

FCC FACT SHEET*

Review of International Section 214 Authorizations to Assess Evolving National Security, Law Enforcement, Foreign Policy, and Trade Policy Risks

Order and Notice of Proposed Rulemaking – IB Docket No. 23-119

Background: In this Order and Notice of Proposed Rulemaking (NPRM), the Commission would take another important step to protect the nation’s telecommunications infrastructure from threats in an evolving national security and law enforcement landscape by proposing comprehensive changes to the Commission’s rules that allow carriers to provide international telecommunications service pursuant to section 214 of the Communications Act of 1934, as amended. Today, a company seeking to offer international services originating or terminating in the United States must first obtain international section 214 authorization to do so. As part of this process, the Commission relies on the Committee for the Assessment of Foreign Participation in the United States Telecommunications Services Sector to assess national security and law enforcement risks associated with the proposed services. However, once authorization is granted, we have no process set for the periodic review of existing authorizations to monitor risks associated with these carriers. We receive updated information only when an authorization holder files an application for a modification, assignment, or transfer of control of the authorization or notifies the Commission of a discontinuance while it is providing service to customers. Otherwise, the Commission does not ordinarily receive updated information about the ownership or the national security, law enforcement, trade, and foreign policy implications associated with these authorized services. As a result, the Commission has long had significantly incomplete and outdated information regarding international section 214 authorization holders with reportable foreign ownership.

What the Order Would Do:

- Adopt a one-time collection of foreign ownership information from international section 214 authorization holders.

What the Notice of Proposed Rulemaking Would Do:

- Propose and seek comment on rules that would require carriers to renew, every 10 years, their international section 214 authority, or in the alternative, seek comment on adopting rules that would require all international section 214 authorization holders to periodically update information enabling the Commission to review the public interest and national security implications of those authorizations based on that updated information.
- Propose and seek comment on other improvements to the Commission’s rules applicable to applications for international section 214 authority and modification, assignment, transfer of control, and renewal of international section 214 authority, including matters related to: (1) a five percent threshold for reportable ownership interests; (2) foreign-owned managed network service providers; (3) cross-border facilities information; (4) a facilities cybersecurity certification; (5) a facilities “covered list” certification; and (6) other changes to Parts 1 and 63 of the Commission’s rules.

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**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
Review of International Section 214 Authorizations)	IB Docket No. 23-119
to Assess Evolving National Security, Law)	
Enforcement, Foreign Policy, and Trade Policy)	
Risks;)	
)	
Amendment of the Schedule of Application Fees)	MD Docket No. 20-270
Set Forth in Sections 1.1102 through 1.1109 of the)	
Commission's Rules)	

ORDER AND NOTICE OF PROPOSED RULEMAKING

Adopted: []

Released: []

By the Commission:

Comment Date: 30 days after date of publication in the Federal Register

Reply Comment Date: 60 days after date of publication in the Federal Register

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I. INTRODUCTION

1. In this Order and Notice of Proposed Rulemaking (Notice), we take another important step to protect the nation’s telecommunications infrastructure from threats in an evolving national security and law enforcement landscape by proposing comprehensive changes to the Commission’s rules that allow carriers to provide international telecommunications service pursuant to section 214 of the Communications Act of 1934, as amended (Act).¹ The overarching objective of this proceeding is to adopt rule changes that will enable the Commission, in close collaboration with relevant Executive Branch agencies, to better protect telecommunications services and infrastructure in the United States in light of evolving national security, law enforcement, foreign policy, and trade policy risks. By this Order, we adopt a one-time collection of foreign ownership information from international section 214 authorization holders.² By this Notice, we propose rules that would require carriers to renew, every 10 years, their international section 214 authority. In the alternative, we seek comment on adopting rules that would require all international section 214 authorization holders to periodically update information enabling the Commission to review the public interest and national security implications of those authorizations based on that updated information. Through these proposals, we seek to ensure that the Commission is exercising appropriate oversight of international section 214 authorization holders to safeguard U.S. telecommunications networks.

2. Today, a company seeking to offer international services originating or terminating in the United States must first obtain international section 214 authorization to do so. As part of this process, the Commission relies on the Committee for the Assessment of Foreign Participation in the United States Telecommunications Services Sector (Committee) to assess national security and law enforcement risks

¹ 47 U.S.C. § 214; 47 CFR §§ 63.12, 63.18, 63.21, 63.22, 63.23.

² 47 U.S.C. §§ 218, 219, 403.

associated with the proposed services. However, once authorization is granted, we have no process set for the periodic review of existing authorizations to monitor risks associated with these carriers. We receive updated information only when an authorization holder files an application for a modification, assignment, or transfer of control of the authorization³ or notifies the Commission of a discontinuance while it is providing service to customers.⁴ Otherwise, the Commission does not ordinarily receive updated information about the ownership or the national security, law enforcement, trade, and foreign policy implications associated with these authorized services. As a result, the Commission has long had significantly incomplete and outdated information regarding international section 214 authorization holders with reportable foreign ownership.

3. In 2020, the report of the United States Senate Committee on Homeland Security and Government Affairs, Permanent Subcommittee on Investigations (PSI Report) recommended the periodic review and renewal of foreign carriers' international section 214 authorizations to ensure that the Commission and the Executive Branch account for evolving national security, law enforcement, foreign policy, and trade risks.⁵ In particular, the PSI Report highlighted the national security concerns associated with Chinese state-owned carriers operating in the United States.⁶ The Commission has taken concrete action to address those risks.⁷ Now, based in part on the PSI Report recommendation, we propose several changes to strengthen the Commission's oversight of international section 214 authorizations and ensure that a carrier's authorization continues to serve the public interest, as the Act intended.

4. *Executive Summary of the Proposed Rules.* To establish an effective and expeditious process for the renewal or, in the alternative, periodic review of international section 214 authorizations, in this Notice, we propose and seek comment on the following issues:

- *Renewal of International Section 214 Authority.* We propose to adopt a 10-year renewal requirement for all international section 214 authorization holders. In the alternative, we seek comment on adopting a periodic review process.

³ See 47 CFR §§ 63.18(h), 63.24(e)(2), 63.24(f)(2)(i).

⁴ The current discontinuance rules only apply to international section 214 authorization holders with customers, or authorization holders that the Commission has classified as dominant in the provision of a particular international service. See 47 CFR § 63.19.

⁵ *Threats to U.S. Networks: Oversight of Chinese Government-Owned Carriers*, Staff Report of Senate Permanent Subcommittee on Investigations, Committee on Homeland Security and Governmental Affairs, 116th Cong. 9, 12-13 (June 9, 2020) (PSI Report), <https://www.hsgac.senate.gov/subcommittees/investigations/library/files/threats-to-us-networks-oversight-of-chinese-government-owned-carriers/> ("Congress should require the periodic review and renewal of foreign carriers' authorizations to provide international telecommunications services.").

⁶ See *id.* at 1 ("U.S. government officials have warned that Chinese state-owned carriers are 'subject to exploitation, influence, and control by the Chinese government' and can be used in the Chinese government's cyber and economic espionage efforts targeted at the United States.").

⁷ *China Telecom (Americas) Corporation*, GN Docket No. 20-109, File Nos. ITC-214-20010613-00346, ITC-214-20020716-00371, ITC-T/C-20070725-00285, Order on Revocation and Termination, FCC 21-114, 2021 WL 5161884, para. 5 (rel. Nov. 2, 2021) (*China Telecom Americas Order on Revocation and Termination*), *aff'd*, *China Telecom (Americas) Corp. v. FCC*, 57 F.4th 256 (D.C. Cir. 2022) (*China Telecom (Americas) Corp. v. FCC*); *China Unicom (Americas) Operations Limited*, GN Docket No. 20-110, File Nos. ITC-214-20020728-00361, ITC-214-20020724-00427, Order on Revocation, FCC 22-9, 2022 WL 354622 (2022) (*China Unicom Americas Order on Revocation*) (9th Cir. argued Feb. 15, 2023); *Pacific Networks Corp. and ComNet (USA) LLC*, GN Docket No. 20-111, File Nos. ITC-214-20090105-00006, ITC-214-20090424-00199, Order on Revocation and Termination, FCC 22-22, 2022 WL 905270 (2022) (*Pacific Networks/ComNet Order on Revocation and Termination*) (D.C. Cir. argued Sept. 20, 2022).

- We propose to adopt a process that establishes a system of priorities for renewal applications according to the existence and nature of reportable foreign ownership and the likelihood that the applications will raise national security, law enforcement, foreign policy, or trade policy concerns.
- Consistent with Commission practice, we will continue to coordinate with the Executive Branch agencies for assessment of any national security, law enforcement, foreign policy, and trade policy concerns.⁸
- To minimize administrative burdens, we propose to adopt streamlined and simplified procedures for renewal applications that do not have reportable foreign ownership.
- We propose, as a baseline, to apply to renewal applications the same rules applicable to initial applications for international section 214 authority and thus harmonize the application requirements.
- *Proposed Rules Applicable to All Applicants.*⁹ In addition, to continue to address evolving national security, law enforcement, and other risks, we propose or seek comment on other improvements to the Commission’s rules applicable to applications for international section 214 authority and modification, assignment, transfer of control, and renewal of international section 214 authority.
 - *Five (5) Percent Threshold for Reportable Ownership Interests.* We seek comment on whether to adopt a new ownership reporting threshold that would require disclosure of 5% or greater direct and indirect equity and/or voting interests.
 - *Services and Geographic Markets.* We propose to adopt rules requiring applicants to provide information about their current and/or expected future services and geographic markets.
 - *Foreign-Owned Managed Network Service Providers (MNSPs).* We seek comment on whether the Commission should require certain applicants, without reportable

⁸ For over 25 years, the Commission has referred certain applications that have reportable foreign ownership to the Department of Defense (DOD), Department of Homeland Security (DHS), Department of Justice (DOJ), Department of State, Office of the U.S. Trade Representative (USTR), and Department of Commerce’s National Telecommunications & Information Administration (NTIA). *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, 23918-21, paras. 59-66 (1997) (*Foreign Participation Order*), *recon. denied*, *Rules and Policies on Foreign Participation in the U.S. Telecommunications Market*, IB Docket 97-142, Order on Reconsideration, 15 FCC Rcd 18158 (2000); *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, 10928-29, para. 3 (2020) (*Executive Branch Process Reform Report and Order*). These agencies are collectively referred to as the Executive Branch agencies. The Executive Branch agencies are either Members of or Advisors to the Committee created pursuant to Executive Order 13913. *See* 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). DOJ, DHS, and DOD also are known informally as “Team Telecom.” *Executive Branch Process Reform Report and Order*, 35 FCC Rcd at 10929-30, para. 5.

⁹ Unless indicated otherwise, we use the terms “applicant” or “applicants” and “application” or “applications” to refer to applications and notifications filed under section 63.18 and/or section 63.24 of the Commission’s rules: (1) applicants that file an initial application for international section 214 authority or an application for modification, assignment, transfer of control, or renewal of international section 214 authority, and (2) authorization holders that file a notification of *pro forma* assignment or transfer of control. *See* 47 CFR § 63.18; *id.* § 63.24(e) (“Applications for substantial transactions”); *id.* § 63.24(f) (“Notifications for non-substantial or pro forma transactions”).

ownership, to provide information on foreign-owned MNSPs.

- *Cross Border Facilities Information.* We propose to require applicants to identify the facilities that they use and/or will use to provide services under their international section 214 authority from the United States into Canada and/or Mexico and to provide updated information on a periodic basis.
- *Facilities Certifications.*
 - *Facilities Cybersecurity Certification.* We propose to require applicants to certify in their application that they will undertake to implement and adhere to baseline cybersecurity standards based on universally recognized standards.
 - *Facilities “Covered List” Certification.* We seek comment on whether the Commission should require applicants to certify in their application whether or not they use equipment or services identified in the Commission’s “Covered List” of equipment and services deemed pursuant to the Secure and Trusted Communications Networks Act to pose an unacceptable risk to the national security of the United States or the security and safety of United States persons.¹⁰
- *Other Changes to Parts 1 and 63 of the Commission’s Rules.* To further ensure that carriers’ use of their international section 214 authority is consistent with the public interest, we propose and seek comment on modifications to Part 1 and 63 rules.
 - *Permissible Number of Authorizations.* We propose to adopt a rule that would allow an authorization holder to hold only one international section 214 authorization except in certain limited circumstances.
 - *Commence Service Within One Year.* We propose to adopt a rule requiring an international section 214 authorization holder to commence service under its international section 214 authority within one year following the grant.
 - *Changes to the Discontinuance Rule.* We propose to amend section 63.19 of the Commission’s rules to require all authorization holders that permanently discontinue service provided pursuant to their international section 214 authority, to file a notification of the discontinuance and surrender the authorization.
 - *Ongoing Reporting Requirements.* We propose to require authorization holders to provide updated ownership information, cross border facilities information, and other information every three years.
 - *International Signaling Point Codes (ISPCs).* We propose to adopt a rule requiring applicants seeking to assign or transfer control of their international section 214 authorization to identify in their applications any ISPCs that they hold and whether the ISPC will be subject to the assignment or transfer of control.
 - *Administrative Modifications.* We propose to adopt other administrative corrections to Parts 1 and 63 of the Commission’s rules.

¹⁰ See 47 U.S.C. §§ 1601–1609; 47 CFR § 1.50000 *et seq.*; see also FCC, *List of Equipment and Services Covered by Section 2 of the Secure Networks Act*, <https://www.fcc.gov/supplychain/coveredlist> (*List of Covered Equipment and Services*).

II. BACKGROUND

5. *Current Requirements.* Section 214(a) of the Act prohibits any carrier from constructing, acquiring, or operating any line, and from engaging in transmission through any such line, without first obtaining a certificate from the Commission “that the *present or future* public convenience and necessity require or will require the construction, or operation, or construction and operation, of such . . . line”¹¹ Section 214(b) of the Act requires that the Commission ensure that a copy of the international section 214 application is provided to the Secretary of Defense and the Secretary of State.¹² In 1999, the Commission granted all telecommunications carriers blanket authority under section 214 of the Act to provide domestic interstate services and to construct or operate any domestic transmission line.¹³ The Commission, however, did not extend this blanket authority to international services.¹⁴ Instead the Commission streamlined the rules applicable to international section 214 applications “to remove regulatory obstacles to a fully competitive marketplace while retaining the appropriate ability to detect and deter anticompetitive conduct.”¹⁵ Importantly, the reason the Commission did not adopt similar blanket authority for international section 214 authorizations was because the “FBI and [DOD] made both legal and policy arguments [contending] that, despite the progression of meaningful economic competition between carriers, it remains important to continue to review some applications and transactions due to national security, law enforcement, and other considerations.”¹⁶

¹¹ 47 U.S.C. § 214(a) (emphasis added); *see Reform of Rules and Policies on Foreign Carrier Entry Into the U.S. Telecommunications Market*, IB Docket No. 12-299, Report and Order, 29 FCC Rcd 4256, 4256, para. 2, n.2 (2014) (“Any party seeking to provide common carrier telecommunications services between the United States, its territories or possessions, and a foreign point must request authority by application pursuant to section 214(a) of the Act, 47 U.S.C. § 214(a), and section 63.18 of the Commission’s rules, 47 C.F.R. § 63.18.”). The Supreme Court has determined that the Commission has considerable discretion in deciding how to make its section 214 public interest findings. *FCC v. RCA Communications, Inc.*, 346 U.S. 86, 90 (1953); *see Policy and Rules Concerning Rates for Competitive Common Carrier Services and Facilities Authorizations Therefor*, CC Docket No. 79-252, First Report and Order, 85 FCC 2d 1, 40-44, paras. 117-29 (1980) (discussing the Commission’s authority under section 214(a) of the Act); *Streamlining the International Section 214 Authorization Process and Tariff Requirements*, IB Docket No. 95-118, Notice of Proposed Rulemaking, 10 FCC Rcd 13477, 13480, para. 6 (1995) (*1995 Streamlining NPRM*); *Streamlining the International Section 214 Authorization Process and Tariff Requirements*, IB Docket No. 95-118, Report and Order, 11 FCC Rcd 12884, 12903, para. 44 n.63 (1996) (*1996 Report and Order*); Telecommunications Act of 1996, Pub. L. 104-104, § 402(b)(2)(A) (1996), codified at 47 U.S.C. § 214 nt. (“The Commission shall permit any common carrier—(A) to be exempt from the requirements of section 214 of the Communications Act of 1934 for the extension of any line; . . .”).

¹² 47 U.S.C. § 214(b); 47 CFR § 1.763(b).

