

11-1995

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ALIEN OWNERSHIP RESTRICTIONS IN THE COMMUNICATIONS INDUSTRY: ARE THEY COMPATIBLE WITH THE NII?

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Alien ownership becomes an issue on occasion when new communication legislation is pending, such as in 1989 when the cable laws were being reevaluated. Restrictions on alien ownership and control have impacted certain sectors of the communications industry more than other sectors in the past and under current legislation.

With legislation pending as to broadband networks, such as the National Information Infrastructure (NII), the problems associated with alien ownership restrictions may come to the forefront of issues that future legislation may need to address. The NII aims to create a "network of networks," which is a combination of several different sectors of the communications industry into one conduit. This "information superhighway" will incorporate everything from personal voice communication and video programming to sensitive corporate data. Consequently, the NII provides a substantive base from which to analyze the problem of alien ownership in broadband networks.

The future of the NII will require participation by those in broadcasting, cable, and telephony. Some of these participants in the communications industry are already restricted by the alien ownership regulations of Title 47 while others are not.

Therefore, a discussion of the problems that are associated with today's alien ownership restrictions and the definition of "control" under current law is necessary. Control is difficult to define and allows for various interpretations. This paper will survey these issues within the context of the broadcasting, cable, and telephony sectors of the communications industry.

History of Alien Ownership

Currently, restrictions against foreign ownership exist in two different sections of the Communications Act: Section 17¹ and Section 310(b).² Both limit the amount of ownership a foreign corporation can have in certain types of communication outlets. Section 17 governs ownership of telephone lines in Alaska, while Section 310(b) deals with ownership and control by foreign groups in broadcast operations.

The first known alien ownership restriction in this country is Section 17,³ which was enacted in 1900 and prohibited alien ownership of wire based communications in Alaska. Later, the Radio Act of 1912⁴ restricted alien ownership and control by granting radio licenses "only to citizens of the United States or

Puerto Rico. . . ."⁵

In Congress, many debates focused on the need to impose the restriction.⁶ On the other hand, the argument against passage of the Act was reciprocity of trade.⁷ Representative Mann argued that the provision would limit American investment interests in radio in foreign countries. However, given the open ended nature of the statute, foreign participation in the U.S. market occurred anyway. Weeks after passage of the 1912 Act, a German dominated company, which was incorporated in New York, obtained a license⁸ over the protest of the Secretary of Commerce and Labor.⁹ The Germans ultimately used their stations to broadcast information about the location of British vessels to German submarines.¹⁰

After the 1912 Radio Act was passed, policy makers continued to debate its open ended nature. Fifteen years later, Congress enacted the Radio Act of 1927¹¹ to close the loophole that permitted foreign companies to form U.S. corporations in order to comply with alien ownership restrictions. Section 12 of the new Act regulated foreign ownership as follows:

The station license required hereby shall not be granted to, or after the granting thereof of such license shall not be transferred in any manner, either voluntarily or involuntarily, to (a) any alien or representative of any alien; (b) to any foreign government, or the representative thereof; (c) to any company, corporation, or association organized under the laws of any foreign government; (d) to any company, corporation, or association of which any officer or director is an alien, or of which more than one-fifth of the capital stock may be voted by aliens or their representatives or by a foreign government or representative thereof, or by any company, corporation, or association organized under the laws of a foreign country.¹²

The restrictions in Section 12 were specifically designed to prevent alien subversion during wars.¹³ During the debates that ensued after the Act's passage, the Secretary of the Navy stated that the restrictions were necessary given that propaganda was disseminated in the United States prior to and during World War I.¹⁴ Others thought the restrictions were unnecessary because the president already had the power to prevent the dissemination of

¹*Id.*

²48 Cong. Rec. 10503 (1912).

³*Id.*

⁴Radio-Communication-Issuance of Licenses, 29 Op. Att'y Gen. 579 (1912).

⁵*Id.* at 582.

