game, it is a game where innovation comes from every angle, including the small companies. It is clear that the U.S. model of diverse and open markets has led to more innovative and less expensive tele-

HeinOnline -- 21 Bernard D. Reams, Jr. & William H. Manz, Federal Telecommunications Law: A Legislative History of the Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996) including the Communications Decency Act 50 1997

communications for consumers. We would like to see this type of access continue as a policy. Substantial foreign ownership in our markets may serve to restrict our previously open market in the same way that many of these markets are restricted overseas.

At least two existing trends can constrain the open market, and these proceedings can address these issues. The global integration of super-carriers that vertically integrate the equipment and services function is one model that is not bad in itself. However, if the foreign entity can establish its equipment and services in other markets without the opportunity for innovative services and equipment to participate in a meaningful way in their market, of course, that constrains any trends and any opportunities for small competitors that are not super-carriers to participate.

We should pursue policies that promote not only the privatization in these foreign markets or encourage the privatization in these foreign markets, but open the competitive aspects of the markets and move away from the monopoly model. An alternative is to establish criteria to demonstrate that the markets are open in areas where it's not feasible to have full and open competition, such as a small market where many competitors would make it uneconomical.

The other area of concern is where markets are claimed to be open, but through use of standards, preferred relationships, and vertical integration, the entry barriers are too high for smaller innovative providers to overcome, where you need to provide financing, establish offices and develop relationships over long periods of time.

Not only do these practices reduce and eliminate opportunities for U.S. small companies and innovators, but they allow the incumbents in these foreign markets to gain uneconomic profits in their markets and use these profits to subsidize market penetration into developing areas.

The areas where this subsidization in the local markets would occur are exactly those areas such as western Europe and Japan that would be—would have companies that would be interested in investing here in the United States. So this would make it appropriate.

Accessing our large homogenous market is a big advantage for them, whereas innovators moving into their markets with different standards make it very difficult for us to adapt our markets for very small pieces of the pie. More open competition in these markets will reduce and eliminate the uneconomic subsidy and change the market to adopt standards and practices that are the most competitive and the most beneficial to the consumer, not the local manufacturers or operators.

As these operators become more global in nature, it will be very difficult to determine a country of origin and, therefore, really try to regulate the market from an operator standpoint here domestically, and we think that a majority of the focus of these bills should continue to look at opening these foreign markets. Therefore, we won't have to control operations or investments in the market here.

Thank you for the opportunity.

[The prepared statement of John Vargo follows:]

HeinOnline -- 21 Bernard D. Reams, Jr. & William H. Manz, Federal Telecommunications Law: A Legislative History of the Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996) including the Communications Decency Act 51 1997

STATEMENT OF JOHN VARGO, PRESIDENT, PLEXSYS INTERNATIONAL CORPORATION

My name is John Vargo, and I am the President of Plexsys International Corporation. We are small, entrepreneurial manufacturer of cellular network systems for rural and emerging telecommunications markets. We are based in Herndon, Virginia.

I am pleased to have this opportunity to share, with the Subcommittee my thoughts on Chairman Oxley's legislation to repeal Section 310 (b) of the Communications Act. I commend Chairman Oxley for his recognition that market access limitations harness and hold back the twin engines of investment and innovation that are driving the information revolution. I hope my comments will prove useful as the Congress considers how 310(b) can be changed to maximize investment and innovation both domestically and internationally.

The information revolution is a process which has the potential to render national boundaries obsolete, at least as constructs which limit the delivery and receipt of information age technologies. The time frame within which this transformation takes place is as much a function of trade policy as it is of technology and telecommunications policy. The types of trade policy adopted by our government and the governments of other nations will have a significant impact on how and when the benefits of the information age become available to consumers around the world.

Just as is the case with the national information infrastructure (NII), construction of the global information infrastructure (GII) will be driven by private investment. Accordingly, the development of the GII must be based on competition and open markets. Market access for telecommunications and other information infrastructure technology should be a cornerstone of U.S. Government's international telecommunications and trade policy.

About $1 trillion will be spent on building the GII over the next decade; of that amount, approximately $750 billion will be spent outside the United States. Given a "level playing field" that gives Plexsys an opportunity to compete in open markets, I am confident that my company will do quite well.

For a small, entrepreneurial company like Plexsys, the "level playing field" provided by competitive and open procurement policies is critical; open procurement practices won't guarantee that we will succeed, but they will give us the opportunity to succeed. We need that opportunity because we don't have the resources of some large U.S. companies that pour money into foreign markets. We must rely on markets where there is open competition that allows us the opportunity to compete fairly on the basis price, quality, delivery and service. Therefore, we are extremely interested in helping the Congress find ways to link 310(b), one of the few areas of leverage the U.S. has, to helping U.S. manufacturers like Plexsys gain access to new markets.

As the Congress seeks to determine whether existing telecommunications and trade policies are conducive to innovation, investment and competition, it should evaluate those policies with a two-pronged test that asks the following questions: Does the policy increase the ability of U.S. firms to attract capital? Does the policy increase the market opportunities available to U.S. firms?

The first component in the two-pronged test is relatively easy to address. Clearly, 310(b) in its current form limits the ability of certain U.S. firms, in particular, common carriers with radio licenses, to attract capital by limiting the ability of a certain class of investors, i.e. any alien, any corporation organized under the laws of any foreign government, or any corporation of which an officer or director is an alien. On this basis, 310(b) fails to meet the first prong of the two-pronged test.

The second component in the two-pronged test is more difficult to evaluate based on whether the position is from the view of a service provider or an equipment provider. Plexsys' experience in the manufacturing sector leads us to believe that one's view can also depend on whether or not one is selling in the domestic or international marketplace. Because Plexsys conducts a significant volume of its business outside the United States, our experiences—and in some cases battle scars—have given us a realist's view of the international marketplace. On that basis, our view is that full repeal of 310(b) would not maximize our ability to penetrate foreign markets.

Penetration of foreign equipment markets is currently difficult for two reasons. The first is that our trade negotiators lack sufficient leverage to compel other nation's to open their telecommunications markets. In fact, this lack of leverage contributed significantly to our inability to force our trading partners to include an agreement on government procurement of telecommunications equipment in the recently completed Uruguay Round of GATT. In contemplating changes to 310(b), the Congress should consider how it might be used by our trade negotiators to open foreign markets.

HeinOnline -- 21 Bernard D. Reams, Jr. & William H. Manz, Federal Telecommunications Law: A Legislative History of the Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996) including the Communications Decency Act 52 1997

At present, the United States has the most open and competitive telecommunications market in the world. Foreign manufacturers already compete in the U.S. equipment market, and competition in the U.S. marketplace might be further enhanced if foreign carriers were permitted to enter the domestic marketplace. However, in return, U.S. companies should be permitted to compete in the foreign companies' respective home markets on an equal and non-discriminatory basis. If 310(b) were amended to allow our trade negotiators to insist upon such "comparable market access," our trade negotiators would have a new and useful tool to assist them in their efforts to open foreign markets.

The second reason that many U.S. manufacturers have difficulty penetrating foreign markets is that in most other countries, communications services are provided by a government-owned or government-sanctioned monopoly, and these monopoly providers of service often procure their equipment from affiliated or preferred suppliers. Under such circumstances, investment, innovation and competition tend to be stifled. The opening of foreign service markets to U.S. service providers, which would be made easier if 310(b) were amended to provide for "comparable market access," would exert pressure on foreign service providers to invest and innovate. Pressure to upgrade their facilities, and to offer new and innovative services, would make it likely that they would find it necessary to procure their equipment on the open market.

Once competitive pressures compel foreign service providers to purchase the best equipment available at the lowest prices available, those service providers and their respective governments are likely to take steps to open their equipment markets. Once those markets have been opened, U.S. companies like Plexsys would have an equitable opportunity to compete for procurement awards. Given an equitable opportunity to compete, I am confident that Plexsys and other U.S. manufacturers would be able to significantly expand their equipment exports. Accordingly, we believe that liberalizing 310(b) to allow our trade negotiators to insist upon "comparable market access" is the best way to expand the market opportunities available to U.S. companies.

Philosophically, repeal of 310(b) makes a great deal of sense. We at Plexsys would like to believe that simply dismantling the last remaining barrier to our market would lead our trading partners to do likewise. We know differently, however, and therefore urge the Congress to recognize that marketplace realities make modification of 310(b) preferable to full repeal. Modification of 310(b) may not be as neat and clean as full repeal, but modification of the provision in a manner that provides for "comparable market access" will provide the best opportunity for U.S. companies to expand both their access to capital and the number of market opportunities available to U.S. companies.

Given the considerable emphasis that has been placed on telecommunications, both domestically and internationally, to increase the efficiency of businesses, stimulate economic activity, and increase the quality of life for a county's citizens, I think this hearing is an extremely important forum to open a part of the debate that needs careful consideration and is of significant importance. I appreciate the opportunity to share the views of Plexsys.

Mr. OXLEY. Thank you, Mr. Vargo. The Chair will ask a few questions. The reciprocity approach suggests that the foreign country go first. Kind of "I'll show you mine if you show me yours" approach. And, yet, we are indeed the acknowledged global leader in telecommunications.

I guess my question to all of you, and let's begin with Mr. Ginn, is how can our entrepreneurs, our large corporations like AT&T, rely on some form of reciprocity when, in fact, we are all over the globe and seek to be even more so. How would we answer that question, Mr. Ginn?

