



PUBLIC NOTICE

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Commission Announces Department of State's Revised Procedures For Its Consideration of Submarine Cable Landing License Applications

IB Docket No. 16-155

The Department of State (State Department) has notified the Commission that it has revised the procedures for its review of submarine cable landing license applications that the Commission refers to both the State Department and the Committee for the Assessment of Foreign Participation in the United States Telecommunications Services Sector (Committee). The State Department's review will begin after the Committee completes its national security and law enforcement review of an application and the National Telecommunications and Information Administration (NTIA) notifies the Commission of the Committee's final recommendation on the application.

The State Department's revised procedures are separate from the Commission's public interest review of submarine cable landing license applications, which includes seeking feedback from the expert Executive Branch agencies, including the Committee, on any national security, law enforcement, foreign policy, or trade policy issues that the Commission should consider as part of its public interest review of applications from applicants with reportable foreign ownership.

The State Department advises in a February 23, 2022 letter¹ that in light of the issuance of Executive Order 13913²—which established the Committee to review Commission applications with foreign ownership for national security and law enforcement concerns—the State Department has revised the procedures it applies to its consideration and approval, if appropriate, of submarine cable landing license applications referred to it by the Commission pursuant to the Cable Landing Act of 1921 and Executive Order 10530.³

¹ See Letter from Jose W. Fernandez, Under Secretary for Economic Growth, Energy, and the Environment, United States Department of State, to Jessica Rosenworcel, Chairwoman, Federal Communications Commission (Feb. 23, 2022) (2022 State Department Letter). A copy of the letter is attached to this Public Notice.

² Executive Order No. 13913 of April 4, 2020, Establishing the Committee for the Assessment of Foreign Participation in the United States Telecommunications Services Sector, 85 Fed. Reg. 19643, 19643-44 (Apr. 8, 2020) (Executive Order 13913).

³ Pub. Law No. 8, 67th Congress, 42 Stat. 8 (1921); 47 U.S.C. §§ 34-39 (Cable Landing Act of 1921); Executive Order 10530, Providing for the Performance of Certain Functions Vested in or Subject to the Approval of the President, § 5(a) (May 10, 1954), reprinted as amended in 3 U.S.C. § 301 (Executive Order 10530). Executive Order 10530 delegates to the Commission the President's authority under the Cable Landing License Act of 1921 to grant, withhold, condition and revoke submarine cable landing licenses. Executive Order 10530 provides that "no such license shall be granted or revoked by the Commission except after obtaining approval of the Secretary of State and such advice from any executive department or establishment of the Government as the Commission may deem necessary." Executive Order 10530, § 5(a). The Commission has codified this requirement in section 1.767(b) of its rules. 47 CFR §1.767(b).

Under the coordination procedures the State Department adopted in 2001, it approves the Commission's grant or revocation of all submarine cable landing license applications, including those without foreign ownership, provided that the Commission notifies the United States Coordinator for International Communications and Information Policy (Coordinator), in writing, of each such application, and that no objections are raised by the State Department within 30 days after such notification.⁴ Notification to the State Department has generally occurred at the same time the application was placed on the Commission's accepted for filing public notice. Action on an application may not be considered to be approved by the Secretary of State while any State Department objections are pending.⁵

Rather than commencing its review when the application first goes on public notice, the 2022 State Department Letter specifies that the State Department will begin a 10-day review period for a submarine cable landing license application after the Commission notifies the State Department of the Committee's final recommendation and the Commission's proposed final licensing decision on the application.⁶ The Coordinator will notify the Commission in writing if the State Department needs more than a 10-day period to conduct its review.⁷ When the State Department needs more than 10 days to review an application, the grant of the application may not be considered approved by the Secretary of State until the Coordinator has notified the Commission in writing that the State Department does not object to the Commission's proposed action on the application.⁸ For a submarine cable application that is not reviewed by the Committee, the 30-day State Department review period under the prior procedures remains in effect.⁹ The revised policy is effective immediately and applies to all applications that the Commission has not yet acted upon as of February 23, 2022, the date of the letter from the State Department.¹⁰