⁶Letter from Secretary of Navy to Chairman of the Senate Interstate Commerce Committee, Hearings on H.R. 8301, 73d Cong., 2d Sess. 26, (1934).

⁷Radio Act of 1927, ch. 169, § 12, 44 Stat. 1162 (1927).

⁸*Id.*

⁹68 Cong. Rec. 3037 (1927).

¹⁰Hearings on H.R. 8301 Before the House Comm. on Interstate and Foreign Commerce, 73 Cong., 2d Sess. 26 (1934).

¹47 U.S.C. § 17 (1994).

²47 U.S.C. § 310 (b) (1994).

³47 U.S.C. § 17 (1993). In a similar fashion 40 U.S.C. § 782 (1993) also regulates wire line communication facilities in Alaska.

⁴Act of Aug. 13, 1912, ch. 287, § 2, 37 Stat. 302 (1912).

propaganda.¹⁵

Subsequently, the Communications Act of 1934¹⁶ was enacted, incorporating most of Section 12 of the 1927 Act. However, two changes were made. First, the capital stock restriction was changed to allow the granting of licenses to corporations with less than 20 percent of the capital stock owned or voted by aliens. The loosening of the restriction was to "guard against actual alien control, and not the mere possibility of alien control."¹⁷

The other change involved control of corporations. No corporation in which any officer or more than one-fourth of the directors were aliens could be granted a license if the Commission found the denial or revocation of a license to be in the public interest.¹⁸ This could be seen as a concession to some of the arguments raised during debates involving the 1927 Act. Many people saw the restrictions as an impediment to foreign investment in the U.S. communications industry.

In 1958, Section 310 was amended to allow the Commission to license aircraft stations to aliens or representatives of aliens who held a valid pilot's license.¹⁹ The change was not due to a change in attitude about foreign involvement in broadcasting. Rather, it arose out of a concern for aircraft safety.²⁰ Section 310(a) was subsequently changed to permit aliens to hold licenses for amateur radio under limited circumstances.²¹

Subsequent laws in the communications sector have renewed debate about the necessity of imposing restrictions on aliens. In 1989, debate again centered around alien ownership and control of cable systems.²² Much of the discussion concerned whether restrictions would cause countries in which American firms had established profitable ventures to enact retaliatory measures.²³

Alien Ownership In the Broadcast Industry

Historically, the broadcasting industry has been subject to the most restrictions against alien ownership and control. These restrictions often play a significant role in the financing and transfer of broadcasting companies, with the rules usually being open to interpretation.

Section 310 currently contains several restrictions on alien ownership and control. Under Section 310(b)(3), aliens can own, directly or indirectly, up to 20 percent of the capital stock of FCC licensed broadcast entities. Section 310(b)(4) allows foreign ownership of up to 25 percent of a licensee's parent company, with up to 25 percent of the board of directors being aliens or alien representatives.

It is noteworthy that ownership and control are often difficult to define in light of the many different types of financial arrangements. For example, a question can arise when an alien obtains stock options which, if exercised, would exceed the ownership limitations. It is unclear whether owning the options

alone could be imputed to ownership of the restricted entity. In addition, the Commission has the power to waive the restriction under 310(b)(4) if it deems the granting of the license to be in the public interest.

To address the difficulties in interpreting the rules of alien ownership, it is necessary to look at cases involving the transfer of control. The problems often arise under Section 310(d) of the Communications Act, with the question of whether there has been a transfer of control without prior Commission approval.²⁴ Such cases provide insight as to what the Commission may take into consideration in determining whether there is actual alien control.

The Commission has stated that in passing upon questions of whether control of corporations subject to the Communications Act has been transferred or acquired, the Commission is not bound by any exact formula. Indeed, the Communications Act itself does not describe a formula which shall govern in such cases. The ascertainment of control in most instances must of necessity transcend formal consideration, "for it involves an issue of fact which must be resolved by the special circumstances presented. . . . [W]e are governed chiefly by the demonstration of . . . power to dominate the management of the corporate affairs."²⁵

This approach requires the Commission to look outside stock ownership, and lays the foundation to consider other factors.