Mr. GINN. Reciprocity will not work in most of the countries of the world. Let me give you an example. Portugal. Portugal has a 25 percent limitation on our investment in that country.

Mr. OXLEY. Is that a coincidence?

Mr. GINN. Well, I can tell you what I was told by the minister. It was a result of our section 310(b). Now, Portugal does not have the capital, nor does it have the technical capability basically to demand a presence in the United States telecommunications indus-

HeinOnline -- 21 Bernard D. Reams, Jr. & William H. Manz, Federal Telecommunications Law: A Legislative History of the Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996) including the Communications Decency Act 53 1997

try, I think. So if you have a reciprocity argument, it has no effect on a country like Portugal and I would say 80 percent of the rest of the countries around the world. So that's the problem I see with reciprocity, as opposed to simply saying we've dropped our barriers, now we expect you to drop your barriers, and if you don't, you get classified as a rogue and we'll deal with that.

Mr. OXLEY. Let me ask Mr. Wondrasch essentially to respond to that.

Mr. WONDRASCH. It's clear that we have currently the most open and competitive telecommunications market in the world in the U.S. right now and elements of our telecommunications market, particularly in equipment, have been open for a long time and we've had foreign competitors and firms participating in that market.

So to a degree, we have taken unilateral action in the United States over the past decade in opening many, many elements of telecommunications. I think we've taken a fair worldwide lead in trying to open those markets. We've seen a little reciprocity in many of the particularly large markets around the world, and let me just use the example of the equipment in a country like China, which we've barely been into but 1 or 2 years.

Our sales would approach, next year, nearly $1 billion. In a combination of France and Germany and Japan, we have a fraction of the sales in those countries, although markets presumably have been open for a substantially long time and we've been there for almost a decade. So we indeed do believe that we have in the United States taken unilateral action.

We believe there is one major lever left and beginning to move, particularly the large firms in Europe in a direction of opening up their monopoly telecommunications companies, primarily government-owned, and we think that tool should not be taken away from any either multilateral or bilateral negotiations that will proceed over the course of the next 1 to 2 years.

Mr. OXLEY. Mr. Major.

Mr. MAJOR. Thank you. Our views are very similar. This represents an important, a potentially important bargaining chip. We've already come a long way towards providing an open market for competition and it would seem unnecessary and unfortunate to sacrifice it without getting something in return.

Mr. OXLEY. In the time I have left, let me ask both the gentleman from AT&T, Mr. Wondrasch, and Mr. Major a question. You have facilities—I understand Motorola is building a huge facility in China.

Mr. MAJOR. We have a facility and we're building additional facilities. That is correct.

Mr. OXLEY. And that is to help penetrate that market in China. The factor would build, what, handsets for cellular?

Mr. MAJOR. It will build handsets for cellular, pagers, as well as there are some plans to do semiconductor manufacture, as well as land mobil radio, yes.

Mr. OXLEY. And did you face any restrictions in your efforts to do that?

HeinOnline -- 21 Bernard D. Reams, Jr. & William H. Manz, Federal Telecommunications Law: A Legislative History of the Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996) including the Communications Decency Act 54 1997

Mr. MAJOR. It has been a long uphill fight. It's one that we feel on a day-to-day basis has been net fair, but certainly open and easy would not be a fair characterization.

Mr. OXLEY. Do you know of any open and easy foreign markets that we can think of right away, other than ours?

Mr. MAJOR. Open and easy doesn't come to mind real quick.

Mr. OXLEY. Mr. Wondrasch, you're big in China, as well.

Mr. WONDRASCH. Open and easy doesn't strike my fancy either in describing the issue. I think the issues in most countries are a combination of legal and then the informal not legal. Our experiences in China have—we have been able to deal with both the informal and the formal barriers that may be in the way and have been able to progress reasonably well with our partners and our relations with the government.

Mr. OXLEY. Thank you. I'm going to turn to my friend from Ohio. I recognize the gentleman from Ohio.

Mr. BROWN. Thank you, Mr. Chairman. First, I would ask unanimous consent to enter this letter from the Department for Professional Employees in the record.

Mr. OXLEY. Without objection.

[The information referred to follows:]

HeinOnline -- 21 Bernard D. Reams, Jr. & William H. Manz, Federal Telecommunications Law: A Legislative History of the Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996) including the Communications Decency Act 55 1997

Department for Professional Employees, AFL-CIO
815 16th Street, N.W., Washington, D.C. 20006

March 2, 1995

The Honorable Michael G. Oxley
Chairman, Subcommittee on Commerce,
Trade and Hazardous Materials
Committee on Commerce
2125 Rayburn House Office Building
U.S. House of Representatives
Washington, DC 20515

Dear Mr. Chairman:

I write concerning your bill, HR 514, to repeal restrictions on foreign ownership of licensed telecommunications facilities. We understand your Committee will be conducting hearings on this measure tomorrow.

The Department for Professional Employees, AFL-CIO, comprises 23 national and international trade unions representing over three million professional and technical workers. Within this group are several organizations representing people employed in every aspect of communications, including common carrier, broadcast and cable. We, therefore, have a very keen interest in your legislation and request the opportunity to submit a statement for the record of tomorrow's hearing at a future date.

In your press statement upon the introduction of HR 514, you stated that the elimination of the foreign ownership restrictions would "...create more jobs here at home by opening overseas markets..." Unless more is done in your proposal or through other means, we doubt that this will, indeed, be the end result.

The question of ownership raises only one issue among the many that must be addressed if we are to achieve a global information infrastructure that is beneficial to U.S. interests. Others concerning such matters as domestic content rules for programming and hardware, tariffs and levies on audio/visual material, the harmonization of intellectual property laws, etc., must be considered, along with the issue of ownership, if access to overseas markets is to be realized.

We do hope you can accommodate our request and we thank you in advance for your consideration.

Sincerely,

Jack Golodner
President

Telephone: (202) 638-0320

FAX: (202) 628-4379

HeinOnline -- 21 Bernard D. Reams, Jr. & William H. Manz, Federal Telecommunications Law: A Legislative History of the Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996) including the Communications Decency Act 56 1997

Mr. BROWN. Thank you. Second, Mr. Wondrasch, if we're able to achieve comparable market access for U.S. firms through reciprocity or some other way, describe briefly, if you would, what benefits there will be for U.S. consumers, for U.S. workers, for U.S. businesses.

Mr. WONDRASCH. Let me take them in order and start with U.S. consumers. As we look at some of the closed markets in Europe, France and Germany being two cases, and telecommunications being managed and run by monopolies in non-competitive environments and the requirement that we have to have a presence in another country to complete a call, the price that we pay, the cost to the U.S. consumer of a transaction that involves a call from here to one of those countries is substantially higher than an equivalent cost or charge that we'd have in the United States.

The net effect of that is, to a degree, a subsidy that the U.S. consumer pays to a non-competitive environment in many of the countries that indeed those people would call. So to consumers, there is clearly a disadvantage.

To businesses, we are absolutely convinced that open competitive markets are going to increase the amount of services. As the amount of services increase, the volume increases. The needs for new technology and infrastructure equipment increase. That creates jobs both for the service industry, as well as the manufacturing industry in the U.S. because we believe U.S. industry is the most competitive in the world and would be successful.

Mr. OXLEY. I thank the gentleman. We will stand in recess for 10 minutes.

[Brief recess.]

Mr. OXLEY. The subcommittee will come back to order. I will recognize the gentleman from Washington.

Mr. WHITE. Thank you, Mr. Chairman. I just have a few quick questions. Actually, I'd like to start with Mr. Major. I want to make sure I understand what I think was your testimony. You mentioned Motorola's Iridium system and the satellite system that I understand is not yet deployed, but is under development.

Did I understand you correctly to say that you don't think section 310(b), in the current state of the law, would apply to that system or that it wouldn't be necessary for you to develop that system?

Mr. MAJOR. As it turned out, section 310(b) in its current form did not apply to the Iridium system because the Iridium system was concluded not to be a common carrier. But that decision wasn't necessarily mandated and, going forward, that decision could change. The nature of global satellite systems is that they will have heavy international investment. You want them so that you have local investment presence. So when you go to other countries to apply for license, there is enthusiasm to grant licenses.

So it didn't apply. If it did apply, it would have been catastrophic in terms of what was necessary to put together that type of network. And the agreement on the part of the other satellite providers I think is significant and reflecting the same view.

Mr. WHITE. Let me ask you, just in more general terms, about what sort of benefits do you think your company would enjoy if we substantially relaxed or we got rid of section 310(b). Would you go

HeinOnline -- 21 Bernard D. Reams, Jr. & William H. Manz, Federal Telecommunications Law: A Legislative History of the Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996) including the Communications Decency Act 57 1997

out and sell a bunch of the stock to a foreign company or how would that affect you?

Mr. MAJOR. To Motorola, the name of the game is to make the global communication markets open and competitive. Open and competitive markets, we know as a matter of fact, grow faster, provide better features to customers, and provide more opportunity for business.

Since America and Motorola, to some extent, control the high ground of the technology for communication systems, the faster those markets can grow, the more open they are, the more competitive they are, the more, yes, we will benefit, but it will benefit as a—with an opportunity to compete against other companies, it will benefit. Net, that results in more jobs and that results in more business.

Mr. WHITE. In terms of how we get to that stage, and I think there seems to be quite a bit of unanimity that opening up those markets would help American firms and Americans in general. What do you think about Mr. Ginn's point that, frankly, you might as well just unilaterally do this, get it over with, and use that kind of as the moral high ground in dealing with other people? Do you have a reaction to that?