¹³ *Implementation of Section 402(b)(2)(A) of the Telecommunications Act of 1996; Petition for Forbearance of the Independent Telephone & Telecommunications Alliance*, Report and Order and Second Memorandum Opinion and Order, 14 FCC Rcd 11364, 11365-66, para. 2 (1999) (*Domestic 214 Blanket Authority Order*). This Notice does not propose rules to modify blanket domestic section 214 authority. We are primarily focused on rules concerning international section 214 authorizations and will make limited proposals regarding domestic section 214 authority only to the extent necessary. *See infra* note 229. Specifically, if we adopt a 5% reporting requirement for international section 214 authorizations, as proposed herein, we propose to require that applicants filing a joint international and domestic section 214 transfer of control application must continue to submit information that satisfies the requirements in both sections 63.04 and section 63.18, including ownership information that would be required by section 63.18(h) under the proposed 5% ownership reporting threshold. *See infra* para. 88 & note 229.

¹⁴ *Domestic 214 Blanket Authority Order*, 14 FCC Rcd at 11365-66, para. 2 & n.8 (citing *1998 Biennial Regulatory Review—Review of International Common Carrier Regulations*, IB Docket No. 98-118, Report and Order, 14 FCC Rcd 4909 (1999) (*Biennial Regulatory Review Order*)); 47 CFR § 63.01.

¹⁵ *Biennial Regulatory Review Order*, 14 FCC Rcd at 4912, para. 6.

¹⁶ *Id.* at 4911, para. 5.

6. The Commission's current rules require that any person or entity that seeks to provide U.S.-international common carrier telecommunications service (also referred to as U.S.-international "telecommunications service")¹⁷ must obtain prior Commission approval pursuant to section 214 of the Act by filing with the Commission an application for international section 214 authority that contains information required by section 63.18 of the Commission's rules.¹⁸ An applicant for international section 214 authority may file an application for global facilities-based and/or resale authority.¹⁹ International section 214 authorization holders may provide service pursuant to their international section 214 authority by using their own facilities and/or by reselling service provided over another provider's facilities. Authorization holders include both wireline and commercial mobile radio service (CMRS) carriers.²⁰ In addition, any person or entity that holds an international section 214 authorization must obtain prior Commission approval before the authorization holder consummates a *substantial* assignment or transfer of control of its international section 214 authorization or other regulated assets (such as customer accounts)²¹ to any other person or entity, including another authorized U.S.-international carrier.²² In simple terms, an assignment is a transaction in which an international section 214 authorization is assigned from one entity to another entity.²³ A transfer of control is a transaction in which the authorization remains held by the same entity, but there is a change in the entity or entities that control the authorization holder.²⁴ An application for Commission consent to assign or transfer control of an

¹⁷ See 47 U.S.C. § 153(50) ("The term 'telecommunications' means the transmission, between or among points specified by the user, of information of the user's choosing, without change in the form or content of the information as sent and received."); *id.* § 153(53) ("The term 'telecommunications service' means the offering of telecommunications for a fee directly to the public, or to such classes of users as to be effectively available directly to the public, regardless of the facilities used.").

¹⁸ See 47 CFR § 63.18 ("Except as otherwise provided in this part, any party seeking authority pursuant to Section 214 of the Communications Act of 1934, as amended, to construct a new line, or acquire or operate any line, or engage in transmission over or by means of such additional line for the provision of common carrier communications services between the United States, its territories or possessions, and a foreign point shall request such authority by formal application. The application shall include information demonstrating how the grant of the application will serve the public interest, convenience, and necessity. Such demonstration shall consist of the following information, as applicable . . .").

¹⁹ 47 CFR § 63.18(e)(1)-(2). If applying for authority to acquire facilities or to provide services not covered by section 63.18(e)(1) and (e)(2), an applicant shall provide a description of the facilities and services for which it seeks authorization. *Id.* § 63.18(e)(3). Examples of authorizations under section 63.18(e)(3) include authorizations for overseas cable construction (submarine cables operated on a common carrier basis), authorizations for use of facilities on the Commission's Exclusion List, and authorizations for facilities-based carriers affiliated with a foreign carrier in a destination market where the Commission has not determined that carrier does not have market power in the destination market. See 47 CFR § 63.22(a).

²⁰ 47 CFR § 63.18(e)(1)-(3).

²¹ See 47 CFR § 63.24, Note to paragraph (b) ("The sale of a customer base, or a portion of a customer base, by a carrier to another carrier, is a sale of assets and shall be treated as an assignment, which requires prior Commission approval under this section."); *Amendment of Parts 1 & 63 of the Commission's Rules*, IB Docket No. 04-47, Report and Order, 22 FCC Rcd 11398, 11411-12, para. 38 (2007) (*2007 Amendment of Parts 1 & 63 Order*).

²² See 47 CFR § 63.24(a)-(c), (e)(1).

²³ 47 CFR § 63.24(b) ("For purposes of this section, an assignment of an authorization is a transaction in which the authorization is assigned from one entity to another entity. Following an assignment, the authorization is held by an entity other than the one to which it was originally granted.").

²⁴ 47 CFR § 63.24(c) ("For purposes of this section, a transfer of control is a transaction in which the authorization remains held by the same entity, but there is a change in the entity or entities that control the authorization holder . . .").

international section 214 authorization shall be filed in accordance with the requirements set forth in section 63.24 of the Commission's rules.²⁵

7. In addition, any person or entity that holds an international section 214 authorization must file a notification of a non-substantial, or "*pro forma*" assignment or transfer of control of its international section 214 authorization or other regulated assets (such as customer accounts) to any other person or entity, including another authorized U.S.-international carrier.²⁶ A *pro forma* assignment of transfer of control is a transaction that does not result in a change in the actual controlling party.²⁷ As to whether there has been a change in the actual controlling party must be determined on a case-by-case basis.²⁸ Prior Commission approval is not required for a *pro forma* assignment or transfer of control.²⁹ A notification of the *pro forma* assignment or transfer of control must be filed with the Commission no later than 30 days after the assignment or transfer of control is completed, in accordance with the requirements set forth in section 63.24 of the Commission's rules.³⁰

8. The regulatory framework for international section 214 authority ensures that the Commission considers whether foreign participation in the U.S. telecommunications market would raise national security, law enforcement, and other concerns due to an applicant's foreign ownership, as well as potential anti-competitive behavior by a carrier with market power in a foreign country,³¹ and that grant of an international section 214 authorization is consistent with the public interest.³² As part of the Commission's public interest analysis, the Commission considers a number of factors and examines the totality of the circumstances in each particular situation.³³ In addition to assessing potential anti-competitive behavior by a foreign carrier with market power,³⁴ as well as other public interest factors, the

²⁵ 47 CFR § 63.24(a) ("Except as otherwise provided in this section, an international section 214 authorization may be assigned, or control of such authorization may be transferred by the transfer of control of any entity holding such authorization, to another party, whether voluntarily or involuntarily, directly or indirectly, only upon application to and prior approval by the Commission."); *id.* § 63.24 (b)-(c); *id.* § 63.24(e)(1) ("Applications for substantial transactions").

²⁶ See 47 CFR § 63.24, Note to paragraph (b).

²⁷ 47 CFR § 63.24(d) ("Transfers of control or assignments that do not result in a change in the actual controlling party are considered non-substantial or *pro forma* . . .").

²⁸ 47 CFR § 63.24(d) (" . . . Whether there has been a change in the actual controlling party must be determined on a case-by-case basis with reference to the factors listed in Note 1 to this paragraph (d). The types of transactions listed in Note 2 to this paragraph (d) shall be considered presumptively *pro forma* and prior approval from the Commission need not be sought."); see *id.* Note 1 to paragraph (d) ("Because the issue of control inherently involves issues of fact, it must be determined on a case-by-case basis and may vary with the circumstances presented by each case . . ."); see *id.* Note 2 to paragraph (d) ("If a transaction is one of the types listed further, the transaction is presumptively *pro forma* and prior approval need not be sought. In all other cases, the relevant determination shall be made on a case-by-case basis . . .").

²⁹ 47 CFR § 63.24(f)(1) ("In the case of a *pro forma* assignment or transfer of control, the section 214 authorization holder is not required to seek prior Commission approval.").

³⁰ 47 CFR § 63.24(f) ("Notifications for non-substantial or *pro forma* transactions").

³¹ *Market Entry and Regulation of Foreign-Affiliated Entities*, IB Docket No. 95-22, Report and Order, 11 FCC Rcd 3873, 3877, para. 6 (1995) (*Foreign Carrier Entry Order*).

³² *Foreign Participation Order*, 12 FCC Rcd at 23918-21, paras. 59-66.

³³ See *id.* at 23918-21, paras. 59-66; see *China Telecom Americas Order on Revocation and Termination*, 36 FCC Rcd at 15970, para. 5, *aff'd*, *China Telecom (Americas) Corp. v. FCC*, 57 F.4th 256 (D.C. Cir. 2022).

³⁴ The Commission assesses potential anti-competitive behavior by the entry of a foreign carrier with market power into the U.S. market. *Foreign Participation Order*, 12 FCC Rcd at 23897-98, 23910-11, paras. 11, 13, 45-46.

Commission considers whether an application for international section 214 authority or modification, assignment, or transfer of control of international section 214 authority raises any national security, law enforcement, foreign policy, or trade policy concerns related to the applicant's reportable foreign ownership.³⁵ In this regard, the Commission has sought the expertise of the relevant Executive Branch agencies³⁶ in identifying and evaluating issues of concern that may arise from an applicant's or authorization holder's foreign ownership.³⁷ In the *Executive Branch Process Reform Order*, the Commission formalized the review process for the Committee to complete its review consistent with Executive Order No. 13913 of April 4, 2020.³⁸ The Commission ultimately makes an independent decision in light of the information in the record, including any information provided by the applicant, authorization holder, or licensee in response to any filings by the Executive Branch agencies.³⁹

9. The Commission's current rules allow for either streamlined or non-streamlined processing of applications for international section 214 authority or modification, assignment, or transfer of control of international section 214 authority.⁴⁰ Applications without reportable foreign ownership normally will be granted automatically 14 days following the date that the International Bureau has placed the application on "Accepted for Filing" public notice.⁴¹ An "Actions Taken" public notice is released identifying the applications that were granted. If an applicant has reportable foreign ownership, the application process usually is not streamlined and the International Bureau refers the application to the Committee for review at the time it places the application on "Accepted for Filing" public notice.⁴² Under the new rules and procedures adopted in the *Executive Branch Process Reform Order*, 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.⁴³ Upon grant of an international section 214 authorization, under the current rules, a facilities-based or resale-based authorization holder may provide international

³⁵ See *Foreign Participation Order*, 12 FCC Rcd at 23918-21, paras. 59-66; *Executive Branch Process Reform Report and Order*, 35 FCC Rcd at 10928-29, para. 3.

³⁶ See *supra* note 8.

³⁷ See *Foreign Participation Order*, 12 FCC Rcd at 23919-20, paras. 62-63 (recognizing that "foreign participation in the U.S. telecommunications market may implicate significant national security or law enforcement issues uniquely within the expertise of the Executive Branch"); *Executive Branch Process Reform Report and Order*, 35 FCC Rcd at 10928-29, para. 3; *China Telecom Americas Order on Revocation and Termination*, 36 FCC Rcd at 15970, para. 5, *aff'd*, *China Telecom (Americas) Corp.*, 57 F.4th 256.

³⁸ See generally *Executive Branch Process Reform Report and Order*; Executive Order No. 13913, 85 Fed. Reg. at 19643 (stating that, "[t]he security, integrity, and availability of United States telecommunications networks are vital to United States national security and law enforcement interests"); *id.* at 19643-44 (establishing the "Committee," composed of the Secretary of Defense (DOD), the Secretary of Homeland Security (DHS), and the United States Attorney General (DOJ), 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 (Members), and also providing for Advisors, including the Secretary of State, the Secretary of Commerce, and USTR).

³⁹ *Foreign Participation Order*, 12 FCC Rcd at 23921, para. 66 ("We emphasize that the Commission will make an independent decision on applications to be considered and will evaluate concerns raised by the Executive Branch agencies in light of all the issues raised (and comments in response) in the context of a particular application.").

⁴⁰ See 47 CFR § 63.12.

⁴¹ 47 CFR § 63.12(a).

⁴² *Executive Branch Process Reform Report and Order*, 35 FCC Rcd at 10928-31, paras. 3-7; *Process Reform for Executive Branch Review of Certain FCC Applications and Petitions Involving Foreign Ownership*, Notice of Proposed Rulemaking, 31 FCC Rcd 7456, 7471, para. 38 (2016).

⁴³ *Executive Branch Process Reform Report and Order*, 35 FCC Rcd at 10928, para. 2.

telecommunications services to any route for which it is classified as non-dominant pursuant to the terms of its authorization.⁴⁴

10. The Commission continues to reassess on an *ad hoc* basis whether a carrier's retention of international section 214 authority presents national security and law enforcement risks that warrant revocation or termination of its international section 214 authority.⁴⁵ The Executive Branch agencies also may recommend that the Commission modify or revoke an existing authorization if they at any time identify unacceptable risks to national security or law enforcement interests of the United States.⁴⁶ If revocation or termination may be warranted, the Commission may institute a revocation proceeding to "provide the authorization holder such notice and an opportunity to respond as is required by due process and applicable law, and appropriate in light of the facts and circumstances."⁴⁷

11. *Current Authorizations Listed in IBFS.* The Commission's records in the International Bureau Filing System (IBFS) indicate there are nearly 7,400 international section 214 authorizations, held by approximately 7,000 authorization holders. We believe that this number significantly exceeds the total number of active authorization holders providing service to customers today.⁴⁸ This is because the Commission's current rules allow authorization holders to retain their international section 214 authorization even if they are no longer in business or using their authorization. Additionally, the Commission does not have a clear mechanism by which the Commission can identify or account for all active international section 214 authorization holders.

12. *Estimate of Active International Section 214 Authorizations.* We estimate that the number of active international section 214 authorization holders is approximately 1,500—or roughly a fifth of the approximately 7,000 international section 214 authorization holders listed in IBFS. Our estimate of active authorization holders is based on two Commission resources: (1) the Commission's Form 499-A records and (2) the Commission's most recent traffic and revenue data as of December 31, 2014.⁴⁹ First, the Commission's Form 499-A records indicate that approximately 1,500 international

⁴⁴ 47 CFR § 63.18(e)(1) ("Global facilities-based authority"); *id.* § 63.18(e)(2) ("Global Resale Authority"); *id.* § 63.18(e)(3) ("If applying for authority to acquire facilities or to provide services not covered by paragraphs (e)(1) and (e)(2) of this section, the applicant shall provide a description of the facilities and services for which it seeks authorization. The applicant shall certify that it will comply with the terms and conditions contained in §§ 63.21 and 63.22 and/or 63.23, as appropriate."); *id.* §§ 63.21, 63.22, 63.23. Under the Commission's rules, a carrier is classified as non-dominant on a U.S.-international route if it is not affiliated with a foreign carrier with market power on the foreign end of the route or it provides an international switched service on that route solely through the resale of an unaffiliated U.S. facilities-based carrier's international switched services. 47 CFR § 63.10(a); *see infra* note 66.

⁴⁵ *See infra* note 47; *China Telecom Americas Order on Revocation and Termination*, 36 FCC Rcd at 15966, *aff'd*, *China Telecom (Americas) Corp. v. FCC*, 57 F.4th at 256; *China Unicom (Americas) Operations Limited*, GN Docket No. 20-110, File Nos. ITC-214-20020728-00361, ITC-214-20020724-00427, Order on Revocation, FCC 22-9, 2022 WL 354622 (2022) (*China Unicom Americas Order on Revocation*) (9th Cir. argued Feb. 15, 2023); *Pacific Networks Corp. and ComNet (USA) LLC*, GN Docket No. 20-111, File Nos. ITC-214-20090105-00006, ITC-214-20090424-00199, Order on Revocation and Termination, FCC 22-22, 2022 WL 905270 (2022) (*Pacific Networks/ComNet Order on Revocation and Termination*) (D.C. Cir. argued Sept. 20, 2022).

⁴⁶ Executive Order 13913 § 9(b); *see also id.* § 6(a).

⁴⁷ *Executive Branch Process Reform Order*, 35 FCC Rcd at 10962–64, paras. 90-92.

⁴⁸ *See infra* para. 12. Additionally, the Commission's records indicate that approximately 3.43% of authorization holders hold more than one authorization.