The analysis of alien ownership has arisen in relatively few cases. Section 310(b) was raised in *Noe v. FCC*. In that case, a losing applicant challenged the awarding of a license to Loyola University.²⁶ The losing party argued that the president of Loyola University is appointed by the head of the Jesuit Order, who at that time was a Belgian residing in Rome. This argument was rejected by the Circuit Court because the limitations imposed under Section 310(b) aimed to prevent alien subversion during war and Loyola's relationship with an alien was not a threat to national security.²⁷ This decision reflects the Commission's flexibility in applying the restriction.

In another case, *Banque de Paris et De Pays Bas*, the Commission allowed a French bank to exceed the 20 percent ownership limitation when the company sought to obtain stock contained in a trust.²⁸ In approving the additional purchase, the Commission imposed some restrictions. These included the annual reporting to the Commission of all actions taken with the stock and prohibitions against the purchase of any additional stock, the entering of any agreement for voting the stock held in the trust under the bank's name, and the taking of any action that might be considered to be the taking over of the corporation.²⁹ Again, the Commission used its discretion and flexibility in enforcing the restrictions.

On the other hand, in *Spanish International Communications Corp.* (SICC), the Commission faced the problem of determining who actually controlled a company that held licenses for several broadcast stations.³⁰ The concerns arose although Americans owned the stock. The case was premised on alien control of the company in violation of Section 310. The violation was alleged because of a relationship between SICC and

¹⁵68 Cong. Rec. 3037 (1927).

¹⁶Communications Act of 1934, ch. 652, 48 Stat. 1064 (1934).

¹⁷S. Rep. No. 781, 73d Cong., 2d Sess. 7 (1934).

¹⁸48 Stat. 1086, § 310 (a)(5) (1934).

¹⁹72 Stat. 981 (1958).

²⁰Act of Aug. 13, 1912, ch. 287, § 2, 37 Stat. 302 (1912).

²¹78 Stat. 202 (1964).

²²*Markey's Program Access Provisions Draw Cable Opposition*, Communications Daily, June 26, 1990. Representative Markey wanted to impose the same alien restrictions that applied to broadcasting to cable.

²³See *infra* note 40.

²⁴*Supra* note 2.

²⁵*Western Gateway Broadcasting Corp.*, 16 F.C.C. 274, 288-289 (1951).

²⁶260 F.2d 739 (D.C. Cir. 1958), cert. Denied, 359 U.S. 924 (1959).

²⁷*Id.* At 742.

²⁸6 F.C.C. 418 (1966).

²⁹*Id.*

³⁰*Spanish International Communications Corp.*, F.C.C. No. 86d-1 (1986).

Spanish International Network (SIN). SIN was a Mexican corporation under the direct control of aliens and provided SICC with over 75 percent of its programming. Also, the owners of SIN provided financing to an American citizen to purchase interests in the SICC stations.³¹ The American was also an SIN employee. After considering these transactions and other factors, the Commission decided that there was actual alien control over SICC. Later, the Commission settled the case under an agreement which provided that the stations would be sold subject to some limitations.³²

When it has been in the public's interest, the Commission has allowed waivers of the alien control restrictions. In one instance, the Commission waived the restrictions so that a foreign controlled company could hold a license on the basis of passive operation of the broadcasting operation.³³ In another case, *Data Transmission Co.*, the Commission approved a financial arrangement in which a Swiss national could have gained an ownership interest in excess of the 20 percent ceiling under Section 310.³⁴ Under the plan, the investor would have held 10.9 percent of the company's common stock and bonds that were convertible into an additional 19.4 percent of the common stock.³⁵ The arrangement also contained restrictions on the company's activities, such as the selling of additional stock, mergers, and borrowing.³⁶ However, the Commission did not find a transfer of control because the alien owner expressly agreed not to interfere with the common carrier operations.³⁷

Overall, the restrictions have been strictly applied in the broadcast sector, with the Commission flexibly using its discretion under specific circumstances. The application of Section 310 to the broadcast industry provides some insight as to how alien ownership and control restrictions can be applied to other industries.