Mr. MAJOR. For a number of cases, and his example of Portugal I thought was fascinating, there is some validity that there will never be a license and, therefore, this additional tool may never work and there are some issues that come from that. In fact, I mentioned to Sam at the break that we're going to give that further thought.

But there are other cases and they are, indeed, the hard cases where we would—the net result would be a valuable negotiation tool had been lost and nothing would be gained in exchange for it. So I think there's a kernel of thought there that requires some careful consideration.

Mr. WHITE. Mr. Schmidt, let me ask you kind of the same question. I don't know whether—you obviously are in a different situation than Motorola, but what does the issue of foreign ownership mean to you and why is it significant in your business?

Mr. SCHMIDT. Well, we have no current plans to engage in any substantial overseas investment. I think for us and for broadcasters who are comparably situated, it is primarily an issue of getting capital inflows from other places. We are looking—broadcasting has not traditionally been a capital intensive business. That is going to change very soon with the conversion to digital television and we are looking at substantial capital needs in the future.

And I am charged by my company with locating that capital, among other things, and I would be—it will disturb me greatly to have a limited number of sources. We are also looking at all our competitors getting access to that capital in an increasingly competitive world. I think that's our primary interest. It's on the inflow, not the outflow.

Mr. WHITE. Does it make a difference to you whether we just raise the level up to 35 or 50 percent or do you think we should get rid of it all together?

Mr. SCHMIDT. I think the issue for us remains discrimination versus other providers more than anything else and I think what-

HeinOnline -- 21 Bernard D. Reams, Jr. & William H. Manz, Federal Telecommunications Law: A Legislative History of the Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996) including the Communications Decency Act 58 1997

ever relief you can give us would be welcome. But we would want to be on a playing field along with the others.

Mr. WHITE. And do you have a view on this issue of whether we should do this unilaterally or try to keep a stick in our pocket to beat our recalcitrant trading partners into submission?

Mr. SCHMIDT. Well, we have supported the notion of reciprocity. I recognize that in broadcasting, peculiarly, other countries have very strong views that are based, I believe, on their cultural—their desire to preserve the cultural values that are in some ways inconsistent with our First Amendment.

I think there is no doubt that a lot of those countries will continue to choose to starve their broadcast industries from receiving foreign capital, perhaps in exchange for subsidizing them with public capital. But I think the question remains why should we let that tail wag this dog and let their policies determine what we're doing and the fact that they don't give us reciprocity. It may not be a useful tool, but I'm not sure why we wouldn't still offer it.

Mr. OXLEY. The gentleman's time has expired. The gentleman from Virginia.

Mr. BOUCHER. Thank you very much, Mr. Chairman. Gentlemen, as you may have noted from some of the statements made, questions asked perhaps by some of the members this morning, there is not a unanimous view in the Congress that we should alter the section 310 restrictions. A majority view, I hope, but not a unanimous view.

And so as legislation is considered in this area, there will be some controversy and there will be some debate. In order to help those of us who think that changes are needed make our arguments, let me just ask you a couple of questions, more or less for the record.

Would all of you agree that the section 310 restrictions do, in fact, pose barriers for the making of American investment in other countries because those countries often justify their restrictions based on our own section 310 restrictions? Is it your experience that section 310, for that reason, does, in fact, impose a barrier or restrict your ability to invest overseas? Mr. Ginn?

Mr. GINN. There is just no question about it. That has been my day-to-day experience for the last 7 years.

Mr. BOUCHER. Would everyone agree—I'm not asking for elaboration, but is it fair to say everyone on the panel agrees with that conclusion? Let me also, then, ask the second question, which is in the event that the barriers are taken down, whether on a reciprocal basis or through outright repeal of section 310(b), is it fair to conclude that American companies making greater investments overseas would confer an advantage on the U.S. economy that perhaps would be greater than the reciprocal advantage conveyed on other economies and on other countries because the barriers have, in fact, come down in this Nation.

Would this Nation, because of our companies' expertise both in technology and managerial capability, be the net winners in the final equation? Who would like to answer? Mr. Ginn?

Mr. GINN. Yes. I think everybody wins. I think those of us who are interested in penetrating international markets will not only be more successful, but we will be able to achieve control positions,

HeinOnline -- 21 Bernard D. Reams, Jr. & William H. Manz, Federal Telecommunications Law: A Legislative History of the Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996) including the Communications Decency Act 59 1997

which means a great deal when you're trying to manage an enterprise.

In addition to that, I would suggest you look at people who have gone ahead of us in unilaterally removing these restrictions. Take the UK as an example. The UK unilaterally removed ownership restrictions and look at what happened in that market. Capital flows have gone up dramatically. American and other companies have gone in and are competing with the traditional telephone players.

The consumer is better off and substantially better off.

Mr. BOUCHER. What I'm really looking for is an answer to a fairly straightforward question. That is, in the net equation, because of our companies' superior managerial skills, technological skills, as compared to those of companies of other countries, do you believe that the net financial advantage and economic advantage would be conveyed on the United States in the event that these barriers are brought down?

Mr. GINN. Overwhelmingly.

Mr. BOUCHER. Thank you. That's what I was looking for.

Mr. WONDRASCH. If I could just comment on that.

Mr. BOUCHER. Yes, please.

Mr. WONDRASCH. I would agree with Mr. Ginn. As long as it's not just the ownership barriers, but some of the informal barriers that really prevent reasonably equivalent market access. So it's not just the ownership criteria, as well.

Mr. BOUCHER. A couple of additional questions. The testimony this morning of the Chairman of the Federal Communications Commission and the Chairman of the NTIA, the Assistant Secretary at NTIA, were consistent in most respects, but I think there was one important difference. That is that they have a slightly different view in terms of who should make the decision with regard to market equivalence and whether or not reciprocity, in fact, exists. And there is a openness in other markets that resembles openness in this market.

The FCC, perhaps not surprisingly, would like to make that decision itself. NTIA is suggesting that that decision should not be made by an independent agency, but ought to reside elsewhere in the Executive Branch.

Do any of you have any views on that decision or that difference in view and would you like to comment on what the measure of reciprocity ought to be? Should it be on a sector-by-sector basis, long distance, for example, versus long distance, wireless versus wireless, local exchange versus local exchange, or would you simply add up the sum of all of those various sectors and make a gross decision on whether or not there is market equivalence in terms of openness? Mr. Ginn?

Mr. GINN. Your first question is one that I don't necessarily feel qualified to deal with, and that is who inside the beltway ought to assume the jurisdiction here. I do know that the FCC has created an international bureau, where Chairman Hundt is aiming at opening up markets around the world through that office.

And I must say that I'm impressed with the leadership of that office and simply based on that, I'm sure that the experts on trade reside in other places in government. But my own experience is that the FCC is stepping up to that issue.

HeinOnline -- 21 Bernard D. Reams, Jr. & William H. Manz, Federal Telecommunications Law: A Legislative History of the Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996) including the Communications Decency Act 60 1997

Mr. BOUCHER. No one is going to fault any of you if you decline to answer that question. I just wondered if you wanted to take the opportunity to express a view one way or the other, and I don't see anyone jumping.

Mr. GINN. On your second question, my testimony is that we ought to unilaterally essentially remove the restriction. And so it gets you away from all the formulas that you asked about.

Mr. BOUCHER. That is not, I think, at this point, a majority view. It seems that the weight of the testimony is that we do this on a reciprocal basis. That being the case, would anyone else on the panel care to comment as to whether this ought to be done on a sector-specific basis or done in gross?

Mr. OXLEY. Make this the last question.

Mr. BOUCHER. That's fine.

Mr. WONDRASCH. Let me just comment quickly. We think it's important to look at the telecommunications industry issue on a holistic basis. We think it will be almost impossible to deal with it on a sector-by-sector basis. It would be too much judgment. There's linkages between the various elements of the sector, whether it be wireless or local or long distance.

So we'd strongly recommend it be looked at on a holistic basis as countries open up their markets and some consistency on how that would be approached, similar to what I think the FCC is moving in the direction of.

Mr. BOUCHER. All right. Any other comment?

[No response.]

Mr. BOUCHER. Thank you very much, Mr. Chairman.

Mr. OXLEY. Thank you. I'm interested in doing a recess so we can vote. What is the gentleman's——

Mr. MARKEY. That would be fine and I could come back. I won't keep you long.

Mr. OXLEY. The committee stands in recess for 10 minutes.

[Brief recess.]

Mr. WHITE [presiding]. The committee will come to order. I think we're ready to get started here and I don't think this is going to take too much longer. I am tempted to extend this hearing for some time since this is my first opportunity to sit in the chair, but I won't do that. Instead of that, I will—I think it's the time of the gentleman from Massachusetts to ask a few questions.

Mr. MARKEY. I thank the Chair very much. Mr. Major, let me begin with you, if I could. It took a considerable amount of effort on the part of our government, including many on this committee, on a bipartisan basis, writing letters to the Ministry of Telecommunications in Japan and others, to help Motorola get into their market. And you're a good example of what can happen when a company gets into a Japanese market, but you're also an exception.

I guess my question for you, sir, is what should we learn from the enormous difficulty that you have had trying to get through the non-legal barriers that are constructed in Japan in terms of how we should construct this legislation? You became kind of the poster child for me and for our government to get you through to show what can happen when one company gets through.

HeinOnline -- 21 Bernard D. Reams, Jr. & William H. Manz, Federal Telecommunications Law: A Legislative History of the Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996) including the Communications Decency Act 61 1997

What is the lesson that we should learn from your experience in terms of how we should construct our laws in this area?