⁴⁹ International Bureau Report—2014 U.S. International Telecommunications Traffic and Revenue Data (revised Dec. 2017) (presenting information on telecommunications services between the United States and international points as of December 31, 2014, based on the former section 43.62 reporting requirements) (2014 Traffic and

(continued....)

section 214 authorization holders may have filed an annual FCC Form 499-A for the 2022 reporting year but only 748 of those carriers reported revenue for U.S.-international service. Under the Commission's rules, all interstate and international providers of telecommunications within the United States are obligated to file the FCC Form 499-A to report historical revenues from the prior year on an annual basis.⁵⁰ Second, the Commission's U.S.-international telecommunications traffic and revenue data as of December 31, 2014, indicate that 1,542 telecommunications providers filed traffic and revenue reports for the 2014 reporting period.⁵¹ This is the best estimate we have that captures facilities-based and resale-based international section 214 authorization holders, yet the Commission last collected these traffic and revenue data nearly 10 years ago.

13. *Commission Efforts to Address Threats to National Security and Law Enforcement Risks.* Promotion of national security is an integral part of the Commission's public interest responsibility, including its administration of section 214 of the Act, and one of the core purposes for which Congress created the Commission.⁵² Over the past several years, as part of the Commission's continuing efforts to promote national security and law enforcement, the Commission denied an application for international section 214 authority⁵³ and revoked, and in certain cases terminated for failure to satisfy certain conditions, certain carriers' section 214 authority based on recommendations and comments from interested Executive Branch agencies regarding evolving national security and law enforcement concerns.⁵⁴ In the *China Mobile USA Order*, the Commission denied an application for international section 214 authority, finding that grant of the application would raise substantial and serious national security and law enforcement risks that could not be addressed through a mitigation agreement.⁵⁵ In that proceeding, the Executive Branch agencies and the Commission confronted the implications of changed

Revenue Report). In 2017, the Commission streamlined the international reporting requirements and eliminated the traffic and revenue reports and the requirement to file terrestrial and satellite circuit data. *Section 43.62 Reporting Requirements for U.S. Providers of International Services; 2016 Biennial Review of Telecommunications Regulations*, Report and Order, 32 FCC Rcd 8115 (2017).

⁵⁰ See 47 CFR §§ 52.17(b), 52.32(b), 54.708, 54.711, 64.604(c)(5)(iii)(A) and (B). The available data may not include, for example, certain resale-based providers, or providers that do not file the FCC Form 499-A because they are *de minimis* for USF contribution purposes, and need not file for any other purpose. See 2022 Telecommunications Reporting Worksheet Instructions (FCC Form 499-A) at 6-7; *id.* at 7, n.17 ("A resale provider may contribute directly to the USF by signing a resale certificate or may be treated as an end user by its underlying carrier and therefore may contribute indirectly as a result of USF pass-through charges."). We recognize that limitations in the available data prevent a more accurate picture of which international section 214 authorization holders are currently providing telecommunications service.

⁵¹ See 2014 Traffic and Revenue Report at 1.

⁵² 47 U.S.C. § 151; see *Foreign Participation Order*, 12 FCC Rcd at 23918-21, paras. 59-66; see also *Protecting Against National Security Threats to the Communications Supply Chain Through FCC Programs et al.*, WC Docket No. 18-89 et al., Report and Order, Further Notice of Proposed Rulemaking, and Order, 34 FCC Rcd 11423, 11436, para. 34 (2019) (*Protecting Against National Security Threats Order*), *aff'd*, *Huawei Technologies USA v. FCC*, 2 F.4th 421, 439 (5th Cir. 2021).

⁵³ *China Mobile International (USA) Inc.; Application for Global Facilities-Based and Global Resale International Telecommunications Authority Pursuant to Section 214 of the Communications Act of 1934, as Amended*, Memorandum Opinion and Order, 34 FCC Rcd 3361, 3365-66, 3376-77, 3380, paras. 1, 8, 31-32, 38 (2019) (*China Mobile USA Order*).

⁵⁴ See *China Telecom Americas Order on Revocation and Termination* at 36 FCC Rcd at 15966-68, 15974, 15994-6030, paras. 1-2, 9, 44-99, *aff'd*, *China Telecom (Americas) Corp. v. FCC*, 57 F.4th at 256; *China Unicom Americas Order on Revocation* at *1, 6, 20-46, paras. 1-2, 16, 49-110; *Pacific Networks/ComNet Order on Revocation and Termination* at *1, 6, 18-49, paras. 1-2, 14, 44-113.

⁵⁵ *China Mobile USA Order*, 34 FCC Rcd at 3361-62, 3365-66, 3376-77, 3380, paras. 1, 8, 31-33, 38.

circumstances in the national security environment on the evaluation of international section 214 authority.⁵⁶ In the revocation and/or termination actions that followed in the *China Telecom Americas Order on Revocation and Termination*, *China Unicom Americas Order on Revocation*, and *Pacific Networks/ComNet Order on Revocation and Termination*, the Commission extensively evaluated national security and law enforcement considerations raised by existing section 214 authorizations and determined, based on thorough record development, that the present and future public interest, convenience, and necessity was no longer served by those carriers' retention of their section 214 authority.⁵⁷

14. The Commission has taken further steps to protect the nation's communications networks from potential national security threats. In November 2019, the Commission prohibited the use of public funds from the Commission's Universal Service Fund (USF) to purchase, obtain, maintain, improve, modify, or otherwise support any equipment or services produced or provided by companies posing a national security threat to the integrity of communications networks or the communications supply chain.⁵⁸ In December 2020, the Commission enacted rules to, among other things, (1) create and maintain the Covered List, which identifies communications equipment and services that pose an unacceptable risk to the national security of the United States or the security and safety of United States persons within the meaning of the Secure and Trusted Communications Networks Act of 2019 (Secure and Trusted Communications Networks Act);⁵⁹ (2) prohibit the use of Federal subsidies made available

⁵⁶ See *id. generally*; *id.* at 3372, para. 20 (“[I]n this case, the Executive Branch agencies identify significantly enhanced national security and law enforcement risks linked to the Chinese government’s activities since the Commission last granted international section 214 authorizations to other Chinese state-owned companies more than a decade ago.”); *id.* at 3379, para. 37 (“As noted, in the current environment the Executive Branch agencies have greater knowledge of the risks of granting international section 214 authorizations to Chinese state-owned enterprises, including increased awareness of China’s role in economic and other espionage against the United States.”).

⁵⁷ *China Telecom Americas Order on Revocation and Termination*, 36 FCC Rcd 15966, *aff’d*, *China Telecom (Americas) Corp.*, 57 F.4th 256; *China Unicom Americas Order on Revocation*, FCC 22-9, 2022 WL 354622; *Pacific Networks/ComNet Order on Revocation and Termination*, FCC 22-22, 2022 WL 905270. Short of denial of renewal applications or revocation of authorizations, the Commission may use its enforcement authority to impose monetary penalties. See, e.g., *Truphone, Inc.*, Notice of Apparent Liability for Forfeiture, FCC 22-30 (rel. April 21, 2022) (the Commission proposed a forfeiture of \$660,639 for Truphone’s misreporting its ownership structure which led to ownership by foreign entities that were not vetted as required by the Act and the Commission’s rules).

⁵⁸ *Protecting Against National Security Threats to the Communications Supply Chain Through FCC Programs*, WC Docket No. 18-89, Report and Order, Further Notice of Proposed Rulemaking, and Order, 34 FCC Rcd at 11433, para. 26, *aff’d*, *Huawei Technologies USA v. FCC*, 2 F.4th 421. For the purposes of section 54.9 of the Commission’s rules, covered communications equipment and services only includes communications equipment and services produced or provided by Huawei Technologies Company (Huawei) and ZTE Corporation (ZTE). See 47 CFR § 54.9(b) (establishing a process to designate entities subject to the prohibition in section 54.9 of the Commission’s rules); *Protecting Against National Security Threats to the Communications Supply Chain Through FCC Programs – Huawei Designation*, PS Docket No. 19-351, Order, 35 FCC Rcd 6604 (PSHSB 2020); *Protecting Against National Security Threats to the Communications Supply Chain Through FCC Programs – ZTE Designation*, PS Docket No. 19-352, Order, 35 FCC Rcd 6633 (PSHSB 2020).

⁵⁹ *Protecting Against National Security Threats to the Communications Supply Chain Through FCC Programs*, WC Docket No. 18-89, Second Report and Order, 35 FCC Rcd 14284, 14311, para. 58 (2020) (*2020 Protecting Against National Security Threats Order*) (implementing the Secure and Trusted Communications Networks Act of 2019, 47 U.S.C. §§ 1601-1609). In March 2021, the Commission’s Public Safety and Homeland Security Bureau announced the publication of a list of communications equipment and services (Covered List) that are deemed to pose an unacceptable risk to the national security of the United States or the security and safety of United States persons. *Public Safety and Homeland Security Bureau Announces Publication of the List of Equipment and Services Covered by Section 2 of the Secure Networks Act*, Public Notice, 36 FCC Rcd 5534 (PSHSB 2021). In March 2022 and

(continued....)

through a program administered by the Commission that provides funds for the capital expenditures necessary for the provision of advanced communications service to purchase, rent, lease, or otherwise obtain any covered communications equipment and service on the Commission's Covered List, or to maintain any such equipment or service that was previously purchased, rented, leased, or otherwise obtained;⁶⁰ (3) require eligible telecommunications carriers receiving USF support to remove and replace covered communications equipment and services from their networks;⁶¹ (4) establish the Secure and Trusted Communications Networks Reimbursement Program (Reimbursement Program) to reimburse providers of advanced communications service for costs reasonably incurred to permanently remove, replace, and dispose of covered communications equipment and services from their networks;⁶² and (5) implement a new data collection applying to all providers of advanced communications service that requires these providers to annually report on covered communications equipment and services that were purchased, rented, leased, or otherwise obtained on or after certain dates.⁶³ In November 2022, the Commission adopted revisions to its equipment authorization program to prohibit authorization of equipment that has been identified on the Commission's Covered List as posing an unacceptable risk to national security of the United States or the security or safety of United States persons, and prohibited the marketing and importation of such equipment in the United States.⁶⁴

September 2022, the Public Safety and Homeland Security Bureau announced additions to the Covered List. *Public Safety and Homeland Security Bureau Announces Additions to the List of Equipment and Services Covered by Section 2 of the Secure Networks Act*, Public Notice, DA 22-320 (PSHSB 2022); *Public Safety and Homeland Security Bureau Announces Additions to the List of Equipment and Services Covered by Section 2 of the Secure Networks Act*, Public Notice, DA 22-979 (PSHSB 2022).

⁶⁰ 47 CFR § 54.10; *2020 Protecting Against National Security Threats Order*, 35 FCC Rcd at 14325-326, paras. 94-95; 47 U.S.C. § 1602.

⁶¹ 47 CFR § 54.11 (requiring eligible telecommunications carriers receiving universal service support to certify that they do not use covered communications equipment and services prior to receiving a funding commitment or support); *2020 Protecting Against National Security Threats Order*, 35 FCC Rcd at 14292-299, para. 21-31.

⁶² 47 U.S.C. § 1603(a) (directing the Commission to establish the Reimbursement Program); 47 CFR § 1.50004; *2020 Protecting Against National Security Threats Order*, 35 FCC Rcd at 14331-368, paras. 108-208. In July 2021, the Commission modified its rules to incorporate the Consolidated Appropriations Act, 2021 (CAA) amendments to the Secure and Trusted Communications Networks Act of 2019. *Protecting Against National Security Threats to the Communications Supply Chain Through FCC Programs*, WC Docket No. 18-89, Third Report and Order, 36 FCC Rcd 11958, para. 1 (2021) (*2021 Protecting Against National Security Threats Order*); Consolidated Appropriations Act, 2021, Pub. L. No. 116-260, § 901, 134 Stat. 1182 (2020); Secure and Trusted Communications Networks Act of 2019, Pub. L. No. 116-124, 134 Stat. 158 (2020) (codified as amended at 47 U.S.C. §§ 1601-1609). These rule modifications included, but were not limited to, revising the eligibility to participate in the Reimbursement Program to providers of advanced communications service with 10 million or fewer customers and adopting the CAA's prioritization scheme if program demand exceeds available funding. *2021 Protecting Against National Security Threats Order*, 36 FCC Rcd at 11963 at para. 13. The Commission also concluded that, pursuant to the CAA's amendments to the Secure and Trusted Communications Networks Act, "covered communications equipment and services" eligible for Reimbursement Program support is limited to communications equipment and services produced or provided by Huawei or ZTE and obtained by providers on or before June 30, 2020. *Id.* at 11965, 11978, paras. 18-19, 46. The certification requirement in section 54.11 of the Commission's rules is also limited to communications equipment and services produced or provided by Huawei or ZTE. *Id.* at 11975, para. 39 (aligning the scope of equipment and services required for removal under section 54.11 with the scope of equipment and services eligible for reimbursement through the Reimbursement Program).

⁶³ 47 CFR § 1.50007; *2020 Protecting Against National Security Threats Order*, 35 FCC Rcd at 14368-371, paras. 209-217.

⁶⁴ *Protecting Against National Security Threats to the Communications Supply Chain through the Equipment Authorization Program*; *Protecting Against National Security Threats to the Communications Supply Chain through* (continued....)

15. Our action today is intended to further protect the nation's telecommunications infrastructure from threats in an evolving national security and law enforcement landscape by proposing to establish a renewal requirement for all international section 214 authorization holders. In the alternative, we seek comment on adopting rules that require periodic Commission review of international section 214 authorizations. We tentatively conclude that the rules proposed in this Notice will improve the Commission's oversight of international section 214 authorizations. Importantly, in view of the evolving national security and law enforcement concerns identified in our recent proceedings revoking the section 214 authorizations of certain providers controlled by the Chinese government, we believe that a formalized system of periodically reassessing international section 214 authorizations would better ensure that international section 214 authorizations, once granted, continue to serve the public interest.⁶⁵

III. ORDER: REPORTING ON FOREIGN OWNERSHIP OF INTERNATIONAL SECTION 214 AUTHORIZATION HOLDERS

16. As an initial matter, pursuant to sections 218, 219, and 403 of the Act, we adopt an Order requiring all international section 214 authorization holders to respond to a one-time collection to update the Commission's records regarding the foreign ownership of international section 214 authorization holders.⁶⁶ As noted above, the Commission has incomplete and outdated information about international section 214 authorization holders. For example, the Commission's records in IBFS reflect there are approximately 7,000 international section 214 authorization holders, though we estimate the more accurate number is closer to approximately 1,500 active authorization holders.⁶⁷ Additionally, we do not have visibility on authorized carriers' current foreign ownership. Thus, the collection of this information is a necessary first step for the Commission to make an informed decision concerning the proposed rules and procedures set forth in this Notice. Among other things, the information derived from this one-time collection will allow the Commission to determine the number of active authorization holders and whether they have reportable foreign ownership. In addition, the information will enable the Commission to identify those authorization holders that are no longer in business or are in business but discontinued service under their international section 214 authority. Overall, the information will assist the Commission in developing a timely and effective process for prioritizing the review of international section 214 authorizations that are most likely to raise national security, law enforcement, foreign policy, or trade policy concerns, as proposed below.

17. Under the Commission's current rules, international section 214 authorization holders are not required to periodically report their ownership, including the extent of any foreign ownership interests, the identity of their foreign interest holders, and the countries associated with such foreign ownership. Following the grant of an international section 214 authorization, an authorized U.S.-

the Competitive Bidding Program, ET Docket No. 21-232, EA Docket No. 21-233, Report and Order, Order, and Further Notice of Proposed Rulemaking, FCC 22-84, 2022 WL 17335868 (rel. Nov. 25, 2022) (*2022 Protecting Against National Security Threats Order*).

⁶⁵ See, e.g., *China Mobile USA Order*, 34 FCC Rcd at 3365-66, 3376-77, 3380, paras. 8, 31-32, 38; *2019 Protecting Against National Security Threats Order*, 34 FCC Rcd at 11433, paras. 26-27; *Protecting Against National Security Threats to the Communications Supply Chain Through FCC Programs*, WC Docket No. 18-89, Declaratory Ruling and Second Further Notice of Proposed Rulemaking, 35 FCC Rcd 7821, 7822, paras. 2-3 (2020); *2020 Protecting Against National Security Threats Order*, 35 FCC Rcd at 14285, para. 1; *2021 Protecting Against National Security Threats Order*, 36 FCC Rcd at 11958-63, paras. 1-12; *China Telecom Americas Order on Revocation and Termination* 15 FCC Rcd 15968, para. 3, *aff'd*, *China Telecom (Americas) Corp. v. FCC*, 57 F.4th 256; *China Unicom Americas Order on Revocation* at *2, para. 3; *Pacific Networks/ComNet Order on Revocation and Termination* at *2, para. 3; *2022 Protecting Against National Security Threats Order* at paras. 1-32.

⁶⁶ 47 U.S.C. §§ 218, 219, 403.