Alien Ownership in the Cable Industry

Today, there are no explicit restrictions on alien ownership in the cable industry. This lack of regulation has not gone unnoticed. In the mid-1970s, the Commission focused on rules to limit alien ownership and control.³⁸ In 1989, the concerns of alien ownership and control in the cable industry were again raised.³⁹

Originally, the Commission unanimously rejected limitations on foreign ownership in the cable industry. First, there was no threat to America's security. Second, cable operators had only minor control over the content of the programming they distributed. Third, foreign ownership restrictions did not generally apply to communications. For example, television networks, newspapers and wire services had few or no restrictions. Fourth, local jurisdictions are more able to determine whether an individual operator's nationality will affect the public

interest. Fifth, free market forces should determine the direction of capital flow in the industry. There was also no perceived benefit from imposing restrictions and they would only protect domestic cable companies from competition.⁴⁰

Of primary concern in these debates were the problems of U.S. investment in foreign cable operations and the restrictions on U.S. companies abroad. The potential regulation was viewed by some as retaliation against countries which did not allow U.S. investment in their cable systems. Ultimately, the U.S. never imposed alien ownership restrictions on cable systems. In contrast, U.S. companies are still prohibited from owning foreign cable systems in some countries.⁴¹

In order to understand why there are no restrictions on alien ownership and control in the cable industry, it is important to recognize why such restrictions were rejected. A look at the discussion of the 1989 bill provides insight as to some of the concerns raised regarding potential restrictions.

Under H.R. 2643, Representative Markey sought to place alien ownership and control restrictions on cable because "it is increasingly attractive and simple for a foreign owned corporation to purchase important segments of our Nation's telecommunications network and control the free flow of information to the public."⁴² He further stated that his proposals were not protectionist. Rather, they ensure "that our information highway cannot become subject to another government's agenda."⁴³ It was recognized that in many areas cable service is a monopoly, and thereby a more restricted means of communication than even broadcasting.⁴⁴

The proposed restrictions resembled those currently under Section 310(b).⁴⁵ At the time of the proposed legislation, less than one percent of the cable systems were owned by aliens.⁴⁶ Under the then pending bill, questions were raised about the ability of U.S. companies to enter other nations' cable markets.⁴⁷ Ultimately, the bill never passed.

In the absence of direct limitations, Section 310 has played a role in some cases.⁴⁸ At the time *GRC Cablevision, Inc.* was decided, Section 310 had not yet been amended to allow foreign owned cable systems to hold a license for a cable television relay service station.⁴⁹ Sixty percent of GRC was owned by another company, which was half owned by a foreign company. Control of GRC was imputed to the foreign company. The Commission, however, waived the restriction.

The situation in *GRC* was different because it was owned by Canadians and Canada and the U.S. have traditionally shared close ties.⁵⁰ In addition, the owners were quite acceptable and

³¹*Id.*

³²Spanish International Communications Corp., 2 F.C.C. Rcd. 3336, 3338-40 (1987).

³³GRC Cablevision Inc., 47 F.C.C.2d 467, 30 R.R.2d 827 (1974), to be discussed infra on alien ownership in the cable industry.

³⁴44 F.C.C. 2d 935 (1974).

³⁵*Id.*

³⁶*Id.*

³⁷*Id.* at 936.

³⁸Cable Television Citizen Requirements, 59 F.C.C.2d 723 (1976).

³⁹Hearings on H.R. 2643 before the Subcommittee on Telecommunications and Finance, 101st Cong., 1st Sess. (1989).