Mr. MAJOR. Thank you is the only appropriate response to that. The lesson is that this is the very best thing for large and small companies in the United States and I think the TIA, the Telecommunications Industry Association data supports that many companies are benefitting as the global telecommunications market opens up.

The lesson is open and competitive is very good for U.S. industry, but it never, never seems to come for free. It only comes as a result of intense vigilance and a process of when you go on a country-by-country basis, it's one tool worked in this case, another tool worked in another case, and, in all cases, vigilance was very significant.

Mr. MARKEY. Retrospectively, sir, if—I remember going over in 1985 and, for better or worse, we have to be realistic about this. The Electronics Industry of America just opened an office in Japan, in Tokyo, in 1985. What if we had begun at the beginning of our relations with Japan economically in this global and competitive universe that we live in now? Let's say before they got the 25 percent share of our auto market, what if we started to negotiate with them before they were over here as they were paradoxed by the block on our market before we basically lifted any restrictions because we needed to ensure our companies could get in over there.

Don't you think that would have been a better approach 25 years ago, retrospectively?

Mr. MAJOR. I'm not sure. I think there's a lot of merit in that. I think there's a lot of reason to say that we should have been more vigilant 25 years ago. I don't think the end conclusion that deadlocks are what you're referring to, but the concept of a continuous process of aggressive change, driving to make the markets open and competitive is the key.

Mr. MARKEY. I guess what I'm saying to you is a company alone can't do it right now. You need the entire United States Government behind you in order to crack open one of these markets, with the Trade Representative and all other parties legislatively pushing as well to make one company somewhat successful in Japan.

It's the non-legal barriers, in other words. Our country basically has a different culture in terms of how they view barriers. If it's not legal, you're in. Other countries don't view it that way.

Mr. MAJOR. That's absolutely correct. And, in fact, the most recent issue in Japan was the—there were two systems in Tokyo. The second system was just woefully inadequate as compared to the first system. When the second system was accelerated and then there were two truly competing systems, the market expanded by 300 percent.

Mr. MARKEY. Mr. Ginn, if I could ask you. How do we deal with the question of reciprocity where there may be equivalency of market openness, but not of the size of the market? In other words, if we allow—if Norway is opened for telecommunications, long distance business, should they then be free to come in, completely into the American market as though there's an equivalency of economic opportunity?

Mr. GINN. I think the short answer is yes, they should.

HeinOnline -- 21 Bernard D. Reams, Jr. & William H. Manz, Federal Telecommunications Law: A Legislative History of the Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996) including the Communications Decency Act 62 1997

Mr. MARKEY. And what about if the local phone system of Kuwait is opened, do you think that should be sufficient to allow a Kuwaiti company then to come in and to buy up a regional telephone company?

Mr. GINN. Absent national security issues, I think that's absolutely right. They should be able to.

Mr. MARKEY. Even though we would not be allowed into Germany or Japan or England or any of the other countries that would be actually desirable for the United States economy to be able to expand into, you would say that was sufficient that the Kuwaitis could take our 270 million person marketplace and, in turn, we would be given an opportunity to go into theirs.

Mr. GINN. Well, I think—I like to think about this problem in two ways, Congressman Markey. First of all, many countries of the world have this barrier and to the extent that you have reciprocity, they have no capital and they have no capability to penetrate this market.

So there's no leverage there. So for 80 percent of the countries of the world, I think we're better off just saying drop section 310(b), take the moral high ground, as was stated earlier, and get into serious negotiations about we've taken the first move, now we expect you not to be a rogue and all this.

Mr. MARKEY. Okay. Now, do you——

Mr. GINN. May I finish, sir?

Mr. MARKEY. Please.

Mr. GINN. Now, there are probably eight or ten or twelve countries around the world where this is a serious issue and I think they have to be looked at differently and we have to be tough with those countries. If they don't open up, then I think we have to go back at them with the kinds of tactics that you know work.

Mr. MARKEY. So in other words, should the Germans be allowed into our marketplace, or the British or the Japanese, if we haven't, through our FCC and Trade Representative, established that they are, in fact, open in an equivalent way for our companies to——

Mr. GINN. Well, Congressman Markey, we own 33 percent of an extremely large cellular company in Germany today. We have a million customers in Germany. So at least on the wallet side that market is relatively open to us.

Mr. MARKEY. But could you purchase the local telephone system in Germany?

Mr. GINN. Okay. Now, what do we do in a case like that, in terms of giving them an equivalency of opportunity in our country? Should a Germany company, under that circumstance, have to—should they be able to buy Nynex?

Mr. GINN. Well, I think in that——

Mr. MARKEY. If we can't buy their local telephone system, how would you handle that?

Mr. GINN. Well, I think that that's where I would rely on the International Bureau at the FCC and the Trade Representative to pursue the German policymakers to essentially agree on how, when that market will open up in all aspects.

Mr. MARKEY. So you would leave the residual authority to the FCC to exclude a German purchase of an American regional company if they determine that the underlying local network in Ger-

HeinOnline -- 21 Bernard D. Reams, Jr. & William H. Manz, Federal Telecommunications Law: A Legislative History of the Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996) including the Communications Decency Act 63 1997

many that they allowed you to use for cellular purposes was still under monopolistic German control and that no American company could, in fact, get control of that local phone network.

Mr. GINN. Yes, sir. I'm saying——

Mr. MARKEY. You would leave it with the FCC.

Mr. GINN. Well, I would leave it with the FCC because I work with the FCC and I know they have the capability to deal with it, to basically negotiate with Germany. And if they are unwilling to move in an expeditious manner, then I would classify them as what I've called before a rogue, and I'd deal with them on that basis.

Mr. MARKEY. So it is important for me to note, though, that we do have to have some capacity at the FCC to make that determination. How should we deal, if we adopt a policy of reciprocity, with the issues raised in the BT/MCI deal and the Sprint French and German deal? What conditions, based on reciprocal ability to enter markets, would we impose in the case of the UK with respect to France and Germany where markets are more closed. How do we handle that?

Mr. GINN. You're addressing that to me?

Mr. MARKEY. You and anyone else, yes.

Mr. GINN. Well, I would say that as I look at the enormous capital requirements facing this industry and this country, it seems to me investors from other parts of the world are going to be maybe not essential, but clearly helpful in building the information superhighway in this country.

So we have supported the Bundesposete-French Telecomm involvement and the Sprint consortium.

Mr. MARKEY. So in other words, the complexity of it is that individual countries might decide to cut individual deals with individual American companies that advantage the agenda of that country's industry, but still exclude all other American companies. It leads to a set of contradictions that are difficult to walk through because the conditions are always so unique. Should we leave the residual authority there to the FCC to be able to ensure that the public interests of all the remaining American companies is also going to be, in fact, advanced with what the German and French and Japanese decision to advance their country's agenda by cutting individual deals with any American company?

Mr. GINN. I would agree with the residual authority, but I would also support the notion that we start by opening our market.

Mr. MARKEY. Opening our market, but leaving it to the FCC ultimately to make a determination as to whether it's in the public interest. Is that correct?

Mr. GINN. Well, let me be clear. I would unilaterally open our markets, but I would give the FCC or whomever else you decide the authority to enter into multilateral and bilateral negotiations to open those market. And if they didn't open those markets, I would give them a residual authority to apply sanctions.

Mr. MARKEY. Now, I'd just like each one of you to just basically give me a yes or no.

Mr. OXLEY. Make it the last question, if you would.

Mr. MARKEY. Okay, yes. Please, if I could get an answer to it, that would be my last question. Mr. Major, heavy negotiation is es-

HeinOnline -- 21 Bernard D. Reams, Jr. & William H. Manz, Federal Telecommunications Law: A Legislative History of the Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996) including the Communications Decency Act 64 1997

sentially bilateral, is it not? Not multilateral. It's country-by-country.

Mr. MAJOR. Country-by-country. Yes.

Mr. MARKEY. Finding a global solution to this is not likely.

Mr. MAJOR. Can I offer just a little additional thought, very quickly?

Mr. MARKEY. Please.

Mr. MAJOR. Fundamentally, we see this as something that would be segmented, probably more by analogous opportunities, wireless, wireline, as opposed to broad total telecomm country decisions. And, yes, shepherded by FCC, in our view, working in conjunction with the USTR. Tough problem, no quick answers, but vigilant action to create change.

Mr. MARKEY. So you're saying they open wireless, we open wireless, but we don't let wireline get into the picture unless they open up an equivalent. Okay. Yes, sir, Mr. Schmidt.

Mr. SCHMIDT. We don't have a specific view on it. I am troubled by the notion of complete sector-by-sector analysis, for obvious reasons, since I think there would be the greatest resistance in the broadcast area.

Mr. MARKEY. Right.

Mr. SCHMIDT. And we are desirous of eliminating the discrimination that exists today and this just may be an illusory relief for us if it's conducted in that way.

Mr. MARKEY. So at the end of the day, in other words, they'd get into the stuff they wanted to get into and they'd hold onto the stuff that we'd want to get into because that sector they would never open up.

Mr. SCHMIDT. There would still be some benefit to us in the input from foreign capital, but it wouldn't be an effective for opening——

Mr. MARKEY. Limited opportunities in areas where we have great potential, where we are the world leader. Yes, Mr. Vargo.