⁶⁷ See *supra* para. 12.

international carrier can provide service globally to any route for which it is classified as non-dominant pursuant to the terms of its international section 214 authorization.⁶⁸ After the grant, the Commission ordinarily does not receive updated information unless an authorization holder files an application for a modification, assignment, or transfer of control of the authorization.⁶⁹ Additionally, international section 214 authorization holders only need to notify the Commission of a planned discontinuance of service when the authorization holder seeks to discontinue service for which it has customers.⁷⁰ If an international section 214 authorization holder does not have any customers when it discontinues offering service, it may file with the Commission a notification to surrender its authorization, but is not required to do so. In those circumstances, the authorization holder may retain the authorization indefinitely. Following the grant of international section 214 authority, an authorization holder may retain the authorization even if it was never used or the authorization holder is not currently offering service or simply is no longer in business.

18. *One-Time Information Collection.* In furtherance of our goal in this proceeding, and pursuant to sections 218, 219, and 403 of the Act,⁷¹ we adopt the information collection requirements herein, which are based on the requirements set forth in section 63.18(h) of the Commission's rules.⁷² Section 63.18(h) requires international section 214 applicants to provide "[t]he name, address, citizenship and principal businesses of any person or entity that directly or indirectly owns at least 10 percent of the equity of the applicant, and the percentage of equity owned by each of those entities (to the nearest one percent)."⁷³ Based on this rule, we direct each authorization holder to identify its 10% or greater direct or indirect foreign interest holders (reportable foreign ownership)⁷⁴ as of thirty (30) days prior to the filing deadline. Additionally, we require each holder to certify as to the accuracy of the information provided. Such certification requires each authorization holder to conduct appropriate diligence, thereby increasing the reliability of its information. In the Notice, we propose to cancel the authorizations of carriers that fail to respond to this Order and impose forfeitures or other measures where a carrier fails to respond in a timely or complete manner.⁷⁵

19. We anticipate that our information collection will not be unduly burdensome as

⁶⁸ Under the Commission's rules, a carrier is classified as non-dominant on a U.S.-international route if it is not affiliated with a foreign carrier with market power on the foreign end of the route or it provides an international switched service on that route solely through the resale of an unaffiliated U.S. facilities-based carrier's international switched services. 47 CFR § 63.10(a); *id.* § 63.10(a)(1) ("A U.S. carrier that has no affiliation with, and that itself is not, a foreign carrier in a particular country to which it provides service (i.e., a destination country) shall presumptively be considered non-dominant for the provision of international communications services on that route."); *id.* § 63.10(a)(4) ("A carrier that is authorized under this part to provide to a particular destination an international switched service, and that provides such service solely through the resale of an unaffiliated U.S. facilities-based carrier's international switched services (either directly or indirectly through the resale of another U.S. resale carrier's international switched services), shall presumptively be classified as non-dominant for the provision of the authorized service . . .").

⁶⁹ We refer to "application" in this context to include an application to modify an international section 214 authorization; an application for substantial assignment or transfer of control of an international section 214 authorization; and a notification of *pro forma* assignment or transfer of control of an international section 214 authorization. See 47 CFR §§ 63.18, 63.24(e)(1), 63.24(f)(2).

⁷⁰ See 47 CFR § 63.19.

⁷¹ 47 U.S.C. §§ 218, 219, 403.

⁷² 47 CFR § 63.18(h).

⁷³ *Id.*

⁷⁴ *Id.*

⁷⁵ See Section IV.A.

international section 214 authorization holders would have information about their ownership available for purposes of compliance with the Commission's rules, e.g., to ascertain whether their ownership requires approval for a substantive or non-substantive assignment or transfer.⁷⁶ Most businesses likely maintain records of their 10% or greater direct or indirect interest holders in the ordinary course of business. An authorization holder that is a privately held entity likely knows its investors. An authorization holder that is a publicly held company is also required to identify its interest holders in requisite filings with the U.S. Securities and Exchange Commission (SEC).⁷⁷

20. Pursuant to this Order, we require an international section 214 authorization holder to submit information based on the categories below.

(1) **Reportable Foreign Ownership – Foreign Adversary – China (including Hong Kong), Cuba, Iran, North Korea, Russia, Maduro Regime.** Where there are interest holders that are entities and individuals that are a government organization or citizen of a “foreign adversary” country, an authorization holder must identify its 10% or greater direct or indirect foreign interest holders, including any 10% or greater direct or indirect foreign interest holders outside the foregoing “foreign adversary” countries. A “foreign adversary” country is defined in the Department of Commerce's rule, 15 CFR § 7.4.⁷⁸ The authorization holder must:

- identify each interest holder and the foreign country or countries, including countries that are not foreign adversary countries;
- disclose whether any interest holder has dual or more citizenships and identify all countries where citizenship is held;⁷⁹ and
- certify to the truth and accuracy of all information.

(2) **Reportable Foreign Ownership – No Foreign Adversary.** Where there are no interest holders that are entities or individuals that are a government organization or citizen of any foreign country that is a “foreign adversary” country defined in the Department of Commerce's rule, 15 CFR § 7.4, an authorization holder must identify its 10% or greater direct or indirect foreign interest holders. The authorization holder must:

- identify each interest holder and the foreign country or countries;
- disclose whether any interest holder has dual or more citizenships and identify all the

⁷⁶ See e.g., 47 CFR § 63.24.

⁷⁷ As discussed below, a reporting threshold of 5% is also consistent with information that U.S. public companies and their shareholders provide to the SEC. See *infra* para. 93; 15 U.S.C. § 78m(d)(1); 17 CFR § 240.13d-1; 17 CFR § 229.403; see *2016 Foreign Ownership Report and Order*, Report and Order, 31 FCC Rcd 11272, 11293-94, para. 45-46, n.130 (2016).

⁷⁸ 15 CFR § 7.4 (“The Secretary has determined that the following foreign governments or foreign non-government persons have engaged in a long-term pattern or serious instances of conduct significantly adverse to the national security of the United States or security and safety of United States persons and, therefore, constitute foreign adversaries solely for the purposes of the Executive Order, this rule, and any subsequent rule promulgated pursuant to the Executive Order. . . .”); see 15 CFR § 7.2 (“Foreign adversary means any foreign government or foreign non-government person determined by the Secretary to have engaged in a long-term pattern or serious instances of conduct significantly adverse to the national security of the United States or security and safety of United States persons.”); Executive Order 13873, Securing the Information and Communications Technology and Services Supply Chain, 84 Fed. Reg. 22689 (2019).

⁷⁹ This requirement applies to United States citizens who hold dual citizenship or multiple citizenships and foreign persons who are citizens of two or more countries.

countries where citizenship is held;⁸⁰ and

- certify to the truth and accuracy of all information.

(3) **No Reportable Foreign Ownership.** An authorization holder that has no reportable foreign ownership must certify to the truth and accuracy of this information.

21. *Information Collection Process and Deadline.* We direct the International Bureau or its successor entity to conduct this information collection, including the creation of the forms, and submit the information collection for Office of Management and Budget (OMB) review⁸¹ and, following OMB review, publish notice of the effective date of the information collection and the filing deadline in the Federal Register. The filing deadline shall be no fewer than thirty (30) days following the effective date of this Order by OMB. The International Bureau or its successor entity also will issue a Public Notice announcing the deadline and will provide instructions for filing this information with the Commission.

22. *FCC Registration Number (FRN).* All authorization holders must have an FCC Registration Number (FRN) in order to file their response in IBFS.⁸² An FRN is the 10-digit number assigned to all entities (individual and corporate) that transact business with the Commission, and it must be provided any time an authorization holder submits a filing or application in IBFS. We note that many international section 214 authorizations were granted to entities prior to the Commission requiring an FRN in 2001.⁸³ Such entities will need to obtain an FRN prior to filing their response to the information collection.⁸⁴

23. *Surrender of Authorizations.* Authorization holders that surrender their international section 214 authorizations before the filing deadline do not need to respond to the one-time information collection. Accordingly, we strongly encourage international section 214 authorization holders that no longer need or use their authorizations to do so before the filing deadline. International section 214 authorization holders may file a surrender letter in IBFS.

IV. NOTICE OF PROPOSED RULEMAKING

24. The Notice seeks comment on proposed rules and possible alternative approaches, including alternatives for small entities, that will further our goal of ensuring that the Commission continually accounts for evolving public interest considerations associated with international section 214 authorizations following an initial grant of the authority. *First*, we propose to cancel the authorizations of those international section 214 authorization holders that fail to respond to the one-time collection requirement adopted in the Order. *Second*, we propose to adopt a 10-year renewal framework for the Commission's reassessment of all authorizations or, in the alternative, seek comment on a formalized

⁸⁰ This requirement applies to United States citizens who hold dual citizenship or multiple citizenships and foreign persons who are citizens of two or more countries.

⁸¹ To the extent required, the International Bureau or its successor entity would also modify the applicable System of Records Notice under the Privacy Act. See Federal Communications Commission, *Privacy Act of 1974; System of Records*, IB-1, International Bureau Filing System, 86 F.R. 43,237 (Aug. 6, 2021).

⁸² 47 CFR. § 1.8002(a) ("The FRN must be obtained by anyone doing business with the Commission, see 31 U.S.C. 7701(c)(2)"). An authorization holder may obtain an FRN through the Commission's CORES webpage. FCC, Commission Registration System (CORES), <https://apps.fcc.gov/cores/userLogin.do>.

⁸³ Federal Communications Commission, Adoption of a Mandatory FCC Registration Number, 66 Fed. Reg. 47890 (Sept. 14, 2001) (amending the Commission's rules to require persons and entities doing business with the Commission to obtain a unique identifying number, called the FCC Registration Number (FRN), through the Commission Registration System (CORES), and to provide the number when doing business with the Commission, effective Dec. 3, 2001).

⁸⁴ *International Bureau Filing System (IBFS)*, Order, 19 FCC Rcd 4575 (2004).

periodic review of such authorizations. *Third*, we propose to adopt a process that prioritizes renewal applications with foreign ownership to regularly reassess any evolving national security, law enforcement, or other concerns, as opposed to reviewing international section 214 authorizations only on an *ad hoc* basis. We intend to continue to collaborate with the relevant Executive Branch agencies and to refer matters to the Committee where warranted. *Fourth*, we propose new application rules to capture critical information from all applicants with and without reportable foreign ownership⁸⁵ not currently collected and to require additional certifications. *Fifth*, to further ensure that carriers' use of their international section 214 authority is in the public interest, we propose and seek comment on modifications to related Parts 1 and 63 rules. *Finally*, we invite comment on the costs and benefits of the proposed rules and any alternatives.

A. Failure to Timely Respond to One-Time Information Collection

25. In the Order, we direct each authorization holder to identify its 10% or greater direct or indirect foreign interest holders (reportable foreign ownership),⁸⁶ as of thirty (30) days prior to the filing deadline. If an international section 214 authorization holder fails to timely respond to the information collection required in the Order, we propose to cancel its authorization. We would deem the failure to respond to the Order as presumptive evidence that the authorization holder is no longer in operation. We propose to publish a list of non-responsive authorization holders in the Federal Register and provide an additional 30 days from that publication for those authorization holders to respond to the information collection requirement or surrender the authorization. If an authorization holder has not responded within 30 days of the publication of the notice in the Federal Register, we propose that those authorizations would be automatically cancelled. We tentatively find this proposal is reasonable and necessary to ensure the accuracy of the Commission's records regarding international section 214 authorization holders and in consideration of the Commission's need to implement a renewal or in the alternative, a periodic review process with administrative efficiency.

26. We propose that any authorization holder whose authorization is cancelled for failure to timely respond to the information collection may file a petition for reinstatement *nunc pro tunc* of the authorization. We propose that a petition for reinstatement will be considered: (1) if it is filed within six months after publication of the Federal Register notice; (2) if the petition demonstrates that the authorization holder is currently in operation and has customers; and (3) if the petition demonstrates good cause for the failure to timely respond. We propose that an authorization holder whose authorization is cancelled under these procedures would be able to file an application for a new international 214 authorization in accordance with the Commission's rules, which would be subject to full review. We seek comment on the cancellation process generally and if there are any proposals to assist small entities. Should there be any other procedural requirements if an authorization holder does not file a petition for reinstatement within six months after publication of the Federal Register notice? We seek comment whether these procedures would provide non-responsive authorization holders with sufficient due process and notice and opportunity to respond.

B. International Section 214 Renewal or Periodic Review Requirements

1. Legal Authority

27. *Legal Authority.* As described below, we propose to adopt a 10-year renewal requirement for all international section 214 authorization holders, whereby those authorization holders must periodically demonstrate that their authorization continues to serve the public interest, and such authorization would expire following appropriate proceedings if the holder fails to meet that burden. In the alternative, we seek comment on adopting a periodic review process whereby international section

⁸⁵ See *supra* note 9 (explaining the use of "applicant" or "applicants" in this Notice).

⁸⁶ 47 CFR § 63.18(h).

214 authorization holders must periodically submit similar information demonstrating that their authorization continues to serve the public interest, and the Commission or a Bureau could institute a revocation proceeding if the holder fails to meet that burden. As a threshold matter, we tentatively find that the Commission has the authority to require the renewal of international section 214 authorizations. We also tentatively conclude that the Commission has the authority to adopt a periodic review process as an exercise of its power to revoke authorizations.

28. We tentatively conclude that the Commission has direct and ancillary authority under sections 4(i), 201(b), and 214 of the Act—individually and collectively—to adopt terms and conditions of service for international section 214 authorizations, including time limits on an authorization, and to cancel an authorization through non-renewal of the international section 214 authority where the Commission determines that the public interest so requires. Section 214 of the Act does not expressly require the renewal of section 214 authorizations unlike section 307(c), which permits the Commission to prescribe license terms by rule, except that broadcast license terms may not exceed eight years.⁸⁷ Although section 214 does not expressly provide for renewal of authorizations,⁸⁸ section 214(c) affords the Commission discretion to grant the authority requested or “refuse” to do so, and the Commission may condition any grant on “such terms and conditions as in its judgment the public convenience and necessity may require.”⁸⁹ In addition, under section 4(i), the Commission has broad authority to adopt rules, not inconsistent with the Act, “as may be necessary in the execution of its functions.”⁹⁰ Under section 201(b) the Commission has broad general grant of rulemaking authority to “prescribe such rules and regulations as may be necessary in the public interest to carry out the provisions of this [Act].”⁹¹

29. Section 214(a) of the Act prohibits any carrier from constructing, acquiring, or operating any line, and from engaging in transmission through any such line, without first obtaining a certificate from the Commission “that the *present or future* public convenience and necessity require or will require the construction, or operation, or construction and operation, of such . . . line”⁹² Thus, the Act requires the Commission to ensure that not only the “construction” of the line, but also its “operation,” further the public convenience and necessity. In addition, the Act requires the Commission to ensure that not only the present, but also the future operations of a telecommunications carrier authorized to provide service under section 214, further the public convenience and necessity. Promotion of national security is an integral part of the Commission’s public interest responsibility, including its administration of section 214 of the Act and one of the core purposes for which Congress created the Commission.⁹³ In recent revocation actions, the Commission has found, given established statutory directives and longstanding

⁸⁷ See, e.g., 47 U.S.C. § 307(c) (providing that the Commission may prescribe license terms by rule, except that broadcast license terms may not exceed 8 years); *id.* § 309(k) (broadcast license renewal standards).

⁸⁸ 47 U.S.C. § 214.

⁸⁹ 47 U.S.C. § 214(c).

⁹⁰ 47 U.S.C. § 154(i).

⁹¹ 47 U.S.C. § 201(b). Indeed, in upholding Commission’s exercise of ancillary jurisdiction pursuant to section 201(b), the Supreme Court stated in *AT&T v. Iowa Utilities Board* that “[w]e think that the grant in § 201(b) means what it says: The FCC has rulemaking authority to carry out the ‘provisions of this Act.’” 525 U.S. 366, 378 (1999).

⁹² 47 U.S.C. § 214(a) (emphasis added).

⁹³ Section 1 of the Act provides that Congress created the Commission, among other reasons, “for the purpose of the national defense [and] for the purpose of promoting safety of life and property through the use of wire and radio communications” 47 U.S.C. § 151; see, e.g., *China Telecom Americas Order on Revocation and Termination* 36 FCC Rcd at 15968, para. 3, *aff’d*, *China Telecom (Americas) Corp. v. FCC*, 57 F.4th 256; *China Unicom Americas Order on Revocation* at *2, para. 3; *Pacific Networks/ComNet Order on Revocation and Termination* at *2, para. 3; *Protecting Against National Security Threats Order*, 34 FCC Rcd 11423,), *aff’d*, *Huawei Technologies USA, Inc. v. FCC*, 2 F.4th 421, 439; *2022 Supply Chain Order*, FCC 22-84.