⁴⁰59 F.C.C.2d 723 (1976).

⁴¹For example, alien interests are forbidden in Canadian cable systems. See, Colis, Coffey, *Foreign Investment in Cable Television: The United States and Canada*, 6 HASTINGS INT'L & COM. L.REV. 399, and note, *Direct Foreign Investment in Cable Television: An Analysis of Alien Ownership in the Context of the United States and Canada*, 10 SYRACUSE J. INT'L & COM. 113.

⁴²*Supra* note 39 at 2, statement of Representative Markey.

⁴³*Id.*

⁴⁴*Supra* note 39 at 13-14, statement of Andrew Jay Schwartzman of the Media Access Project.

⁴⁵H.R. 2643 at 3 (1989).

⁴⁶*Supra* note 39 at 16, statement of Barry Gage.

⁴⁷*Supra* note 39 at 11, comments of James M. Theroux, President of and Chief Executive Officer of Metropolitan Cablevision.

⁴⁸The restrictions were amended in 1975 to permit alien ownership and control of these retransmission facilities, P.L. 93-505 (1975).

⁴⁹47 F.C.C.2d 467.

⁵⁰*Id.* At 468.

their participation in the operation of the relay station was passive. Thus, the Commission determined that it was in the public interest to grant the license.⁵¹

The Commission's choice to adopt this lax position on alien ownership and control in the cable industry demonstrates its continued reliance on the premise behind Section 310, which is the prevention of foreign editorializing and propagandizing. This reliance, plus a change in Section 310, means that aliens have not been subject to control limitations in this sector of the communications industry. Lack of support for such restrictions indicates that restrictions are unlikely to be imposed in the near future.

Alien Ownership in the Telephone Industry

The telephone industry presents unique problems under Section 310. Modern telephone system use facilities that require broadcast spectrum in certain operations, such as cellular or long distance transmissions. Use of transmission facilities has created problems.

One recent case dealt with licenses for a cellular telephone system. In *Moving Phone Partnership, L.P. v. F.C.C.*, the Commission refused to grant the licenses necessary to operate a cellular system citing alien ownership and control.⁵² The licenses were not granted because Moving Phone was a limited partnership with more than one alien partner and was, therefore, in violation of Section 310.⁵³

On review, the Court of Appeals upheld the Commission's decision, citing the necessity to "safeguard the United States from foreign influence in broadcasting."⁵⁴ The court added, "[a]lthough broadcast radio stations were the dominant medium when the national security policy underlying Section 310(b) was developed, the rationale is equally applicable to common carrier radio stations, as they, also, are part of the Nation's network."⁵⁵ Apparently, *Moving Phone* is at odds with the FCC's less stringent application of the alien ownership restrictions in other cases such as *GRC*. In *GRC*, the FCC reasoned that origination of content, not passive use of the spectrum to rebroadcast signals to other locations, was the focus of Section 310. This reasoning could have been applied in *Moving Phone* because Moving Phone was a common carrier and would not originate content. Instead, Moving Phone would only retransmit the signals of cellular phone users, a passive function under *GRC*.

Another important observation is that until recently, there were no foreign owned telephone companies in the U.S. In 1993, the Commission approved the sale of Telefonica Larga Distancia de Puerto Rico (TLDPR), the second largest long distance carrier in Puerto Rico to a Spanish company.⁵⁶ AT&T, the largest long distance carrier in Puerto Rico, challenged the purchase on grounds that it violated Section 310(b) and that other countries closed their long distance service markets to American companies.⁵⁷ Despite the objection, the Commission permitted the

sale because the Puerto Rico Telephone Authority would retain 85.1 percent ownership and control of TLDPR's facilities with Title III licenses.⁵⁸

Also pertinent are recent mergers involving foreign companies. The merger between British Telecom and MCI is just one example. When a merger of this nature takes place, the companies' many lines of business are melded together. As a result, it would become more difficult to determine whether Section 310 violations have actually occurred. In addition, overseas RBOC investments, such as NYNEX in New Zealand and Southwest Bell in Australia, may present additional problems with respect to Section 310.⁵⁹ These ventures have proven to be very profitable for RBOCs whose domestic markets are limited in growth. Strict application of Section 310 could cause foreign governments to prohibit U.S. investment in their countries.