Mr. VARGO. Thank you. In these markets we're talking about, we would just like to have section 310(b) addressed as much as possible, opening these markets for competitive access for everyone. As an alternative to that, if these mega-carriers are allowed to come into the United States and purchase telephone companies, we want to make sure that they don't bring their closed markets, whether it be traditional or otherwise of supplier relationships with them, that, in fact, our market doesn't become more closed.

Mr. MARKEY. Thank you. Mr. Wondrasch.

Mr. WONDRASCH. Just a quick comment on the sector-by-sector analysis. We don't believe that on a stand-alone basis, looking at a sector-by-sector analysis—indeed, it gets us to the end objective we have and that's reciprocity and open markets, open global markets. These individual sectors are too closely linked and we think an approach, again, at least as proposed by the FCC to look a little more holistically at the set of different elements in making an overall judgment about the nature of that market is a much more appropriate way to approach this.

Mr. MARKEY. Thank you, sir. Again——

Mr. OXLEY. The gentleman's time has expired.

HeinOnline -- 21 Bernard D. Reams, Jr. & William H. Manz, Federal Telecommunications Law: A Legislative History of the Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996) including the Communications Decency Act 65 1997

Mr. MARKEY. Just for 30 seconds, if I may, please. Unanimous consent to extend for 30 additional seconds.

Mr. OXLEY. Without objection.

Mr. MARKEY. My view basically is the same as Ronald Reagan was in dealing with countries in negotiation, which is trust, but verify. Yes, if we act in a unilateral way, it might set a good example, but we must remember who we're dealing with and that in many instances historically has proven to be an erroneous assumption.

So learning those lessons of history, I think, are going to be very important to us as to how we construct the amount of discretion which we give to the Trade Representative, which we give to the FCC in terms of ensuring that there is an opening in a meaningful way of all of the telecommunications marketplaces across the globe. My hope would be that that would be the end result of any legislation which we would pass and I want to work with you, Mr. Chairman, towards that goal.

Mr. OXLEY. Thank you. Let the record reflect the gentleman from Massachusetts did quote Ronald Reagan. I just have a couple of questions before we are completed here. Mr. Vargo, in your testimony, you point out that the small entrepreneurial companies such as yours count on open procurement policies in foreign countries.

Do you have any anecdotal information or experiences that you might be able to share with the committee as to what your experience has been?

Mr. VARGO. For a smaller company, many of these markets honestly haven't been worthwhile for us to pursue because it's been well known for a long time that they're closed out to the big players with resources. Certainly, unless you have a substantially innovative product, it's closed to you.

Just as an anecdote, what we're worried about, and two things—everybody talks about opening up these foreign markets is what we want. The alternative to that is—and people are talking about France Telecomm today. They've developed a product there through subsidies and other fashions called Minitel. What we wouldn't want to see is France Telecomm buy some carriers here in the United States and, in essence, export products of theirs that have already been developed through subsidy and then are used on a global scale because they've continued to benefit from this subsidy in their local market.

So we want to make sure that our market doesn't become more closed when they come in by pulling in the preferred relationships. And, more importantly, if their markets are open to this, that's the best way to defend against that.

Mr. OXLEY. Thank you. Mr. Schmidt, let me ask you: do the national security interest or threat of propaganda concerns that have been expressed earlier justify different treatment for broadcasters with respect to reviewing foreign investment?

Mr. SCHMIDT. As I said, Mr. Chairman, I think there are conceivable sets of circumstances in which a case-by-case approach might be warranted, and I think that kind of remedy was alluded to even by Chairman Hundt. What troubles me is there would be a lower threshold of concern today over who had the license for WISH in

HeinOnline -- 21 Bernard D. Reams, Jr. & William H. Manz, Federal Telecommunications Law: A Legislative History of the Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996) including the Communications Decency Act 66 1997

Indianapolis than over who has the phone company serving the Pentagon or the Federal Government or anywhere else.

I don't think that's warranted and I think the—we've seen lots of evidence of foreign investment in culturally-specific industries, which, A, has had very little success financially, but, B, hasn't had any great impact on our culture. And I don't think there's any great reason to believe that beyond that very narrow national security interest, that there is anything that warrants the kind of across-the-board overkill that section 310(b) is today.

Mr. OXLEY. Thank you. And, Mr. Ginn, last question. In your written testimony, you note that there is a once in a lifetime opportunity to shape the world's wireless industry in a manner that supports our national interest, greater liberalization abroad.

How long is that opportunity going to last? How long is that window going to be open and what are the implications for missing that opportunity?

Mr. GINN. Mr. Chairman, I think they are enormous. At least let me talk about what I know about, and that's wireless. It started about 7 or 8 years ago when countries themselves, absent section 310(b), began to change their view from a model of government ownership and regulation to a model of competition. And my company saw that happening and decided that we would like to be the competitor to the local telephone company around the world. So we began to work that strategy.

And what I have seen is it started in the UK, in Japan, and moved to Germany, but what I will predict is this trend, this competitive model will move throughout the world. My view is that that will occur progressively over the next decade. When all these markets are converted to a competitive model, the game is over. Right now, American companies are dominating the wins. I can't think of a single country where an American firm has not been involved in the obtaining of a license to compete with the traditional carriers on the wireless side.

So it is extremely important that we face this section 310(b) issue which will give wireless companies a great opportunity to participate in this revolution that's going on worldwide.

Mr. OXLEY. Thank you. For the record, the Chair would ask unanimous consent to keep the record open for 30 days for written testimony of committee members and the public. Without objection, it is so ordered.

Gentlemen, we thank you for a most informative panel and this meeting is adjourned.

[Whereupon, at 12:41 p.m., the subcommittee was recessed, to reconvene at the call of the Chair.]

[Additional material submitted for the record follows.]

STATEMENT OF CAPITAL CITIES/ABC, INC., CBS INC., NATIONAL BROADCASTING CORPORATION, INC., AND TURNER BROADCASTING SYSTEM, INC.

Capital Cities/ABC, Inc., CBS Inc., National Broadcasting Company, Inc. and Turner Broadcasting System, Inc. (collectively, "the Networks") appreciate the opportunity to submit this written statement and to suggest a narrow legislative change to Section 310 of the Communications Act of 1934 that will maintain and encourage the further development of an international "open skies" policy for sat-

HeinOnline -- 21 Bernard D. Reams, Jr. & William H. Manz, Federal Telecommunications Law: A Legislative History of the Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996) including the Communications Decency Act 67 1997

ellite news gathering ("SNG") operations.[1] In light of the operational flexibility and economies that use of SNG facilities makes available for broadcasters, a policy which removes barriers to the use of SNG equipment will facilitate and encourage the free flow of news and other information among the countries of the world.

The Networks and other U.S. broadcasters use international satellite services and facilities extensively to bring fast-breaking news, sporting events and other programming from overseas to the American public. As satellite technology has continued to advance, the Networks increasingly wish to utilize their own SNG terminals. SNG terminals are easy-to-use earth stations that can be transported to a program origination site by car, truck and/or commercial aircraft ("flyaways"). SNG terminals primarily are used on a short-term basis to provide video transmissions from the program origination site, but they also are used to provide voice and data communications in conjunction with broadcast transmissions. Transportable SNG facilities are well suited to promote the coverage of news events that require a rapid and mobile response as well as sporting, cultural, or other entertainment events that occur in locations either where fixed earth station facilities are not readily available or where it is economically undesirable to use such facilities.

On several occasions, however, U.S. broadcasters have been denied authority to use their own SNG equipment in a foreign country. Not infrequently, a foreign broadcaster cites section 310(a) of the Communications Act as a reason why it will not grant a license to or otherwise accommodate in a reasonable manner U.S. broadcasters that wish to operate their own SNG equipment in the foreign country. In contrast to the foreign ownership restrictions of Section 310(b) of the Act—which apply only to common carrier, broadcast, and aeronautical licenses—Section 310(a) prohibits the grant of station licenses to "any foreign government or the representative thereof." Many foreign broadcasters either are part of their governments or, still have some form of "official" relationship with their government to one degree or another, even if they are not part of the government *per se*. While there is little precedent interpreting Section 310(a), many foreign broadcasters are under the impression that they will be denied an SNG license to operate their equipment in this country on the basis that they will be considered "representatives" of a foreign government. For example, in a September 8, 1994 letter from Jorg Wenzel of the European Commission to Larry Loeb, Capital Cities/ABC, Inc., Mr. Wenzel points out that: "In relation to satellite newsgathering, we do not share your view that Section 310 of the U.S. Communications Act allows European Community operators to enter the U.S. market."

Because of this widespread impression that U.S. law imposes an impediment to the operation of SNG's in this country, even on a short-term basis, by foreign broadcasters, foreign authorities have reacted by taking actions, or are considering taking actions, that effectively bar or make it more difficult for U.S. broadcasters to operate their own SNG terminals within the foreign authorities' jurisdictions. A good example of the manifestation of this reaction to the Section 310(a) problem is the proposal of the European Commission ["EC"] to adopt a new regulatory regime for mutual recognition of satellite licenses. The EC proposal would establish a Community License whereby the holder of such license would be authorized to operate its satellite equipment throughout the Community without having to obtain further individual licenses from the various Community countries. This streamlined licensing procedure obviously would be helpful to those broadcasters who are eligible to obtain a Community License, but competitively harmful to U.S. broadcasters who are not eligible to obtain such a license.