Commission determinations, that it has authority to revoke section 214 authority.⁹⁴ By the same reasoning, we tentatively find that the Commission has the authority to require the renewal and/or periodic review of a carrier's international section 214 authority to ensure that the public convenience and necessity continues to be served by the carrier's operations.

30. In addition, section 214(c) of the Act permits the Commission to “attach to the issuance of the [section 214] certificate such terms and conditions as in its judgment the public convenience and necessity may require.”⁹⁵ In granting all telecommunications carriers blanket domestic section 214 authority, the Commission found that the “present and future public convenience and necessity require the construction and operation of all domestic new lines pursuant to blanket authority,” subject to the Commission's ability to revoke a carrier's section 214 authority when warranted to protect the public interest.⁹⁶ Likewise, when the Commission opened the U.S. telecommunications market to foreign participation in the late 1990s, it delineated a non-exhaustive list of circumstances where it reserved the right to designate for revocation an international section 214 authorization based on public interest considerations and stated that it considers “national security” and “foreign policy” concerns when granting authorizations under section 214 of the Act.⁹⁷ Thus, carriers are granted a section 214 authorization subject to the Commission's reserved power to revoke those authorizations if later circumstances warrant. Likewise, we tentatively find that under section 214(c) the Commission has reserved the power to adopt terms and conditions for authorizations granted under section 214 of the Act, such as requiring the renewal or other review of carriers' international section 214 authority, as the public convenience and necessity may require in order to provide the Commission the opportunity to assess whether an authorized telecommunications carrier and its operations raise national security, foreign policy, or other concerns.

31. We tentatively find that section 4(i) of the Act provides further support for the

⁹⁴ *China Telecom Americas Order on Revocation and Termination*, 36 FCC Rcd 15966; *China Unicom Americas Order on Revocation*, FCC 22-9, 2022 WL 354622; *Pacific Networks/ComNet Order on Revocation and Termination*, FCC 22-22, 2022 WL 905270.

⁹⁵ 47 U.S.C. § 214(c).

⁹⁶ *China Telecom Americas Order on Revocation and Termination*, 36 FCC Rcd at 15968-69, para. 4, *aff'd*, *China Telecom (Americas) Corp.*, 57 F.4th at 256; *China Unicom Americas Order on Revocation* at *2, 9, paras. 4, 24; *Pacific Networks/ComNet Order on Revocation and Termination* at *2, para. 4; *Domestic 214 Blanket Authority Order*, 14 FCC Rcd at 11374, para. 16. The Commission has explained that it grants blanket section 214 authority, rather than forbearing from application or enforcement of section 214 entirely, in order to remove barriers to entry without relinquishing its ability to protect consumers and the public interest by withdrawing such grants on an individual basis. *Id.* at 11372-73, 11374, paras. 12-14, 16.

⁹⁷ *China Telecom Americas Order on Revocation and Termination*, 36 FCC Rcd at 15968-99, para. 4, *aff'd*, *China Telecom (Americas) Corp.*, 57 F.4th at 256; *China Unicom Americas Order on Revocation* at *2, 9, paras. 4, 24; *Pacific Networks/ComNet Order on Revocation and Termination* at *2, para. 4; *Foreign Participation Order*, 12 FCC Rcd at 23896, 23919-20, paras. 9, 61-63. With regard to revocation of an international section 214 authorization, the Commission in the *Foreign Participation Order* and the *Reconsideration Order* delineated a non-exhaustive list of circumstances where it reserved the right to designate for revocation an international section 214 authorization based on public interest considerations. *See, e.g., Foreign Participation Order*, 12 FCC Rcd at 24023, para. 295; *Reconsideration Order*, 15 FCC Rcd at 18173, 18175-76, paras. 28, 35; *see also* 47 CFR § 63.11(g)(2); *ECO Test Report and Order*, 29 FCC Rcd at 4259, 4266, paras. 6, 22. In the *Foreign Participation Order*, the Commission also stated it considers “national security” and “foreign policy” concerns when granting authorizations under section 214 of the Act. *Foreign Participation Order*, 12 FCC Rcd at 23919-20, paras. 61-63 (in regulating foreign participation in the U.S. telecom market in the late 1990s, the Commission recommitted to considering “national security” and “foreign policy” concerns when granting licenses under section 310(b)(4) and authorizations under section 214(a) of the Act, stating it would also continue to “accord deference” to expert Executive Branch views on these issues that would inform its “public interest analysis”).

Commission's authority to require renewal, or periodic review, of international section 214 authorizations. Section 4(i) authorizes the Commission to "perform any and all acts, make such rules and regulations, and issue such orders, not inconsistent with this Act, as may be necessary in the execution of its functions."⁹⁸ The Commission has long found that section 4(i) "supports revocation authority, as reasonably ancillary to the Commission's authority to authorize common carrier service in the first instance."⁹⁹ As the Commission explained, revocation authority "is necessary to ensure not only compliance with the Commission's rules and its requirements for truthfulness, but also that circumstances with serious national security and law enforcement consequences that would have been relevant in determining whether to authorize service remain relevant in light of significant developments since the time of such authorization."¹⁰⁰ For these same reasons, we tentatively find that the authority to refuse renewal of or require periodic review of carriers' international section 214 authority is at least "reasonably ancillary" to the performance of the Commission's responsibilities under section 214 of the Act to ensure that a carrier's operations remain consonant with the "public convenience and necessity."

32. We seek comment on our legal analysis and whether these statutory provisions give the Commission broad flexibility to promulgate regulations—such as a renewal or, in the alternative, a periodic review process for international section 214 authorizations—that may not be expressly identified in precise terms where necessary to carry out our regulatory responsibilities under section 214 consistent with the purposes of the Act, such as promoting national security.¹⁰¹ At a minimum, would such rules be "reasonably ancillary to the effective performance of the Commission's various responsibilities. . . ."?¹⁰² We also seek comment on whether other statutory provisions provide a legal basis for adopting the renewal or in the alternative, a periodic review process outlined below. Would the Commission have authority to institute one of the proposals—period renewal or periodic review—but not the other?

33. *Due Process and Retroactivity.* As noted below, we seek comment on whether all international section 214 authorizations regardless of issuance date and ownership should be subject to renewal or, in the alternative, periodic review process. Because the renewal framework we propose to adopt will affect both existing authorization holders and authorizations held pursuant to applications granted, after the effective date of the renewal rules, we seek comment on due process and retroactivity concerns—including "primary" versus "secondary" retroactivity—that may arise from this proposal.¹⁰³ Specifically, we seek comment on the interplay between renewal standards and retroactivity concerns.

34. The courts have established a distinction for rules between "primary" retroactivity and "secondary" retroactivity. A rule is primarily retroactive if it (1) "increase[s] a party's liability for past conduct"; (2) "impair[s] rights a party possessed when he acted"; or (3) "impose[s] new duties with respect to transactions already completed."¹⁰⁴ The standard for primary retroactivity assesses whether a

⁹⁸ 47 U.S.C. § 154(i).

⁹⁹ *China Unicom Americas Order on Revocation* at *8, para. 22 (citing *CCN, Inc. et al.*, Order, 13 FCC Rcd 13599, 13607 (1998)); *Pacific Networks/ComNet Order on Revocation and Termination* at *9, para. 22 (citing same).

¹⁰⁰ *China Unicom Americas Order on Revocation* at *8, para. 22.

¹⁰¹ See, e.g., *United States v. Southwestern Cable Co.*, 392 U.S. 157, 178 (1968) (upholding the Commission's authority to regulate cable television).

¹⁰² *Southwestern Cable*, 392 U.S. at 178; see also *AT&T v. Iowa Utilities Board*, 525 U.S. at 380 (noting that "'ancillary' jurisdiction . . . could exist even where the Act does not 'apply'" (emphasis in original)).

¹⁰³ See, e.g., *Mobile Relay Assocs. v. FCC*, 457 F.3d 1, 11 (D.C. Cir. 2006) (non-renewal resulting from a new regulatory framework may "upset[] expectations based on prior law," but that is not primarily retroactive).

¹⁰⁴ *Landgraf v. USI Film Prods.*, 511 U.S. 244, 280 (1994).

rule has changed the past legal consequences of past actions.¹⁰⁵ In contrast, a rule would be “secondarily” retroactive if it “affects a regulated entity’s investment made in reliance on the regulatory status quo before the rule’s promulgation.”¹⁰⁶ Secondary retroactivity will be upheld “if it is reasonable.”¹⁰⁷

35. We tentatively conclude that the renewal framework we propose here is not “primarily” retroactive as applied to applications granted after the effective date of any new rules, as the mere adoption of such a requirement would not make past conduct unlawful, alter rights the carrier had at the time an application was granted, or impose new duties with respect to completed transactions. For the same reasons, we do not believe a renewal requirement as applied to existing authorization holders would be primarily retroactive—for example, because the Commission may revoke a section 214 authorization, grant of an application does not confer a permanent authorization. We recognize, however, that such a requirement could upset the expectations of existing authorization holders. To the extent our proposed renewal process constitutes “secondary” retroactivity, we tentatively conclude it is reasonable and does not violate the Administrative Procedure Act as, among other things, the proposed renewal framework would simply provide for a more systematic review process that focuses on evolving national security, law enforcement, and other relevant concerns. We seek comment on our tentative conclusions. When and under what circumstances would denial of a renewal application trigger primary or secondary retroactivity concerns? For example, would non-renewal of an international section 214 authorization based on evolving national security and law enforcement risks, regardless of that authorization holder’s ongoing compliance with the Commission’s rules, have primary or secondary retroactive effect? Additionally, would the application of renewal, or in the alternative, periodic review procedures to existing authorization holders require different standards or procedures based on retroactivity, reliance interests, or fair notice concerns?

2. Need for International Section 214 Renewal Requirements

36. Our principal goal in this proceeding is to adopt a renewal process or, in the alternative, a formalized periodic review of international section 214 authorizations to assess evolving national security, law enforcement, and other risks. As the Senate Subcommittee noted in the PSI Report, “[n]ational security and law enforcement concerns, as well as trade, and foreign policy concerns . . . are ever evolving, meaning that an authorization granted in one year may not continue to serve the public interest years later.”¹⁰⁸ The PSI Report stated, “[a]uthorizations effectively exist in perpetuity despite evolving national security implications,” yet “[t]he FCC does not require a foreign carrier’s authorization to be periodically reassessed to confirm the services continue to serve the public interest.”¹⁰⁹

37. We tentatively conclude that adopting a systemized renewal or, in the alternative, formalized periodic review process for international section 214 authorizations would better enable the Commission to ensure that an authorization, once granted, continues to serve the public interest. While neither the proposed renewal process nor a formalized periodic review process would supplant the Commission’s existing authority to conduct *ad hoc* review of whether a carrier’s retention of international section 214 authority presents national security or law enforcement risks that warrant revocation or termination of its international section 214 authority, this *ad hoc* review based on current information collection requirements does not allow the Commission to systematically and continually account for

¹⁰⁵ *Bowen v. Georgetown Univ. Hosp.*, 488 U.S. 204, 217-220 (1988).

¹⁰⁶ *Mobile Relay Assoc.*, 457 F.3d at 11.

¹⁰⁷ *Id.*

¹⁰⁸ PSI Report at 12.

¹⁰⁹ *Id.* at 9.

evolving risks.

38. We tentatively conclude that the proposals in the Notice would help to ensure that the Commission and the Executive Branch agencies can continually account for evolving national security, law enforcement, foreign policy, and trade policy risks associated with the authorizations. As discussed above, the Executive Branch agencies may recommend that the Commission modify or revoke an existing authorization if they at any time identify unacceptable risks to national security, law enforcement, foreign policy, or trade policy.¹¹⁰ For instance, in recent years, the Executive Branch agencies filed a recommendation requesting that the Commission revoke and terminate a carrier's international section 214 authorizations,¹¹¹ stating that "[t]his recommendation reflects the substantial and unacceptable national security and law enforcement risks associated with [China Telecom (Americas) Corporation's] continued access to U.S. telecommunications infrastructure pursuant to its international Section 214 authorizations."¹¹²

39. With regard to the Executive Branch agencies' oversight of all authorization holders with mitigation agreements, the PSI Report nonetheless observed, "older [mitigation] agreements contained few provisions, were broad in scope, and provided little for Team Telecom to verify,"¹¹³ and "[w]here Team Telecom did reserve for itself the right to monitor a foreign carrier's operations in the United States, it exercised that authority in an *ad hoc* manner."¹¹⁴ The PSI Report further noted that although Executive Order 13913 "allows [the Committee] to review existing authorizations, it does not *mandate* periodic review or renewal."¹¹⁵ In view of these concerns, we believe that a renewal or, in the alternative, periodic review process would better enable the Commission and the Executive Branch agencies to reassess and account for evolving national security, law enforcement, and other risks presented by international section 214 authorization holders in light of updated information about both the holder and the foregoing risks.

40. While the Commission could simply adopt a basic reporting mechanism for authorization holders to regularly inform the Commission of select information such as their current ownership, we tentatively conclude that a formalized system of renewal or, in the alternative, periodic review would better ensure that the Commission conduct periodic and comprehensive review of all authorizations, including reassessment of any national security, law enforcement, and other concerns. Our review would be based on the totality of the circumstances presented by each situation, including additional information as necessary, to determine whether the public interest continues to be served by an authorization holder's international section 214 authority. Our proposed renewal framework would include rule-based conditions as well as any other appropriate conditions, the breach of which could warrant termination. In addition, a carrier's failure to file a renewal application would cause the authorization to expire automatically. Thus, a renewal framework is more efficient than case-by-case review of periodic reports followed by revocation proceedings where necessary. Additionally, a periodic and systemized

¹¹⁰ See *supra* para. 13; see Executive Branch Recommendation to the Federal Communications Commission to Revoke and Terminate [China Telecom (Americas) Corporation's] International Section 214 Common Carrier Authorizations, File Nos. ITC-214-20010613-00346, ITC-214- 20020716-00371, ITC-T/C-20070725-00285, at 1-2 (filed Apr. 9, 2020) (Executive Branch Recommendation to Revoke and Terminate). The Executive Branch agencies that jointly made this recommendation are DOJ, DHS, DOD, the Departments of State and Commerce, and USTR. *Id.* at 1, n.1. See also Executive Order 13913 § 9(b); see also *id.* § 6(a).

¹¹¹ See generally Executive Branch Recommendation to Revoke and Terminate.

¹¹² *Id.* at 1.

¹¹³ PSI Report at 45.

¹¹⁴ *Id.* at 32.

¹¹⁵ *Id.* at 12.

reassessment framework is consistent with Commission's practice in other contexts, such as broadcast or wireless license renewals. We tentatively conclude that establishing a similar process will assist the Commission's ongoing efforts to protect the nation's telecommunications infrastructure from potential security threats and ensure that only those individuals or entities with the requisite character qualifications have access to this critical infrastructure.

3. Renewal Requirement Applicable to All International Section 214 Authorization Holders

41. We propose to adopt a renewal framework or, in the alternative, a formalized periodic review process for all international section 214 authorization holders, with or without foreign ownership, to ensure the Commission fully reassesses public interest considerations associated with all authorization holders. Under this proposal, all authorization holders would be subject to a renewal requirement, including authorization holders that have been granted international section 214 authority prior to the effective date of the renewal rules and authorization holders that are granted international section 214 authority after the effective date of the rules. We propose, as discussed below, to structure the periodic reassessment by prioritizing review of authorization holders with reportable foreign ownership, consistent with the Commission's long held view that foreign ownership in the U.S. telecommunication sector implicates national security, law enforcement, and other considerations.¹¹⁶ We also recognize, in view of evolving and heightened threats to U.S. telecommunications infrastructure, that national security, law enforcement, and other risks may also be raised irrespective of whether an authorization holder has foreign ownership.

42. In this Notice, we propose to capture critical information and require certifications of all applicants for international section 214 authority and modification, assignment, and transfer of control of international section 214 authority. We further propose to refer to the Committee matters that may raise national security or law enforcement concerns to assist our public interest determination. The Commission has a continuing interest in ensuring that all authorization holders, not only those with reportable foreign ownership, maintain the requisite character qualifications and continue to comply with the Commission's rules. Furthermore, as discussed above, it is important for the Commission to have complete and accurate information concerning all international section 214 authorization holders, including identification of those authorization holders that no longer exist or provide service under their international section 214 authority. We seek comment on our proposed approach.

43. We do not address in this proceeding blanket domestic section 214 authority. Applying a renewal or, in the alternative, a periodic review process to domestic section 214 authority at this time would delay the implementation of solutions to our evolving concerns about international section 214 authorizations given, among other things, that the Commission has granted blanket section 214 authority for domestic service based on policy determinations that are beyond the scope of our current concerns. We believe the public interest would be better served by implementing a new framework for review of international section 214 authorizations as expeditiously as possible.