As noted, in addition to coordinating all submarine cable applications with the State Department pursuant to Executive Order 10530, the Commission also coordinates with certain Executive Branch agencies, including the State Department and the Committee, for any national security, law enforcement, foreign policy and trade policy issues raised by applications from applicants with reportable foreign ownership.¹¹ Issued in 2020, Executive Order 13913 established the Committee "to assist the FCC in its public interest review of national security and law enforcement concerns that may be raised by foreign

⁴ Letter from Alan Larson, Under Secretary of State for Economic, Business, and Agricultural Affairs, United States Department of State, to Michael Powell, Chairman, Federal Communications Commission at 1 (dated Dec. 3, 2001) (2001 State Department Letter). A copy of the letter is attached to this Public Notice.

⁵ *Id.* at 1.

⁶ 2022 State Department Letter at 1-2.

⁷ *Id.* at 2.

⁸ *Id.*

⁹ *Id.* at 1.

¹⁰ *Id.* at 2.

¹¹ See *Process Reform for Executive Branch Review of Certain FCC Applications and Petitions Involving Foreign Ownership*, IB Docket No. 16-155, Report and Order, 35 FCC Rcd 10927, 10934-36, paras. 17, 24 (2020) (*Executive Branch Review Order*); *Erratum* (Appendix B – Final Rules), DA 20-1404 (OMD/IB rel. Nov. 27, 2020); 47 CFR § 1.40001(a)(1). See also *Rules and Policies on Foreign Participation in the U.S. Telecommunications Market; Market Entry and Regulation of Foreign-Affiliated Entities*, IB Docket Nos. 97-142 and 95-22, Report and Order and Order on Reconsideration, 12 FCC Rcd 23891, 23919, para. 63 (1997), recon. denied, 15 FCC Rcd 18158 (2000).

participation in the United States telecommunications services sector.”¹² The *Executive Branch Review Order*, adopted later in 2020, formalized the review process and establishes firm time frames for the Executive Branch agencies to complete their application review consistent with Executive Order 13913. The Commission’s coordination with the Executive Branch for review of these issues is unaffected by the revised State Department procedures. Under Executive Order 13913 and the Commission’s rules, the Committee has 120 days for initial review, plus an additional 90 days for secondary assessment if the Committee determines that the risk to national security or law enforcement interests cannot be mitigated with standard mitigation measures.¹³ The review period starts on the date the Chair of the Committee (Chair) determines that the applicant has completed responses to any questions and information requests from the Committee.¹⁴ Once the Committee has completed its review, the Chair notifies NTIA of the Committee’s final recommendation and NTIA notifies the Commission of the recommendation within 7 days after the Committee has completed its review.¹⁵ Upon receipt of the notification from NTIA, the Commission will notify the State Department of the Committee’s final recommendation and the Commission’s proposed final licensing decision on the application, upon which date the State Department will initiate its 10-day review period.

For additional information, contact David Krech, Telecommunications and Analysis Division, International Bureau, David.Krech@fcc.gov, 202-418-7443.

Attachments

2022 State Department Letter
2001 State Department Letter

¹² Executive Order 13913, Sec. 3(a). The members of the Committee are the Secretary of Defense, the Secretary of Homeland Security, and the Attorney General of the Department of Justice, who serves as the Chair, and the head of any other executive department or agency, or any Assistant to the President, as the President determines appropriate. *Id.*, Sec. 3(b), (c). The heads of certain agencies are designated as advisors to the Committee, including the Secretary of State, the Secretary of Commerce, and the United States Trade Representative. *Id.*, Sec. 3(d).

¹³ *Id.*, Sec. 5(b), (c); 47 CFR § 1.40004(b), (c).

¹⁴ Executive Order 13913, Sec. 5(b)(iii); 47 CFR § 1.40004(b).

¹⁵ Executive Order 13913, Sec. 9(h).