Pursuant to the EC proposal, however, a Community License shall not be granted unless the applicant's principal place of business and its registered office, if any, are located in a Member State and the operator is not owned or controlled by non-EC third countries and/or nationals of such third countries. Thus, the U.S. networks would not be eligible for a Community License. Admittedly, the EC foreign ownership proposal would operate in a more restrictive way than Section 310 operates in that a foreign private corporation which is not a "representative" of a foreign government may obtain a license to operate its SNG equipment in the U.S., while a non-government affiliated U.S. broadcast network corporation would not be eligible for a Community License under the EC proposal. Nevertheless, the nationality restriction contained in the proposed EC directive is attributable, at least in part, to the EC view that Section 310(a) prohibits the grant of a license to a foreign broadcaster that wishes to operate an SNG terminal in the United States, even on a short-term basis, and that the EC restriction is necessary to counter Section 310(a).

---

[1] This statement does not set forth the position of any of these parties with respect to other issues with which Section 310 may be involved.

HeinOnline -- 21 Bernard D. Reams, Jr. & William H. Manz, Federal Telecommunications Law: A Legislative History of the Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996) including the Communications Decency Act 68 1997

In addition, U.S. broadcasters in the past have encountered difficulties securing permission to operate their own SNG equipment in other foreign countries. For example, U.S. broadcasters were denied permission to use their SNG terminals at the 1992 Rio environmental summit, because the Brazilian telecommunications authorities claimed Section 310 would not allow Brazilian broadcasters to receive licenses to operate their SNG facilities in the United States. U.S. broadcasters also have encountered difficulties in obtaining permission to use their SNG equipment for news coverage at the Tokyo G-7 economic summit in June 1993 and the Naples G-7 economic summit in June 1994. Additionally, CBS filed an application with the French government approximately three years ago requesting permission for a license to use a CBS-owned SNG terminal in France. While meeting technical requirements in all respects, this application still is pending without a grant. While there is no documentation demonstrating that Section 310 was entirely responsible for the difficulties in obtaining licenses in these and other instances, it appears that the issue was at least contributory. And, even where Section 310(a) has not resulted in a foreign administration denying permission outright to U.S. broadcasters to operate their SNG equipment abroad, it has been the experience of the Networks that the existence of the provision has served to provide foreign administrations with a rationale for delaying processing of requests for operating authority, restricting operating flexibility, increasing licensing fees, or otherwise making it more difficult to use SNG facilities.

Broadcasters worldwide are concerned that restrictions on using SNG facilities, or the imposition of conditions on use that have the effect of increasing costs or reducing operational flexibility, will impact adversely on their ability to carry out their information dissemination missions. In a letter dated July 8, 1994, to the EC, Werner Rumphorst of the European Broadcasting Union expressed concern about the EC directive and stated that "we believe that the free operation of satellite newsgathering equipment is of such fundamental value that it goes beyond free trade and must not be compromised by other telecommunications considerations." Indeed, prohibitions against foreign broadcasters utilizing SNG facilities in a given country serve only to impede the free flow of information and the exchange of news and other programming across national borders.

Therefore, the Networks support the enactment of a minor amendment to Section 310 addressing this specific problem. The proposed amendment would clarify that the operation of SNG facilities is excluded from the prohibition of Section 310(a). By expressly conferring on the FCC authority to prescribe conditions under which foreign broadcasters may be licensed to operate their SNG facilities in the United States, Congress will increase the likelihood that U.S. broadcasters will be able to obtain authority to operate their SNG facilities in other countries. Consistent with the past leadership the United States has shown in taking the initiative in the satellite area, this action would promote the further development of a global "open skies" policy for SNG operations.

In the past, the FCC has recommended to Congress that the following language be added to Section 310 to provide the FCC with express authority to license foreign broadcasters' SNG terminals:

> Notwithstanding the provisions of section 310(a), the Commission may issue authorizations, under such conditions and terms as it may prescribe, to permit the operation of satellite newsgathering equipment within the United States.

The Networks support the adoption of this language or similar language that would clarify that foreign broadcasters may be licensed to operate their own transportable earth station terminals for the transmission of video and audio signals as well as voice and data communications related to broadcasting operations. The Networks are gratified that FCC Chairman Hundt supported such a modification to Section 310 in his March 3 testimony, recognizing that "[t]he continued availability of overseas satellite newsgathering capability by U.S. broadcasters is fraught with uncertainty because of this provision."

In conclusion, Capital Cities/ABC, CBS, NBC and TBS commend this Committee for examining whether changes to Section 310 of the Communications Act would promote U.S. interests in changing international telecommunications markets. The Networks recognize that the issue of facilitating SNG operations across national borders is a narrow aspect of the Committee's consideration of revisions to Section 310. Even though the issue is narrow, because of its importance to facilitating the free flow of news and other information among nations, the Networks urge the Committee to adopt an amendment consistent with the language set forth above.

HeinOnline -- 21 Bernard D. Reams, Jr. & William H. Manz, Federal Telecommunications Law: A Legislative History of the Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996) including the Communications Decency Act 69 1997

STATEMENT OF DAVID HONIG, EXECUTIVE DIRECTOR, MINORITY MEDIA AND TELECOMMUNICATIONS COUNCIL

Mr. Chairman and Distinguished Members of the Subcommittee, thank you for graciously providing me with this opportunity to present this written statement of the Minority Media and Telecommunications Council ("MMTC") on legislation to repeal Section 310(b) of the Communications Act.[1]

Section 310(b)'s restriction on alien ownership of communications facilities dates from 1912. It has served us well and it should be retained.

MMTC opposes the outright repeal of section 310(b) because it would sound a death knell for minority media ownership. Furthermore, unlimited foreign capital invested in American broadcasting would eviscerate the public interest standard which has undergirded broadcast regulation for most of this century.

I. Section 310(b) Breathes Life Into The Public Interest Standard In The Communications Act

Repeal of Section 310(b) would literally permit the airwaves to be sold off to the highest bidder. That would be a tragedy. It would destroy years of careful and thoughtful work in constructing the world's greatest system of broadcasting.

Innovation and creativity are the bedrock of broadcasting. As in most industries, these attributes come from the bottom up, not from the top down.

Therefore, any legislation which would result in dramatically greater consolidation is troublesome. Unlimited alien ownership in American media would make broadcast owners even more distant from viewers and listeners than many of them are now. Today, if a radio listener in Peoria thinks a local station's programming is harmful to her children, she can call the owner, whether the owner is in Peoria or in New York City. What if the owner is in Brussels or Berlin? In Teheran or Tripoli? In Osaka or Vladivostok?

In our system of broadcasting, the licensee is ultimately responsible for everything that is broadcast. The "buck stops" with the station owner. Because of that direct accountability, broadcasting has been freed even of indirect program content regulation, such as the Fairness Doctrine, ascertainment and program percentages.

The quality of our broadcast service is guaranteed by the FCC's very high standards for licensee character qualifications. Because there are far fewer radio and television licenses than there are people who want them, we have laws and regulations to insure that licensees are not felons, antitrust violators, race or sex discriminators, or drug dealers. We know that an American owned licensee has complied with American laws. But we have no realistic way of knowing whether alien broadcast owners have complied with the laws of their home countries—laws which may be much more relaxed and easier to circumvent than American laws.

We hope the subcommittee will keep these considerations in mind before performing radical surgery on an excellent statute which has meant so much to the American way of life and to the American way of broadcasting.

II. Section 310(b) Allows Minorities To Compete In The Marketplace To Acquire Communications Facilities

The most fundamental reason Congress should not repeal Section 310(b) is that we have not yet completed the task of insuring that all Americans have a chance to achieve ownership in America's most important industry. Today, according to the National Telecommunications and Information Administration, minorities own only 2.7 percent of all broadcast stations—mostly small facilities. MMTC has estimated that these stations represent no more than one half of one percent of broadcast industry asset value.

In other forums, minorities face major impediments to their continued growth in media ownership—the possible repeal of the multiple ownership rules, the possible rollback even of moderate, efforts-based affirmative action, and the possible repeal of the relatively benign tax certificate policy embodied in Section 1071 of the Internal Revenue Code. None of these events can be viewed in isolation from the others.

[1] The Minority Media and Telecommunications Council ("MMTC") is a nonprofit association of attorneys, scholars, engineers and economists. Since 1986, it has provided research and legal support to the national civil rights organizations on matters of communications policy. In my private capacity, I am one of the attorneys representing various units of the NAACP before the FCC in challenges to whether Fox Television Stations, Inc. violated Section 310(b) of the Communications Act. MMTC emphasizes that it takes no position on the merits of that litigation or any other adjudicatory case. The views expressed in this testimony are the carefully considered views of the Council institutionally. This testimony does not necessarily reflect the views of any particular member of the Council or any member of its Board.

HeinOnline -- 21 Bernard D. Reams, Jr. & William H. Manz, Federal Telecommunications Law: A Legislative History of the Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996) including the Communications Decency Act 70 1997

I trust that we as a nation have not given up on our commitment to diversify the public airwaves. And that, above all other reasons, is why the Minority Media and Telecommunications Council opposes outright repeal of Section 310(b).

The primary obstacle facing minorities seeking to break into media ownership is access to capital. Even by taking advantage of the tax certificate policy, minorities frequently cannot win a bidding war with nonminority competitors engorged with the ample resources of those sources of *domestic* capital which are seldom available to minorities.

Roughly 80 percent of the world's media and telecommunications investment capital is *not* American capital.[2] Suppose Congress allows virtually unlimited amounts of that 80 percent of the world's media and telecommunications investment capital to enter this country at will. If minorities and small broadcasters are forced to bid against alien as well as domestic capital, they will be swamped.

Virtually no foreign equity or even foreign debt finds its way into the hands of minorities. There are two principal reasons why.