44. We seek comment generally on our proposal to implement a renewal or, in the alternative, a periodic review framework for international section 214 authorizations and whether the Commission should exempt certain authorization holders from either framework. What would be the justifications for excluding any authorization holders? Do these justifications outweigh the concerns raised by the Commission, other U.S. government agencies, and Congress regarding threats to the security of U.S. telecommunications infrastructure in an evolving national security and law enforcement environment? Are there any special considerations applicable to small businesses offering international

¹¹⁶ *Foreign Participation Order*, 12 FCC Rcd at 23918-21, paras. 61-66.

section 214 services? We also seek comment on how best to structure a periodic review process to the extent we decide to apply this alternative to some or all authorization holders.

4. 10-Year Renewal Timeframe

45. We propose to adopt a renewal timeframe of 10 years and seek comment on this proposal. We tentatively find that a renewal timeframe of 10 years—in conjunction with our proposal in this Notice to require authorization holders to provide updated ownership information, cross border facilities information, and other information every three years—would ensure that the Commission and the relevant Executive Branch agencies can continually reassess and account for evolving national security, law enforcement, foreign policy, and trade policy concerns associated with international section 214 authorizations. We tentatively conclude that a 10-year timeframe is reasonable under the renewal framework that we propose in this Notice for structuring a formalized and systemic reassessment of carriers' international section 214 authority. Moreover, a 10-year timeframe minimizes burdens on authorization holders and balances our policy considerations with administrative efficiency for the Commission and the relevant Executive Branch agencies, including the Committee agencies.

46. We seek comment on our proposed 10-year renewal timeframe. Would a different timeframe better enable the Commission to periodically reassess international section 214 authorization holders in consideration of evolving risks and for compliance with the Act and its implementing rules? We note that wireless and broadcast licensees have various renewal terms. With regard to Wireless Communications Services (WCS), the term of a license varies according to different spectrum bands, which results in different license periods such as 10, 12, or 15 years.¹¹⁷ In the context of broadcast licensing, each license granted for the operation of a broadcasting station is limited to a term not to exceed eight years.¹¹⁸ Would a renewal timeframe similar to broadcast or wireless license renewals, such as 8, 12, or 15 years be more appropriate, and if so, why? Or would a shorter renewal timeframe, such as 5 years, better enable the Commission to reassess and account for evolving risks? Commenters should address the burdens that will be placed on authorization holders based on the length of the license term. We also propose below ongoing reporting requirements in the context of a 10-year renewal timeframe.¹¹⁹

47. We also seek comment on whether we should adopt a rule reserving our discretion to issue a shorter renewal timeframe on a case-by-case basis where the Commission deems it appropriate to require the authorization holder to seek renewal sooner than otherwise would be required, or to adopt conditions on renewal where the Commission determines that renewal otherwise would not be in the public interest.¹²⁰

¹¹⁷ See 47 CFR § 27.13.

¹¹⁸ 47 U.S.C. § 307(c); see, e.g., 47 CFR §§ 73.733, 73.1020(a), 74.15(d), 74.15(e); see generally *Implementation of Section 203 of the Telecommunications Act of 1996 (Broadcast License Terms)*, Report and Order, 12 FCC Rcd 1720 (1997) (1997 *Broadcast License Terms Order*).

¹¹⁹ See *infra* Section IV.F.4.

¹²⁰ We note that the Commission's rules expressly preserve the Commission's discretion to grant individual broadcast station licenses for less than the standard license term if the public interest, convenience, and necessity would be served by such action. See 47 CFR § 73.1020(a) ("Both radio and TV broadcasting stations will ordinarily be renewed for 8 years. However, if the FCC finds that the public interest, convenience and necessity will be served thereby, it may issue either an initial license or a renewal thereof for a lesser term."); 47 CFR § 74.15(d) ("Lower power TV and TV translator station and FM translator station licenses will ordinarily be renewed for 8 years. However, if the FCC finds that the public interest, convenience or necessity will be served, it may issue either an initial license or a renewal thereof for a lesser term. The FCC may also issue a license renewal for a shorter term if requested by the applicant."); 1997 *Broadcast License Terms Order*, 12 FCC Rcd at 1729, 1739, n.24, Appx. A. See also 47 U.S.C. § 309(k)(2) (where applicant fails to meet the standards for renewal, the Commission may grant the

(continued....)

48. We tentatively affirm that, regardless of the renewal timeframe, the Commission would continue to be able to exercise its existing authority, as it deems necessary, to conduct *ad hoc* reviews of international section 214 authorizations at any time in between the periodic reassessment of authorizations. In other words, adoption of a renewal rules does not mean that the Commission would only review authorizations at such periodic intervals. For instance, if the Commission were to adopt a renewal timeframe of 10 years, the Commission might still elect to exercise its existing authority to review and, if necessary, revoke authorizations at any time in between the scheduled 10-year renewal proceedings.

49. *Periodic Review Alternative.* In the alternative, we seek comment on whether the Commission should adopt a three-year formalized system of periodic review. Under this approach, the Commission would systematically and continually review all authorization holders at regular intervals to reassess whether their retention of international section 214 authority continues to serve the public interest or raises concerns that may warrant revocation of the international section 214 authority. To the extent circumstances in any particular situation raised such concerns, the Commission could initiate a revocation proceeding. Thus, in contrast to the renewal framework, an authorization would not be cancelled if the Commission determined that retention of the authorization was not in the public interest. Instead, the authorization would continue by default subject to the Commission instituting a revocation proceeding.

50. We seek comment generally on this approach and on the appropriate timeframe. We seek comment on whether the Commission should adopt this approach for all authorization holders, regardless of whether their international section 214 authority is granted prior to or after the effective date of new rules adopted in this proceeding. What other options should we consider with regard to a periodic review process given evolving national security, law enforcement, and other risks? As noted with respect to the authorization renewal approach, we also tentatively affirm that we retain discretion to review international section 214 authorizations at any time we deem such action to be necessary in the public interest, regardless of when a carrier's authorization may be scheduled for periodic review.

51. *Bifurcated Process.* We also seek comment on whether the Commission should adopt a bifurcated process for authorization holders depending on whether their international section 214 authority is granted prior to or after the effective date of new rules adopted in this proceeding. Specifically, should the Commission adopt a 10-year renewal framework, as proposed above, for authorization holders whose international section 214 application is granted after the effective date of new rules adopted in this proceeding? At the same time, should the Commission adopt a three-year formalized periodic review process for authorization holders whose international section 214 authority was or is granted prior to the effective date of rules adopted in this proceeding?

5. Application of New Framework

52. *Authorizations Granted After Effective Date of Rules.* With respect to authorization holders whose international section 214 authority is granted after the effective date of new rules adopted in this proceeding, we tentatively find the Commission may implement a renewal requirement, if adopted, pursuant to its statutory authority under section 214 of the Act to attach terms and conditions to the grant of international section 214 authority. Section 214(c) of the Act permits the Commission to “attach to the issuance of the [section 214] certificate such terms and conditions as in its judgment the public convenience and necessity may require.”¹²¹ If the Commission were to adopt a renewal framework, these authorization holders would be subject to a renewal requirement as a condition of their international section 214 authority. The Commission would either grant or deny an application to renew the

application “on terms and conditions as are appropriate, including renewal for a term less than the maximum otherwise permitted”).

¹²¹ 47 U.S.C. § 214(b).

international section 214 authority. We seek comment on this proposed approach.

53. *Authorization Holders With Existing Authorizations Before Effective Date of Rules.* With respect to authorization holders whose international section 214 authority was or is granted prior to the effective date of new rules adopted in this proceeding, we tentatively find that the Commission may apply a similar renewal requirement pursuant to its statutory authority under sections 214, 201, and 4(i) of the Act, but that a denial of an application to renew a carrier's existing international section 214 authority granted prior to the effective date of any new rules would entail the same process that is due in a case of revocation. If the Commission were to apply a renewal requirement to these authorization holders, the Commission would either grant or deny an application to renew the international section 214 authority. A denial of such renewal application, however, would functionally be a revocation of an authorization holder's existing authority and require the same process that is due in a case of revocation, including notice and opportunity to respond. We seek comment on this proposed approach.

54. *Other Matters.* We seek comment on whether an existing authorization that is subject to a substantial and/or *pro forma* assignment or transfer of control should be considered a new authorization for purposes of adopting terms and conditions for that authorization, such as requiring the renewal of the international section 214 authority. We also seek comment as to whether and/or how a carrier's domestic blanket section 214 authority should be affected if the Commission were to deny the renewal of the carrier's international section 214 authority or revoke the carrier's international section 214 authority.

6. Public Interest Standard

55. *Renewals.* We tentatively conclude that the Commission will apply the same standard of review for applications for renewal of international section 214 authority as that applied to initial applications for international section 214 authority and to applications for modification, assignment, or transfer of control of international section 214 authority. Consistent with the Commission's public interest review of these applications, the Commission's grant of an application for renewal of international section 214 authority will be based on a finding by the Commission that the public interest, convenience, and necessity would be served by the renewal of that authority. As discussed above, the Commission has long found that national security, law enforcement, foreign policy, and trade policy concerns are important to its public interest analysis of international section 214 authority, and these concerns warrant continued consideration of the public interest in view of evolving and heightened threats to the nation's telecommunications infrastructure. Accordingly, we propose that the Commission, as part of its public interest analysis, will examine the totality of the circumstances in each renewal application and consider, as its primary concerns, national security, law enforcement, foreign policy, and trade policy concerns, including in relation to an applicant's reportable foreign ownership as reflected by our proposal to structure the renewal process based on reportable foreign ownership.¹²² Furthermore, the Commission has found that although a section 214 application from a World Trade Organization (WTO) Member applicant is entitled to a rebuttable presumption that grant of the application is in the public interest on competition grounds, "no such presumption applies to national security and law enforcement concerns, which are separate, independent factors the Commission considers in its public interest analysis."¹²³ We

¹²² *Foreign Participation Order*, 12 FCC Rcd at 23899. We find that none of the proposals in this Notice, including our proposal to adopt periodic renewal requirements, affects the Committee's review of an authorization holder's section 214 authority. Consistent with our formal review process, we will refer to the Executive Branch those renewal applications where an applicant has reportable foreign ownership under the rules adopted in the *Executive Branch Process Reform Order*, 35 FCC Rcd at 10928. We also propose in this Notice to routinely refer to the Committee certain renewal applications where the applicant does not have reportable foreign ownership but other aspects of the application may raise national security or law enforcement concerns that require the input of the Committee to assist our public interest determination.

¹²³ *China Mobile USA Order*, 34 FCC Rcd at 3367 (citing *Foreign Participation Order*, 12 FCC Rcd at 23920-21 para. 65).

tentatively find that consideration of these issues is consistent with the Commission's longstanding practice and its ongoing responsibility to evaluate all aspects of the public interest, including any national security, law enforcement, foreign policy, or trade policy concerns associated with potential renewal of international section 214 authority.¹²⁴ We further propose that examination of competition and any other relevant issues that come to the Commission's attention is not foreclosed by its continuing assessment of the aforementioned concerns.

56. As with other applications involving international section 214 authority, we propose that the Commission will also consider whether an applicant seeking renewal of its international section 214 authority has the requisite character qualifications, including whether the applicant has violated the Act, Commission rules, or U.S. antitrust or other competition laws, has engaged in fraudulent conduct before another government agency, has been convicted of a felony, or has engaged in other non-FCC misconduct the Commission has found to be relevant in assessing the character qualifications of a licensee or authorization holder.¹²⁵ The Commission has found that such conduct demonstrates that a carrier may fail to comply with the Commission's rules and policies as well as any conditions on its authorization.¹²⁶ The public interest may therefore require, in a particular case, that we deny the application of a carrier that has violated Commission rules, the Act, or other laws that may be indicative of a carrier's truthfulness and reliability. We believe consideration of an authorization holder's regulatory compliance and adherence to other relevant laws is also consistent with the Commission's review of renewal applications in other contexts¹²⁷ and is important to the Commission's assessment as to whether the public interest, convenience, and necessity would be served by the renewal of international section 214 authority.

57. We seek comment on the standard that we propose to adopt for the renewal of international section 214 authority. Should the Commission consider factors in addition to those identified above, in determining whether to grant or deny a renewal application for international section 214 authority? Should the Commission consider a standard similar to that of broadcast station renewals, that renewal would serve "the public interest, convenience, and necessity" and the renewal applicant has had no serious violations of the Act or the Commission's rules or multiple violations that would constitute a "pattern of abuse"?¹²⁸ In the alternative, we seek comment on whether an applicant seeking renewal of international section 214 authority should be granted a renewal expectancy in any circumstance as long it

¹²⁴ *China Telecom Americas Order on Revocation and Termination*, 36 FCC Rcd at 15978-79, para. 17; *China Unicom Americas Order on Revocation* at *11, para. 28; *Pacific Networks and ComNet Order on Revocation and Termination* at* 9, para. 22.

¹²⁵ *See generally Policy Regarding Character Qualifications in Broadcast Licensing*, 102 FCC 2d 1179 (1986) (*Character Qualifications*), modified, 5 FCC Rcd 3252 (1990) (*Character Qualifications Modification*); *see infra* Section IV.E.6.. The term "non-FCC misconduct" refers to misconduct other than a violation of the Rules or the Act. *Character Qualifications*, 102 FCC 2d at 1183 n.11, para. 7. The Commission and the courts have recognized that "[t]he FCC relies heavily on the honesty and probity of its licensees in a regulatory system that is largely self-policing." *See Contemporary Media, Inc., v. FCC*, 214 F.3d 187, 193 (D.C. Cir. 2000). Reliability is a key, necessary element to operating a broadcast station in the public interest. *See Character Qualifications*, 102 F.C.C.2d at 1195, para. 35. An applicant or licensee's propensity to comply with the law generally is relevant because a willingness to be less than truthful with other government agencies, to violate other laws, and, in particular, to commit felonies, is potentially indicative of whether the applicant or licensee will in the future conform to the Commission's rules or policies. *See Character Qualifications Modification*, 5 FCC Rcd at 3252, para. 3.

¹²⁶ *Foreign Participation Order*, 12 FCC Rcd at 23916, para. 53 & n.90. *See Character Qualifications*, 102 FCC 2d at 1195-97, 1200-03; *MCI Telecommunications Corp.*, 3 FCC Rcd 509, 515 n.14 (1988) (stating that character qualifications standards adopted in the broadcast context can provide guidance in the common carrier context).

¹²⁷ *See, e.g.*, FCC Form 303-S (broadcast license renewal application), Instructions at 7-8, available at <https://www.fcc.gov/sites/default/files/form303s.pdf>.

¹²⁸ 47 U.S.C. 309(k)(1).

can make a specific showing, and if so, what factors should be included in such a showing. Our existing rules provide for any interested party to file a petition to deny an application.¹²⁹ We propose to afford the same opportunity with respect to renewal applications. What showings must an opposing party make in support of its position?

58. *Failure to Meet Public Interest Standard.* We tentatively conclude that the Commission would institute appropriate proceedings to deny an application seeking renewal of international section 214 authority if the Commission determines that an applicant has failed to meet the public interest standard. We propose that if the Commission denies the renewal of an authorization holder's international section 214 authority, the international section 214 authorization will be treated as expired without further administrative action by the Commission. Should the Commission apply the same approach to authorization holders whose authorization was or is granted prior to the effective date of new rules? We seek comment on these approaches.

59. *Periodic Review Alternative.* In the event we adopt a periodic review framework, we seek comment on the extent such a periodic review framework should incorporate the same public interest standards and processes as those proposed below, or those the Commission might ultimately adopt, for renewal applications. For example, should the public interest standard for determining whether to revoke an authorization be the same as the standard for renewal? Should the Commission apply the same approach to authorization holders whose authorization was or is granted prior to the effective date of new rules?

60. *Failure to Meet Public Interest Standard.* We tentatively conclude that the Commission would institute appropriate proceedings to revoke an international section 214 authorization if the Commission determines that an authorization holder has failed to meet the public interest standard. We seek comment on this tentative conclusion.