Consequently, imposition of alien ownership and control restrictions seems to be in a state of flux. Future application of the alien restrictions in telephony may depend on the Commission's willingness to strictly enforce the restrictions.

Alien Ownership and Control and the NII

The pending NII legislation has not sparked any calls for the imposition of alien ownership restrictions like those under Section 310. However, the issue of alien ownership might have to be considered in order to safeguard the NII from potential problems resulting from foreign control and ownership.

The NII presents regulators with a different set of alien ownership problems when compared to those presented by the broadcast industry. Today, restrictions cannot be imposed under the guise of national security because most U.S. defense oriented networks are separate from commercial networks and are wholly owned by the federal government.⁶⁰ Despite the national defense arguments, other problems are associated with alien ownership and control of the NII.

Among the leading problems that restrictions would cause is the staggered development of the NII. The government has already determined that private industry must take the lead in developing the NII.⁶¹ However, the estimated cost of building the network exceeds \$300 billion.⁶² No single sector of the domestic communications industry has the financial capacity to develop the NII on its own. As a result, foreign investment will be a likely source of capital if the NII is to be developed. Foreign investors may expect to retain some control over the network before they invest their money. In turn, alien ownership restrictions could increase the NII's development costs because the pool of financial backers would be limited or the cost of capital would rise. Ultimately, limited resources could hamper the overall development of the NII.

Another problem is what "control" and "ownership" mean when applied to the NII. Prior Commission decisions do not provide insight as to what constitutes ownership and control in

⁵¹*Id.*

⁵² 998 F.2d 1051 (D.C. Cir. 1993), cert denied 114 S.Ct. 1369 (1994).

⁵³ 47 C.F.R. § 22.4.

⁵⁴ *Supra* note 52 at 1055, citing to Kansas City Broadcasting Co., 5 Rad.Reg. (P&F) 1057, 1093 (1952).

⁵⁵ *Id.* at 1056.

⁵⁶ 1992 F.C.C. Lexis 6948. See also, *FCC Approves Overseas Purchase of Puerto Rican Telco*, 131 No. 2 Pub. Util. Fort 40, January 15, 1993.

⁵⁷ *Id.*

⁵⁸ *Id.*

⁵⁹ See, Larry Fish, *Bell Rings Abroad for Expansion Worldwide Role for Phone Firms*, PHILADELPHIA INQUIRER, July 2, 1990, Business p. 1.

⁶⁰ Ronald Rosenberg, *Defense Department Separates Military, Academic Computers*, Boston Globe, Dec. 2, 1988, p. 73.

⁶¹ John M. Doyle, *Scully: Private Firms Lead Telecommunications Charge*, BOSTON GLOBE, Oct. 21 1993, Business p. 45.

⁶² Tim Wilson, *NII May Open Markets for Carriers, Vendors*, COMMUNICATION WEEK, Oct. 11, 1993 p. 3.

some cases.⁶³ Given the NII's complex nature, it would be difficult to regulate the NII with the current restrictions against alien ownership, for broadcast, cable, and telephone are expected to merge under the NII.

Upon completion, the NII will likely consist of several large, tightly integrated networks that interconnect with one another and with smaller networks and nodes. Alien ownership questions are easier to address if restrictions are placed on larger networks. The NII's backbone will likely consist of several large networks through which information is routed. Consequently, it will be easier to identify the owners and controllers of that portion of the NII.