First, alien media investment capital arrives in this country only in units too large for most minority deals. Unlike domestic investors, an alien investor typically lacks the knowledge and ability to monitor her investment closely. The administrative cost of managing an overseas investment is not materially greater for a $100 million investment than it is for a $1,000,000 investment. Consequently, alien funds are generally unavailable to small (and thus most minority) businesses.

Second, alien fund managers and bankers seldom have experienced the culture and traditions—much less the legal regime—of civil rights. The Community Reinvestment Act does not apply overseas, nor do precepts against redlining and discrimination in lending. Even alien investors with the best of intentions have little to gain from the long term success of minority entrepreneurship in the United States. On the other hand, all Americans benefit when the minority sector of our economy is strong. Domestic investors, aware of these benefits, frequently act accordingly.

Congress must avoid even the appearance of weakening its defense of minorities' ability to obtain meaningful access to capital and to use that capital competitively. It should remember that the broadcast deregulatory initiatives the FCC launched over the past two decades—with Congressional approval—were defended by pointing to the existence of the minority ownership policies as a structural, content neutral and profoundly necessary means of promoting diversity.[3] The D.C. Circuit has ex-

---

[2] Aliens wishing to financially benefit from American media can do so now through debt rather than equity. Debt poses no regulatory problem for the FCC. Loans are freely sold worldwide without the knowledge of the FCC. The FCC tracks equity; it does not track debt. But equity, not debt, is where influence lies. Even noncontrolling equity holders always have greater exposure and decision making rights than creditors.

[3] Beginning almost immediately after it adopted the minority ownership policies, the FCC began systematically deregulating in every other substantive area except EEO: postcard renewals, ascertainment and program content percentage standards, the Fairness Doctrine, five year TV and seven year radio renewals, the duopoly rule, the Top 50 Policy, the 7-7-7 and the 12-12-12 rule, the Mickey Leland (14-14-14) rule, most distress sales (for want of stations placed in hearing), most comparative hearings for new facilities, and the AM clear channel eligibility criteria favoring minority ownership. For example, in *Deregulation of Radio (NPRM),* 73 FCC2d 457, 482 (1979), the FCC reassured the public that "[e]fforts to promote minority ownership and EEO are underway and promise to bring about a more demographically representative radio industry." In adopting its ultimate rules in *Deregulation of Radio,* 84 FCC2d 968, 1036, *recon. granted in part,* 87 FCC2d 797 (1981) *aff'd in pertinent part sub nom, Office of Communication of the United Church of Christ* v. *FCC,* 707 F.2d 1413 (D.C. Cir. 1983), the FCC held that "it may well be that structural regulations such as minority ownership programs and EEO rules that specifically address the needs of these groups is preferable to conduct regulations that are inflexible and often unresponsive to the real wants and needs of the public." It explicitly concluded that the minority ownership policies and EEO rules, rather than direct regulation of broadcast content, were the preferable means to achieve diversification. *Id.* at 977.

See also Amendment of section 73.636(a) of the Commission's Rules (Multiple Ownership of Television Stations), 75 FCC2d 587, 599 (1979) (separate statement of Chairman Ferris), *aff'd sub nom. NAACP* v. *FCC,* 682 F.2d 993 (D.C. Cir. 1982); *Implementation of BC Docket 80-90 to Increase the Availability of FM Broadcast Assignments, Second Report and Order,* 101 FCC2d 638, *recon. denied,* 59 RR2d 1221 (1985), *aff'd sub nom. NBMC* v. *FCC,* 822 F.2d 277 (2d Cir. 1987); *Deletion of AM Acceptance Criteria in section 73.37(e) of the Commission's Rules,* 102 FCC2d 548, 558 (1985), *recon. denied,* 4 FCC Rcd 5218 (1989); *Nighttime Operations on Canadian, Mexican and Bahamian Clear Channels,* 3 FCC Rcd 3597 (1988), *recon, denied,* 4 FCC Rcd 4711 (1989); *cf. Revision of Radio Rules and Policies (Report and Order) (MM Docket 91-140),* 7 FCC Rcd 2755, 2769-2770 sections 26-29 (1992) (relying on minority ownership policies to further diversification goals, even as the FCC *deleted* one of those policies, the Mickey Leland Rule.)

HeinOnline -- 21 Bernard D. Reams, Jr. & William H. Manz, Federal Telecommunications Law: A Legislative History of the Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996) including the Communications Decency Act 71 1997

pressly approved this safety-net approach, endorsing the FCC's reliance on minority ownership as a preferred means of promoting diversification.[4]

A safe environment for minority ownership is socially compelled if we are not to remain forever two societies, one Black and one White. *See Report of the National Advisory Commission on Civil Disorders* (1968) (the *"Kerner Report"*), Chapter 15. The minority ownership policy is the thin straw upon which the FCC relies to insure that listeners and viewers receive a diverse pallette of information.

The bottom line is that unlimited entry of aliens into American media ownership would virtually eviscerate the effectiveness of the minority ownership policies. It would be especially cruel to American minorities to deny them a meaningful opportunity to buy broadcast stations as a consequence of legislation welcoming well-heeled Britons, Russians, and Germans to buy access to the American peoples' airwaves. Congress should not force American minorities to the back of the line and allow wealthy foreigners—simply because they have money—to jump to the front of the line. *As Americans, we simply need to put our own people first.*

III. If Section 310(b) Is Liberalized, Congress Should Build In Protections For Minority Ownership

If some relaxation of Section 310(b) is considered by the Congress, we have four recommendations on how to somewhat cushion the blow to minorities and small businesses.

First, we should not allow foreign access without reciprocity. Most nations do not allow virtually unrestricted access by American investors in their mass media enterprises. Most Anglophone and Francophone nations have at least a 60 percent local ownership and equity requirement. Leaders of both political parties disfavor unilateral concessions in trade negotiations. The recent successful negotiation with China over the pirating of intellectual property demonstrates why reciprocity must be part of any liberalization of section 310(b).

Second, if Congress liberalizes section 310(b), it should do so in a way which fosters minority ownership by addressing the longstanding, almost intractable problem of capital formation. For example, Congress could permit up to 49 percent alien equity so long as it is invested in a minority controlled company.

Third, Congress should authorize the FCC to permit an alien who makes a substantial investment in a minority controlled broadcaster to hold a larger equity stake in that and other American media holdings than otherwise would be permissible.

Fourth, Congress should create the American Communications Investment Bank as a vehicle to promote diversity in broadcasting through the use of alien investments. The Bank would be a private, nonpartisan institution, operated by Presidential appointees subject to Senate confirmation. The Bank would permit aliens (and others, including U.S. based multinationals) seeking to invest in U.S. media to channel and pool their investments for subsequent subdivision and targeting to U.S. media interests of all sizes, in furtherance of U.S. communications and trade policy.

The Bank would be designed to attract sufficient investment to greatly accelerate the construction of the information superhighway, generate additional tax revenue, and help balance the budget without raising taxes.

The Bank would promote minority ownership in four ways, providing minorities with capital to which they heretofore seldom had access:

(1) Its investment decisions would include minority ownership as a primary decisional factor, accounting for at least 30 percent of the capital invested or loans made, subject to generally accepted prudent lending and investing criteria.

(2) Capital flowing through the Bank would not be deemed attributable for the purpose of Section 310(b)(4) of the Communications Act.

(3) By its pooling mechanism, the Bank would reduce the transaction costs which prevent small and moderate sized amounts of alien capital from being invested in American media and thus ultimately being accessible by minorities.

(4) By its subdistribution mechanism, the Bank would enable large sized amounts of alien capital to be broken down into the smaller sums minorities often require for broadcast acquisitions.

---

[4] *NAACP* v. *FCC*, 682 F.2d at 1004 (holding that the FCC "has not improperly exercised its discretion by relying on [its minority ownership, employment and programming policies] rather than the Top-Fifty Policy, to advance minority goals.") Eviscerating the marketplace value of the FCC's minority ownership incentives by eliminating alien ownership protections would necessarily call into question the continued validity of two decades of deregulation.

HeinOnline -- 21 Bernard D. Reams, Jr. & William H. Manz, Federal Telecommunications Law: A Legislative History of the Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996) including the Communications Decency Act 72 1997

This is not "affirmative action." It is, instead, a workable means of fulfilling Congress' goal of assisting minorities to acquire the capital needed to compete in the marketplace.

IV. Before Proceeding Legislatively, Congress Should Permit The FCC To Develop A Record On Alien Ownership

In opening a rulemaking proceeding on this subject just two weeks ago, the FCC emphasized that "we have had a traditionally heightened concern for foreign influence over or control of licensees which exercise editorial discretion over the content of their transmissions." *Market-Entry and Regulation of Foreign-affiliated Entities (NPRM)*, FCC 95-53 (released February 17, 1995) *("NPRM")* at 41-42 and n. 84.[5] The FCC has asked for comment on "whether we should also consider other factors" besides reciprocal access in evaluating whether to allow additional alien ownership of broadcast facilities. *Id.* at 44. As the expert agency, the FCC should be permitted to complete its rulemaking proceeding before Congress intervenes.

The Minority Media and Telecommunications Council encourages the Subcommittee not to consider repeal or liberalization of Section 310(b) *unless and until* a firm, workable and tested mechanism is created to guarantee that the net effect of additional alien ownership will be a dramatic increase in American minority ownership.