C. Renewal Process and Implementation

1. Prioritizing the Renewal Applications and Other National Security and Law Enforcement Concerns

61. We propose to adopt a renewal schedule that prioritizes the filing and review of renewal applications, based on whether the carrier currently has reportable foreign ownership,¹³⁰ the length of the time since the Commission's most recent review of the authorization, and whether the authorization is subject to a mitigation agreement. We also propose to prioritize filing and review of renewal applications where the authorization holder does not have reportable foreign ownership but the application raises other issues that require coordination with the Executive Branch agencies, including the Committee agencies, to

¹²⁹ See 47 CFR § 63.20(d) ("Any interested party may file a petition to deny an application within the time period specified in the public notice listing an application as accepted for filing and ineligible for streamlined processing. The petitioner shall serve a copy of such petition on the applicant no later than the date of filing thereof with the Commission. The petition shall contain specific allegations of fact sufficient to show that the petitioner is a party in interest and that a grant of the application would be prima facie inconsistent with the public interest, convenience and necessity. Such allegations of fact shall, except for those of which official notice may be taken, be supported by affidavit of a person or persons with personal knowledge thereof. The applicant may file an opposition to any petition to deny within 14 days after the original pleading is filed. The petitioner may file a reply to such opposition within seven days after the time for filing oppositions has expired. Allegations of facts or denials thereof shall similarly be supported by affidavit. These responsive pleadings shall be served on the applicant or petitioner, as appropriate, and other parties to the proceeding.").

¹³⁰ We refer here to "reportable foreign ownership" to signify the 10% or greater direct or indirect ownership interests that an authorization holder or applicant is currently required to disclose as part of an application or notification required by section 63.18(h) and/or section 63.24 of the Commission's rules. See 47 CFR §§ 63.18(h), 63.24.

assist the Commission's public interest review, as discussed below. This should simplify the renewal process and minimize administrative burdens while prioritizing the Commission's consideration of those authorizations that most likely raise national security, law enforcement, foreign policy, or trade policy concerns. The Commission currently prioritizes the processing of renewal applications for broadcast station licenses and wireless licenses to promote administrative efficiency.¹³¹ For broadcast renewal applications, the filing dates and license expiration dates for radio and television station licenses are based on geographical groupings of states.¹³² In the context of wireless licensing, Wireless Radio Services licenses have different license terms based on different spectrum bands,¹³³ yet all renewal applications must be filed no later than the expiration date of the authorization and no sooner than 90 days prior to the expiration date.¹³⁴ Similarly, we seek to adopt a process in consultation with the Executive Branch agencies to streamline and simplify the renewal filing procedures.¹³⁵ We propose to apply these same principles to the extent the Commission adopts a periodic review framework rather than a renewal framework. We seek comment on the process described below both as it may apply in a renewal context and in a periodic review context.

62. *Other National Security, Law Enforcement, and Other Concerns.* As discussed further below, we propose to routinely refer to the Executive Branch agencies certain renewal applications or, in the alternative, periodic review submissions, where the authorization holder does not have reportable foreign ownership but other issues associated with the filing may separately raise national security, law enforcement, and other concerns that require input from the Executive Branch agencies to assist the Commission's public interest review.¹³⁶ This would include, for example, international section 214 authorization holders without foreign ownership that certify that they use or will use foreign MNSPs and/or report cross border facilities that may separately raise national security, law enforcement, and other concerns. While it is unclear how many such referrals we would undertake under these other identified concerns, given potential national security, law enforcement, or other concerns, we would propose to process these expeditiously in Group 1 below. We seek comment on this proposal.

63. *Prioritize Categories – Groups 1 to 5.* Specifically, we propose to prioritize the renewal applications or any periodic review filings and deadlines based on: (1) reportable foreign ownership, including any reportable foreign interest holder that is a citizen of a foreign adversary country, (2) the year of the oldest to most recent Commission action (i.e., initial grant, modification, assignment, or transfer of control), divided in fixed intervals, and (3) whether or not the authorizations are conditioned on a mitigation agreement. We also propose to prioritize any filings that raise other national security, law enforcement, or other concerns. We propose as well to have authorization holders with separate authorizations that fall into more than one group below to file for all their authorizations, perhaps in a single filing, based on the deadline for the highest priority group. We propose to delegate authority to the International Bureau or its successor entity to establish the deadlines and make necessary modifications, if needed, and to consult with the Executive Branch agencies concerning prioritizing the renewal applications or any periodic review filings.

- **Group 1: All Authorization Holders with Reportable Foreign Ownership From Foreign Adversary Country/No Mitigation Agreement/Authorization Granted over 10 Years Ago or Raises Other National Security, Law Enforcement, or Other Concerns.** We

¹³¹ 1997 Broadcast License Terms Order, 12 FCC Rcd at 1727, para. 18.

¹³² See, e.g., 47 CFR § 73.1020; 1997 Broadcast License Terms Order, 12 FCC Rcd at 1727, para. 18.

¹³³ See 47 CFR § 27.13.

¹³⁴ 47 CFR § 1.949(a).

¹³⁵ See *infra* para. 69.

¹³⁶ See *infra* paras. 65, 72.

propose that filing deadlines for Group 1 will apply to authorizations where the authorization holder: (1) has reportable foreign interest holders that are citizens of any foreign adversary country; (2) the authorization is not conditioned on a mitigation agreement with the Executive Branch agencies; and (3) the Commission's most recent review of such filing (i.e., initial grant, modification, assignment, or transfer of control) occurred over 10 years ago; or (4) for any other national security, law enforcement, or other concerns.

- **Group 2: All Authorization Holders with Reportable Foreign Ownership/Mitigation Agreement/Authorization Granted over 10 Years Ago.** We propose that the filing deadline for Group 2 will apply to authorizations where the authorization holder: (1) has reportable foreign ownership; (2) the authorization is conditioned on a mitigation agreement with the Executive Branch agencies; and (3) the Commission's most recent review of such filing (i.e., initial grant, modification, assignment, or transfer of control) occurred over 10 years ago.
- **Group 3: All Authorization Holders with Reportable Foreign Ownership/No Mitigation Agreement/Authorization Granted less than 10 Years Ago.** We propose that the filing deadline for Group 3 will apply to authorizations where the authorization holder: (1) has reportable foreign ownership; (2) the authorization is not conditioned on a mitigation agreement with the Executive Branch agencies; and (3) the Commission's most recent review of such filing (i.e., initial grant, modification, assignment, or transfer of control) occurred less than 10 years.
- **Group 4: All Authorization Holders with Reportable Foreign Ownership/ Mitigation Agreement/Authorization Granted less than 10 Years Ago.** We propose that the filing deadline for Group 4 will apply to authorizations where the authorization holder: (1) has reportable foreign ownership; (2) the authorization is conditioned on a mitigation agreement with the Executive Branch agencies; and (3) the Commission's most recent review of such filing (i.e., initial grant, modification, assignment, or transfer of control) occurred less than 10 years.
- **Group 5: No Reportable Foreign Ownership/No Other National Security or Law Enforcement Concerns.** We propose that the filing deadline for Group 5 will apply to all other authorizations where: (1) the authorization holder does not currently have reportable foreign ownership; and (2) the authorization does not raise other national security or law enforcement concerns.

64. *FCC's Preliminary Review and Referral to the Committee of International Section 214 Authorizations.* Based on the Commission's records, our best estimate is that the number of active international section 214 authorization holders is approximately 1,500. We note that we are also seeking comment below on other new rules, such as proposing to require authorization holders to have only one authorization and proposing to decrease the reportable ownership threshold to 5% that, if adopted, likely would affect the number of filings to be reviewed.¹³⁷ We estimate that approximately 375 of the 1,500 authorization holders have reportable foreign ownership.¹³⁸ We propose to prioritize the submission of filings, our preliminary review, and referral to the Committee, according to the first four groupings set out above. The filing and review of submissions without reportable foreign ownership would occur after

¹³⁷ See *infra* Sections IV.E.1 and IV.F.1.

¹³⁸ This estimate is based on the percentage of applications out of the total international section 214 applications (i.e., applications for international section 214 authority and applications for modification and substantial assignment and transfer of control of international section 214 authority) filed with the Commission where an applicant has reportable foreign ownership.

consideration of the priority submissions. We seek comment on this approach.

65. *Other National Security and Law Enforcement Concerns.* As discussed further below, if we adopt certain measures on which we seek comment below, we would propose to routinely refer to the Committee certain renewal applications or, in the alternative, periodic review submissions, where the authorization holder does not have reportable foreign ownership but other issues associated with the filing may separately raise national security, law enforcement, and other concerns that require input from the Committee to assist the Commission's public interest review.¹³⁹ This could include, for example, international section 214 authorization holders without foreign ownership that certify that they use or will use foreign MNSPs and/or report cross border facilities that may separately raise national security, law enforcement, and other concerns. Such concerns would be processed in Group 1. While it is unclear how many such reviews of renewal applications or periodic review submissions we would undertake, we would propose to process these expeditiously given the national security and/or law enforcement concerns. We seek comment on this proposal.

66. *Renewal Deadline.* We propose that, upon approval by the Office of Management and Budget (OMB) of the information collections under the new rules proposed herein, the International Bureau or its successor entity will establish filing deadlines for Groups 1 to 5 that require the first submissions of renewal applications by authorization holders within six months of OMB approval. We propose to apply these same principles to the extent the Commission adopts a periodic review framework rather than a renewal framework. We seek comment generally from applicants and the Executive Branch agencies on the proposed approach for structuring the renewal process or, in the alternative, periodic review process and filing deadlines. We also seek comment on what filing deadlines would be feasible for applicants and the Executive Branch agencies in consideration of the recent timeframes and rules adopted in the *Executive Branch Process Reform Order*.¹⁴⁰ We seek comment on these proposals and what potential burdens, if any, would be imposed upon authorization holders under any of these approaches.

67. We seek comment on how best to structure the filing and review of renewal applications to prioritize those authorizations most likely to raise current national security, law enforcement, foreign policy, or trade policy issues. We believe that carriers' compliance with the one-time information collection required in the Order will be crucial for the Commission's efficient administration of a renewal process or, in the alternative, periodic review process. Through our assessment of the one-time information collection, we propose to delegate authority to the International Bureau or its successor entity to (1) identify which authorization holders are existing and active and would undergo the renewal or other periodic review process; (2) identify which authorization holders fail to respond to the Order and thus presumptively are no longer in operation, and cancel their authorizations pursuant to the process proposed above; (3) identify, among the respondents, which authorization holders currently have or do not have reportable foreign ownership or other relevant indicia and designate them accordingly in Groups 1 to 5; and (4) determine which authorization holders in Groups 1 to 5 must file renewal applications by each respective filing deadline based on a 10-year requirement. Therefore, the results of the one-time information collection will inform our determination of the best processing and timing approach for the renewal process or, in the alternative, periodic review process. In addition, the International Bureau or its successor entity may release the results of the one-time information collection to improve the comment record or seek further comment based on the results of the one-time information collection, as needed.

68. *Periodic Review Alternative.* We propose to apply these same principles to the extent the Commission adopts a periodic review framework rather than a renewal framework. We propose, for example, to prioritize the filing of the required information submissions and the review of specific

¹³⁹ See *infra* para. 72, Section IV.E.3.

¹⁴⁰ *Executive Branch Process Reform Report and Order*, 35 FCC Rcd at 10952, para. 76.

authorizations in the same manner as proposed for a renewal framework. We seek comment on these proposals and how best to minimize administrative burdens and maximize the effectiveness of our review. We seek other suggestions on how best to prioritize and simplify the process. Should the Commission consider other options?

2. Processing Procedures

69. *Streamlined Renewal Processing Procedures.* We propose that the Commission adopt streamlined processing for renewal applications in Group 5 in certain situations. For instance, section 63.12(a) of the Commission's rules provides that, "[e]xcept as provided by paragraph (c) of this section, a complete application seeking authorization under § 63.18 of this part shall be granted by the Commission 14 days after the date of public notice listing the application as accepted for filing."¹⁴¹ In current practice, once filed, Commission staff review the application for compliance with the Commission's rules and place the application on an Accepted for Filing public notice at that point. We propose to adopt similar streamlined processing procedures for renewal applications that are in Group 5, where the authorization holder does not currently have reportable foreign ownership and the application does not raise other national security, law enforcement, or other considerations. With regard to those authorization holders in Group 5, we would place the renewal application on streamlined Accepted for Filing public notice and the application would be granted by the Commission 14 days after the date of the public notice if: (1) the Commission does not refer the application to the Executive Branch agencies because the applicant does not have reportable foreign ownership and the application does not raise other national security, law enforcement, or other considerations; (2) the application does not raise other public interest considerations, including regulatory compliance; (3) the Executive Branch agencies do not separately request during the comment period that the Commission defer action and remove the application from streamlined processing; and (4) no objections to the application are timely raised by an opposing party. We seek comment on this proposal. We believe a streamlined process for Group 5 renewal applications would decrease the burdens on applicants and ensure a faster review process.

70. *Authorizations Pending Renewal.* As with Title III licensees pursuant to section 307(c)(3) of the Act, and consistent with the Administrative Procedure Act, we propose that an applicant that has timely applied for renewal of its international section 214 authorization may continue providing service(s) under its international section 214 authority while its renewal application is pending review.¹⁴² We seek comment on this proposal.

71. *Referral of Applications with Reportable Foreign Ownership to the Executive Branch Agencies.* Consistent with our formal review process, we propose to refer to the relevant Executive Branch agencies, including the Committee agencies, those applications for renewal of international section 214 authority where the applicant has reportable foreign ownership.¹⁴³ For these referrals, we propose to apply the same time frames that were adopted in the *Executive Branch Process Reform Order*, a 120-day initial review period followed by a discretionary 90-day secondary assessment.¹⁴⁴ We anticipate that a referral of a renewal application with reportable foreign ownership may result in a mitigation agreement, or modification of an existing mitigation agreement, or a recommendation by the

¹⁴¹ 47 CFR § 63.12.

¹⁴² See 5 U.S.C. § 558 ("When the licensee has made timely and sufficient application for a renewal or a new license in accordance with agency rules, a license with reference to an activity of a continuing nature does not expire until the application has been finally determined by the agency."); *id.* § 551(8) ("license" defined to mean "the whole or a part of an agency permit, certificate, approval, registration, charter, membership, statutory exemption or other form of permission").

¹⁴³ See *supra* para. 8.

¹⁴⁴ *Executive Branch Process Reform Order*, 35 FCC Rcd at 13164, para. 20.

Executive Branch agencies to deny the application.¹⁴⁵ We seek comment on these proposals.

72. *Referral of Certain Applications Without Reportable Foreign Ownership to the Executive Branch Agencies.* We recognize, in view of evolving and heightened threats to U.S. telecommunications infrastructure, that national security, law enforcement, and other risks may also be associated with an authorization holder irrespective of whether it has foreign ownership. We seek comment in this Notice whether applicants that do not have reportable foreign ownership (i.e., U.S.-owned) should provide information concerning foreign-owned MNSPs. We also seek comment on rules that would require applicants to provide information on the facilities they use and/or will use to provide services between the United States and Canada and/or Mexico (cross border) and disclose whether the applicant uses equipment or services identified on the Commission's "Covered List."¹⁴⁶ If we adopt such requirements, we would propose to routinely refer to the Executive Branch agencies, including the Committee agencies, to assist our public interest determination of those applications where an applicant discloses that it:

- uses and/or will use a foreign-owned MNSP;¹⁴⁷
- has cross border facilities;¹⁴⁸ and/or
- uses equipment or services identified on the Commission's "Covered List" of equipment and services pursuant to the Secure and Trusted Communications Networks Act.¹⁴⁹

For these referrals, we propose to apply the same time frames that were adopted in the *Executive Branch Process Reform Order*, a 120-day initial review period followed by a discretionary 90-day secondary assessment.¹⁵⁰ We seek comment on these proposals. We reaffirm, however, that the Commission retains discretion to determine which applications it will refer to the Executive Branch agencies for review.¹⁵¹

73. *Failure to Timely File Renewal Applications.* We propose that if an authorization holder fails to timely file an application for renewal of its international section 214 authority, we will deem the international section 214 authorization expired and cancelled by operation of law. We propose to delegate authority to the International Bureau or its successor entity to provide notice in advance of the renewal deadline. The Commission has similar procedures where it automatically terminates an earth station authorization to the licensee upon the expiration of the license term if a renewal application was not timely filed.¹⁵² In the case of a space station license, the license is "automatically terminated in whole or in part without further notice to the licensee" upon the expiration date unless an application for extension of the license term has been filed with the Commission.¹⁵³ The Commission's rules allow the reinstatement of an earth station authorization that is automatically terminated if the Commission determines that reinstatement would best serve the public interest, convenience and necessity, but a

¹⁴⁵ Executive Order 13913 § 9.

¹⁴⁶ See *infra* paras. 105, 112.

¹⁴⁷ See *infra* para. 99.

¹⁴⁸ See *infra* para. 105.

¹⁴⁹ See *infra* para. 112; see 47 U.S.C. §§ 1601–1609; 47 CFR § 1.50000 *et seq.*; see also *List of Covered Equipment and Services*.

¹⁵⁰ *Executive Branch Process Reform Order*, 35 FCC Rcd at 10935, para. 20.

¹⁵¹ *Id.* at 10929, para. 4.