In contrast, smaller networks and nodes are more difficult to regulate, for they include anything from an intracorporate network link to the NII to an end user in the home. All of these users could be considered to be owners because their access points could be part of the network. Moreover, the vast number of these users will prove to be too numerous to monitor. Hence, the potential for propagandizing becomes real when the expected use of the NII is considered. Individuals will be able to retrieve programs and send them. In essence, a full range of communication services will be available to users and will permit "broadcasting" as well as "reception."

In addition, a function of the NII may include access to foreign networks. This possible feature presents the problem of when access to a network may constitute alien ownership or control. For example, would control consist of domination of the physical plant or the content of information that is provided over the network? This question must be answered before any restrictions may be considered. Given the analysis that the FCC applied in *SICC*⁶⁴, any restrictions can prove to be vague and difficult to define.

Furthermore, if restrictions are based on nationality, other problems may arise. For example, the restrictions' constitutionality could be challenged under the First Amendment. Of even greater concern, however, is that content regulations could limit the integration of the NII with other networks around the world.⁶⁵ Arguably, the concerns that underlie Section 310 could be addressed if restrictions are imposed on foreign access.⁶⁶ However, the NII is supposed to be a global network. Restrictions on ownership could limit the NII's usefulness, for it may become impossible to interface it with foreign networks.

A final consideration is trade policy. Currently, the U.S. maintains open trade policies with other countries.⁶⁷ These policies have made investment in foreign countries very profitable for U.S. communication companies.⁶⁸ Undoubtedly, ownership restrictions could jeopardize the continuing of these free trade policies.

Despite the arguments against alien ownership and control of the NII, there are many reasons why restrictions should be imposed. First, competition from foreign businesses has increased. Consequently, espionage by foreign corporations has

become a real concern.⁶⁹ Also, the illegal interception of communications has become problematic because there is no way of detecting the illegal reception of optical fiber transmissions.

Protocols and hardware present another obstacle to withholding all restrictions against alien ownership. Because protocols and hardware may be incorporated into the NII, the U.S. must decide whether it is willing to rely on foreign companies that control these types of proprietary technologies. This is a definite concern because the U.S. has already questioned the reliance on foreign proprietary technology in the defense industry.⁷⁰

Allowing foreigners to control or own portions of the NII may undermine the confidence of businesses that wish to participate in the NII market. If the NII is not secure in the area of corporate communications, an important sector of the market that is necessary to the success of the NII will not materialize. A decrease in support by businesses may ground the NII. However, outright exclusion of foreign investment in the NII may also cause the same result.

Conclusion

Past alien ownership and control restrictions in the communications industry have proven to be difficult to define. Notwithstanding their intended purpose, application of the current alien ownership restrictions has been haphazard and gives little insight into their actual scope. However, these regulations are based on past experiences and continue to play a role in the regulation of the U.S. communications industry.

If alien ownership restrictions are to be applied to the NII, a careful review of past and current experiences with such restrictions will be necessary. Specifically, the question of whether or not to impose restrictions must be answered. Without that effort, the development of the NII will proceed on an unsound foundation.

⁶³See *infra*, discussions on implementation of Section 310 in broadcasting, cable and telephony.

⁶⁴*Supra* note 30.

⁶⁵There has been debate as to whether a Global Integrated Infrastructure (GII), should be a goal included in the U.S.'s and other countries initiatives similar to the NII.

⁶⁶See *supra*, note 53.

⁶⁷For example GATT.

⁶⁸*Supra* note 61.

⁶⁹Frank Greene, *Documents show French Spy on U.S. Firms, Agencies*, DETROIT FREE PRESS, April 19, 1993, John M. Doyle, *New Job for Spies: Corporate Espionage*, CHICAGO TRIBUNE, November 22, 1992, Business Sec. A1 13.

⁷⁰Norman R. Augustine, Frank C. Conchan, Richard Van Atta, *Critical Assets*, Vol. 9 No. 4 ISSUES IN SCIENCE & TECHNOLOGY at 5, June 22, 1993.

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