PREPARED STATEMENT OF THOMAS B. PATTON, VICE-PRESIDENT, GOVERNMENT RELATIONS, PHILIPS ELECTRONICS NORTH AMERICA CORPORATION

Mr. Chairman and members of the Subcommittee, I am Thomas Patton, Vice President of Philips Electronics North America Corporation.

Philips supports you, Mr. Chairman, in your efforts and those of like-minded Members of this Subcommittee to repeal or revise the provisions of the Communications Act of 1934 relating to foreign ownership. While the issue often triggers an emotional response, a dispassionate, rational analysis of the question compels the conclusion that changes to our law are long overdue and would yield significant economic dividends for the United States.

Philips Electronics, ties and commitment to the United States economy are well documented. It is among the 100 largest U.S. manufacturers and among the 50 largest U.S. exporters. Philips Electronics has maintained a presence in this country since 1933. Currently, we employ over 25,000 workers in the United States, have nearly $5 billion in assets in the U.S. and achieve annual sales of $7 billion. Today, in the United States, Philips Electronics consumer electronic products, lighting products, components, semiconductors, dictation systems, diagnostic imaging systems and other professional equipment are marketed under many familiar brand names including Philips, Magnavox and Norelco. Research in electronics is conducted for Philips at its laboratories in Briarcliff Manor, New York. Our track record in this country is a measure of the benefits foreign investment can bring to the U.S. economy.

Our company has long been a pioneer in the telecommunications and entertainment industries. We are in the forefront of creating digital high definition television and providing telecommunications equipment for public and private infrastructures. We are also involved in developing applications which offer new possibilities for telephony, image transfer and data communication. The result of these and other technological developments in the telecommunications industry is that distance is no longer a barrier and borders no longer divide. Legal developments should keep pace with this new technological reality. The foreign ownership restrictions contained in Section 310(b) of the Communications Act present a significant barrier to our growth and effort to spread the benefits of this technology worldwide.

Mr. Chairman, your proposed legislation, H.R. 514, represents an important building block in the legal infrastructure necessary to support the world's interdependent economies. The bill would remove artificial, anachronistic barriers to the development of a global information and communication infrastructure, enhance the position of American companies seeking to open foreign telecommunications markets and bring significant benefits to American workers and consumers.

Protectionism,and fear of hostile nations gaining control of our nation's communication system in the wake of World War I provided the rationale for the foreign ownership restrictions in the 1934 Communications Act. That rationale is outdated in the increasingly borderless world economy where interdependence is a fact of life and cooperation is an imperative. We view the success of our company as inter-

[5] The FCC cited *GRC Cablevision, Inc.*, 47 FCC2d 467 (1974) and *Teleport Transmission Holding, Inc.*, 8 FCC Rcd 3063 (CCB 1993).

HeinOnline -- 21 Bernard D. Reams, Jr. & William H. Manz, Federal Telecommunications Law: A Legislative History of the Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996) including the Communications Decency Act 73 1997

twined with a successful U.S. economy. If the U.S. government sends a strong message now against foreign ownership restrictions it will be in an excellent position to challenge restrictions elsewhere and push for increased access by U.S. companies to foreign markets.

our experience as a global transnational high technology firm has taught us that even our large economic size and enormous individual research efforts are simply insufficient to deal with the exigencies of technology in the next century. We need to cooperate with other high technology firms and with the governments of the nations in which we operate. In short, companies like IBM, AT&T, Hewlett-Packard, Digital, Philips, Siemens, Thomson, etc. must cooperate even as they compete or risk losing the battle to others.

In our efforts to expand the horizon of cooperation with American firms, we have encountered barriers which frustrate the development of innovative and cost efficient technology. The foreign ownership restrictions in the communications sector are just such a barrier. Because of the capital intensive nature of hi-tech communications ventures, businesses must have a variety of financing options in order to develop and implement a viable business plan. Because the foreign ownership restrictions limit the array of financing options they are a serious disincentive and obstacle to the attainment of a seamless, global information infrastructure.

Philips recognizes the strategic importance of national security considerations. It questions, however, the rationale these concerns supposedly provide to justify foreign ownership restrictions in general and heightened scrutiny for broadcast in particular in the face of the seemingly endless multiplication of media outlets in today's information society. The vast number and type of outlets (television, cable, satellite, VCR) combined with the "internationalization" of material and sources means that the threat of any "enemy" gaining control of a significant portion of these outlets is minimal to nonexistent. The reality of today's communications systems is that no one medium can claim to be dominant. Diversity is the public's most effective trustee. The multiplicity of owners of various distribution and transmission media and increased competition among them is the best weapon against monopolistic control or any lingering national security threat.

In fact, the heightened restrictions for broadcasting do not stop the stream of foreign capital, they simply divert its flow from benefitting broadcasting. Companies, such as Philips who find themselves unable to invest in the networks, have selected other media outlets, such as movie production or home video. The result is that broadcasters' competitors benefit at their expense. This effective discrimination against broadcasting does not advance the goal of diversity.

One of the most effective tools to promote diversity in the communications marketplace is the principle of national treatment, enshrined in the operative documents of the GATT and the OECD. The concept of national treatment can be stated rather simply, and there is general and fairly universal agreement that it includes at least the following principles:

- foreign investors have the right to establish a particular economic activity in a given nation on terms which are no less favorable than those available to domestic investors of that nation;
- once established, access by such foreign investors to suppliers, distributors and customers should be as unfettered as access by domestic firms in the same or similar business;
- the availability of capital, whether raised by sale of equity shares or obtained by debt should be solely a function of the financial markets of a particular nation rather than the nationality of those seeking funds;
- national governments should establish a level playing field and provide such benefits, grants and protections to foreign investors as are made available to domestic investors, provided that each is willing to abide by such rules as may be established for participation.

These principles were, in large measure, both adopted and followed in the decades following World War II, particularly in the U.S. and Europe. Recently, however, these principles, while still in favor, seem gradually to be eroding at the edges as economic nationalism or, perhaps more accurately, economic regionalism appears to be gaining political popularity in many areas of the world.

The threat of reciprocal exclusion in the communications sector is real. Many foreign countries use the restrictions in Section 310(b) as an excuse to restrict access to their markets. For example, the recent satellite directive in Europe which limits foreign ownership in European satellite entities was a direct response to foreign ownership restrictions in the United States. The immediate result of such responses is higher prices and lower quality for the consumer. No country should risk being left behind in the technological revolution. As Representative Bliley notes, "the ben-

HeinOnline -- 21 Bernard D. Reams, Jr. & William H. Manz, Federal Telecommunications Law: A Legislative History of the Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996) including the Communications Decency Act 74 1997

efits from expanded competition are endless." Not only do workers benefit by expanded job opportunities, but the consumer faces an increasing array of higher quality and lower priced products and services. A unified march towards the Global Information Infrastructure is an accelerated march towards the full potential it offers.

The reality is that the U.S. economy already has reaped substantial benefits from international investment. More than 4.7 million Americans owe their jobs to the presence of international investment in the United States. A recent Commerce Department study concluded that foreign-owned U.S. firms have made a significant contribution to U.S. technological development. The beneficial effects of international investment helped to pave the way for the U.S. return to dominance in the world economy. Removal of the foreign ownership restrictions in the telecommunications industry will further advance that reality and reaffirm the principle that the location of a firm's headquarters is far less important than the corporation's willingness to create high-wage, high-skill jobs in the U.S.

In the past several decades, local and state officials have come to recognize that new capital is the lifeblood of economic survival and that foreign-owned U.S. companies can provide a major and needed boost to the local economies. Removal of the foreign ownership restrictions in the telecommunications industry will provide the same type of economic stimulus on a national level that many state and local officials have sought to foster by attracting foreign investment in the communities. Such a targeted boost to the telecommunications sector is especially advantageous because it is an area that holds so much promise for economic growth, top quality jobs and consumer enjoyment and advancement.

To complement action on the domestic front, Congress can also assume a leadership role in focusing diplomatic attention on the proper multilateral forum, the recently formed WTO. A multilateral approach will promote international cooperation in the most expeditious and efficacious manner. A unilateral approach alone can often generate mistrust while a bilateral approach is time-consuming and often uneven in scope and effect. The General Agreement on Trade in Services provides a ready-made forum to address these issues. The U.S. is in a powerful position to shape the international debate concerning telecommunications. It should seize this opportunity and take the lead in encouraging open markets worldwide.

Philips has devoted significant time and resources to help build the Global Information Infrastructure. Its partnership with American companies is tangible proof of the benefits to be obtained from as well as the necessity of international partnerships. Philips, therefore, welcomes and applauds this subcommittee's current interest in revising the foreign ownership restrictions. Now is an ideal time to give teeth to the United States' traditional support of open investment and national treatment. We hope you will help in the effort to advance that policy and U.S. interests by removing such barriers to investment.

Thank you.

HeinOnline -- 21 Bernard D. Reams, Jr. & William H. Manz, Federal Telecommunications Law: A Legislative History of the Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996) including the Communications Decency Act 75 1997

HeinOnline -- 21 Bernard D. Reams, Jr. & William H. Manz, Federal Telecommunications Law: A Legislative History of the Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996) including the Communications Decency Act 76 1997

Document No. 199

HeinOnline -- 21 Bernard D. Reams, Jr. & William H. Manz, Federal Telecommunications Law: A Legislative History of the Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996) including the Communications Decency Act [xv] 1997

HeinOnline -- 21 Bernard D. Reams, Jr. & William H. Manz, Federal Telecommunications Law: A Legislative History of the Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996) including the Communications Decency Act [xvi] 1997