¹⁵² 47 CFR § 25.121(e) ("Applications for renewals of earth station licenses must be submitted on FCC Form 312R no earlier than 90 days, and no later than 30 days, before the expiration date of the license . . .").

¹⁵³ 47 CFR § 25.161(b) (is automatically terminated upon the expiration of the license term, unless, "in the case of a space station license, an application for extension of the license term has been filed with the Commission.").

petition for reinstatement will only be considered if, among other things, it explains the failure to file a timely notification or renewal application.¹⁵⁴ When a broadcast licensee fails to file a timely renewal application, the authorization is cancelled pursuant to a public notice issued by the Media Bureau shortly after the expiration date of the license; a renewal application filed after such public notice may be processed provided that the applicant successfully petitions for reinstatement of license and the renewal application is filed within 30 days of the cancellation public notice.¹⁵⁵ The Media Bureau may commence an enforcement action for untimely filing and unauthorized operation.¹⁵⁶ In the wireless radio services context, if a renewal application is not filed in a timely manner, a licensee must request a waiver of the filing deadline, pursuant to Section 1.925 of the Commission's rules, along with its late-filed renewal application. The Commission will grant the waiver and renewal applications *nunc pro tunc* if they are filed up to thirty days after the expiration date and if the application is otherwise sufficient, but the licensee may be subject to enforcement action for untimely filing and unauthorized operation.¹⁵⁷ The Commission will grant applications filed after this period under certain circumstances.¹⁵⁸

74. We seek comment on this proposed approach. Would this procedure be adequate as applied to authorizations in effect as of the effective date of any new rules? We seek comment on alternative approaches. Would any of the procedures used in the other contexts, such as those discussed above, be appropriate or desirable in the international section 214 context? We note that an authorization holder whose authorization expires due to its failure to timely file a renewal application may file an application for a new international section 214 authorization.

75. *Periodic Review Alternative/Processing.* We generally propose to apply similar processing to the extent the Commission adopts a periodic review framework rather than a renewal framework. For instance, we propose to prioritize review of specific authorizations in the same manner as proposed under a renewal framework. We seek comment on these proposals and how best to minimize administrative burdens and maximize the effectiveness of our review under this alternative. We seek other suggestions on how best to prioritize and simplify the periodic review process. Should the Commission consider other options?

76. *Periodic Review Alternative/Failure to Timely File Required Information.* We propose that the International Bureau or its successor entity initiate a revocation process against an authorization

¹⁵⁴ 47 CFR § 25.163 (“A station authorization terminated in whole or in part under the provisions of § 25.161 may be reinstated if the Commission, in its discretion, determines that reinstatement would best serve the public interest, convenience and necessity. Petitions for reinstatement will be considered only if: (1) The petition is filed within 30 days after the expiration date set forth in § 25.161(a) or § 25.161(b), whichever is applicable; (2) The petition explains the failure to file a timely notification or renewal application; and (3) The petition sets forth with specificity the procedures that have been established to ensure timely filings in the future.”).

¹⁵⁵ See, e.g., *Atlantic City Board of Education*, Memorandum Opinion and Order, 31 FCC Rcd 9380, 9383-85, paras. 9-11 (2016), *aff'd*, *Press Communications v. FCC*, 875 F.3d 1117, 1124 (D.C. Cir. 2017).

¹⁵⁶ See, e.g., *Magnolia State Broadcasting*, Memorandum Opinion and Order and Notice of Apparent Liability for Forfeiture, 2022 WL 354607, DA 22-105 (MB Feb. 3, 2022) (\$7,000 NAL issued to license that failed to timely file renewal application and continued station operations after its license expired).

¹⁵⁷ See *Biennial Regulatory Review (Wireless Telecommunications Services)*, Memorandum Opinion and Order on Reconsideration, 14 FCC Rcd 11476, 11485, para. 22 (1999).

¹⁵⁸ See *East Kentucky Power Coop., Inc.*, Letter Order, , 28 FCC Rcd 2071,2072 (WTB 2013) (explaining, on review of application to waive renewal deadline, that renewal applications filed more than 30 days after expiration “will not be routinely granted, will be subject to stricter review, and also may be accompanied by enforcement action, including more significant fines or forfeitures” and that the reinstatement determination will be based on “all of the facts and circumstances, including the length of the delay in filing, the reasons for the failure to timely file, the potential consequences to the public if the license should terminate, and the performance record of the licensee”).

holder that, absent good cause,¹⁵⁹ fails to timely file periodic review information with the Commission. We seek comment on this proposed approach. What procedures would ensure that the authorization holder has the opportunity to demonstrate good cause, and what factors should we consider in evaluating a good cause showing? Should we accept late filings instead of initiating revocation proceedings? We further seek comment on whether and under what circumstances an authorization holder whose authorization is revoked for its failure to timely file periodic review information be barred from applying for a new international section 214 authorization.

3. Due Process and Procedural Requirements

77. *Due Process and Procedural Requirements.* We seek comment on the procedural measures necessary to ensure the development of an adequate administrative record, including procedures for participation by other interested parties, and on the appropriate procedural safeguards to ensure due process with regard to our proposed renewal or, in the alternative, a periodic review process. To determine what process is due involves consideration of the *Mathews v. Eldridge* three-part test: (1) “the private interest that will be affected by the official action;” (2) “the risk of an erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards;” and (3) “the Government’s interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail.”¹⁶⁰ We note that neither the Commission’s rules, the Act, nor the Administrative Procedure Act requires trial-type hearing procedures. Congress has granted the Commission broad authority to “conduct its proceedings in such manner as will best conduce to the proper dispatch of business and to the ends of justice.”¹⁶¹ The Commission has broad discretion to craft its own rules “of procedure and to pursue methods of inquiry capable of permitting them to discharge their multitudinous duties.”¹⁶² Furthermore, the Act gives the Commission the power of ruling on facts and policies in the first instance.¹⁶³ In exercising that power, the Commission may resolve disputes of fact in an informal hearing proceeding on a written record.¹⁶⁴ In particular, we seek comment on the extent to which our proposed renewal or in the alternative, a periodic review process should incorporate the procedures the Commission recently utilized—and which the Court of Appeals for the D.C. Circuit approved¹⁶⁵—in revoking, and in certain cases terminating, four Chinese government-owned carriers’ section 214 authority.¹⁶⁶

78. The Commission stated in those cases that the Act does not specify any procedures for

¹⁵⁹ See 47 CFR § 1.3.

¹⁶⁰ *Mathews*, 424 U.S. at 335.

¹⁶¹ 47 U.S.C. § 154(j); *China Telecom (Americas) Corp. v. FCC*, 57 F.4th 256, 265.

¹⁶² *China Telecom (Americas) Corp.*, 57 F.4th 256, 268 (citing *FCC v. Schreiber*, 381 U.S. 279, 290 (1965)) (internal quotations omitted); see also *Vermont Yankee Nuclear Power Corp. v. Nat. Res. Def. Council, Inc.*, 435 U.S. 519, 543 (1978).

¹⁶³ *Procedural Streamlining of Administrative Hearings Order*, 35 FCC Rcd 10729, 10732-33, para. 11 (2020) (*Administrative Hearings Order*).

¹⁶⁴ *Id.*

¹⁶⁵ *China Telecom (Americas) Corp.*, 57 F.4th at 262 (citing *Administrative Hearings Order*, 35 FCC Rcd at 10732-33, para. 11) (“The Communications Act gives the Commission the power of ruling on facts and policies in the first instance. In exercising that power, the Commission may resolve disputes of fact in an informal hearing proceeding on a written record. And the Commission may reach any decision that is supported by substantial evidence in the record.”).

¹⁶⁶ See *China Telecom (Americas) Corp.*, 57 F.4th at 269 (“[The Commission reasonably determined that the issues raised in this case could be properly resolved through the presentation and exchange of full written submissions before the Commission itself.”).

revoking a section 214 authorization.¹⁶⁷ Nor has the Commission promulgated any regulations setting forth any such procedures. The Commission explained that although the Commission adopted regulations prescribing certain procedures for the revocation of station licenses and construction permits pursuant to Part 1, Subpart B of its rules, those regulations do not apply to the revocation of a section 214 authorization¹⁶⁸ and that hearing rights for common carriers under section 214 are limited.¹⁶⁹ In the recent revocation proceedings, the Commission exercised its discretion to “resolve disputes of fact in an informal hearing proceeding on a written record,”¹⁷⁰ and reasonably determined that the issues raised in those cases could be properly resolved through the presentation and exchange of full written submissions before the Commission itself.¹⁷¹ The Commission determined, among other things, that the fiscal and administrative burden on the government would be especially heavy in those cases, as a trial before an administrative law judge could require participation by officials from other agencies.¹⁷² More importantly, given the national security issues at stake, any resulting unwarranted delay could be harmful.¹⁷³ Accordingly, to provide affected carriers with due process, the Commission allowed them to submit evidence and arguments in writing and determined the need for the revocation and/or termination of 214 authorizations on the basis of a written record.¹⁷⁴ The court of appeals affirmed the Commission’s use of these procedures.¹⁷⁵

79. We seek comment on the procedures applicable to international section 214 renewal applications and, in the alternative, to the periodic review applications. To the extent the Commission adopts a periodic review process framework under which an order instituting revocation procedures might ensue, we propose to implement the approach the Commission used in its most recent section 214 revocation proceedings.¹⁷⁶ The Commission has stated that if it is considering revoking an authorization, it will “provide the authorization holder such notice and an opportunity to respond as is required by due process and applicable law, and appropriate in light of the facts and circumstances.”¹⁷⁷ Is there any reason the Commission should not use the same procedures if it adopts a renewal framework? We note

¹⁶⁷ See *China Telecom Americas Order on Revocation and Termination*, 36 FCC Rcd at 15981, para. 21; *China Unicom Americas Order on Revocation* at *13, 16, paras. 34, 39; *Pacific Networks/ComNet Order on Revocation and Termination* at *12, 16, paras. 28, 37.

¹⁶⁸ See 47 CFR §§ 1.201-1.377; 47 CFR § 1.91(a), (d).

¹⁶⁹ The hearing requirements applicable to Title III applications do not apply to section 214 applications. *Procedural Streamlining of Administrative Hearings*, Notice of Proposed Rulemaking, 34 FCC Rcd 8341, 8343, para. 4 & n.16 (2019) (*Administrative Hearings NPRM*); *Oklahoma W. Tel. Co. Order*, 10 FCC Rcd at 2243-44, para. 6 (finding no substantial public interest questions existed to justify hearing on section 214 application) (citing *ITT World Commc’ns v. FCC*, 595 F.2d 897, 900-01 (2d Cir. 1979)).

¹⁷⁰ *Administrative Hearings Order*, 35 FCC Rcd at 10732-33, para. 11.

¹⁷¹ *China Telecom (Americas) Corp. v. FCC*, 57 F.4th 256, 269.

¹⁷² *China Telecom Americas Order on Revocation and Termination*, 36 FCC Rcd at 15985, para. 27.

¹⁷³ *Id.*, 36 FCC Rcd at 15985, para. 27.

¹⁷⁴ See generally *China Telecom Americas Order on Revocation and Termination*, 36 FCC Rcd 15966, *aff’d*, *China Telecom (Americas) Corp. v. FCC*, 57 F.4th 256; *China Unicom Americas Order on Revocation*, FCC 22-9, 2022 WL 354622; *Pacific Networks/ComNet Order on Revocation and Termination*, FCC 22-22, 2022 WL 905270.

¹⁷⁵ *China Telecom (Americas) Corp.*, 57 F.4th at 268-71 (holding that discovery and live hearing procedures, and an opportunity to achieve or demonstrate compliance were not required “by statute, regulation, FCC practice, or the Constitution”).

¹⁷⁶ See *supra* note 110; PSI Report at 45.

¹⁷⁷ *Executive Branch Review Process Reform Report and Order*, 35 FCC Rcd 10927, 10964, para. 92.

that the Commission's Part 1, Subpart B provides procedures for hearings in appropriate circumstances.¹⁷⁸ Those procedures do not automatically apply to section 214 authorizations,¹⁷⁹ but they provide a possible model for incorporating such procedures should the Commission determine they are appropriate in a specific case. Under what circumstances, if any, should any such procedures be incorporated in a renewal or periodic review hearing? If the Commission tentatively determines that renewal might not be warranted, it will provide the authorization holder such notice and an opportunity to respond as is required by due process and applicable law, and appropriate in light of the facts and circumstances. Should the procedures be different for authorization holders whose international section 214 authority was or is granted prior to the effective dates of the new rules, and if so, in what way?

80. *Burden of Proof/Renewal.* We propose to assign the burden of proof to the applicant seeking renewal of its international section 214 authority. Should the Commission use the same approach where a renewal applicant was or is granted international section 214 authority prior to the effective date of the new rules? Section 63.18 of the Commission's rules requires that an application for international section 214 authority "include information demonstrating how the grant of the application will serve the public interest, convenience, and necessity."¹⁸⁰ The Commission has stated that the applicant for an international section 214 authorization bears the burden of demonstrating that grant of its application would serve the public interest in accordance with section 63.18 of the Commission's rules.¹⁸¹ We believe the same burden of proof is appropriate with respect to applicants seeking renewal of international section 214 authority. If the Commission adopts a renewal requirement for existing authorization holders that were or are granted international section 214 authority prior to the effective date of new rules, should the applicant or the Commission bear the burden of proof in a proceeding to deny renewal?¹⁸²

81. *Periodic Review Alternative/Burden of Proof.* If the Commission adopts a periodic review process framework for both existing and new authorization holders, how should the burden of proof be allocated? Should we determine the burden of proof on a case-by-case basis at the time of review?

D. Renewal Application Requirements

82. Given the increasing concerns about ensuring the security and integrity of U.S. telecommunications infrastructure, we propose new rules that we anticipate will help us to acquire critical information from applicants and propose to require additional certifications to create accountability for

¹⁷⁸ *Administrative Hearings Order*, 35 FCC Rcd at 10729, para. 2.

¹⁷⁹ *China Telecom*, 57 F.4th at 269.

¹⁸⁰ 47 CFR § 63.18.

¹⁸¹ *China Mobile USA Order*, 34 FCC Rcd at 3367, para. 11.

¹⁸² For example, in broadcast renewal proceedings, licensees bear the burden of proof in demonstrating that renewal is in the public interest, *see, e.g., Entercom License, LLC*, Hearing Designation Order and Notice of Opportunity for Hearing, 31 FCC Rcd 12196, 12231, para. 92 (2016), *subsequent hist. omitted*, whereas in a broadcast revocation proceeding, the Commission bears the burden of proof, 47 U.S.C. § 312(d); *see, e.g., Acumen Communications, Licensee of Various Authorizations in the Wireless Radio Services, Applicant for Modification of Various Authorizations in the Wireless Radio Services, Applicant for Renewal of Authorization in the Wireless Radio Services*, Order to Show Cause, Hearing Designation Order and notice of Opportunity for Hearing, WTB Docket No. 17-17, 32 FCC Rcd 243, 248-29, paras. 16, 21 (MD-WTB 2017) (stating, among other things, that the burden of proceeding with the introduction of evidence and the burden of proof with regard to revocation of various Wireless Radio Service authorizations shall be on the Commission's Enforcement Bureau and the burden of proceeding with the introduction of evidence and the burden of proof with regard to various applications, including an application for renewal, shall be on the applicant).

applicants and to improve the reliability of the information that they provide.¹⁸³ We tentatively conclude that the new requirements that we propose would improve the Commission's assessment of evolving public interest risks.¹⁸⁴ We propose to apply the requirements applicable to initial applications for international section 214 authority to the proposed rules for renewal applications and thus harmonize the application requirements. We note that, whereas a renewal framework would require the filing of renewal applications, a periodic review framework would require the Commission to obtain relevant information in a different manner. We propose that any periodic review framework would require authorization holders to submit the same information as that required for a renewal application. Is there any reason we would not require authorization holders subject to periodic review to file the same information required in a renewal application? We seek comment on whether the two types of filings should be different in any respect, and if so, what purpose such differences would serve.

83. We propose as a baseline to apply the requirements applicable to initial applications for international section 214 authority to the proposed rules for renewal applications. Section 63.18 of the Commission's rules, which implements section 214 of the Act, requires that an application for international section 214 authority "include information demonstrating how the grant of the application will serve the public interest, convenience, and necessity," and "[s]uch demonstration shall consist of the following information as applicable."¹⁸⁵ Specifically, the current application rules provide important information and attestations concerning an applicant's contact information, the specific type of authority that each applicant seeks, any foreign carrier affiliations, and any competition issues, among other things. We propose to apply these provisions of section 63.18 to the application rules that we propose for renewal applicants.¹⁸⁶ We believe these information and certification requirements are necessary for our public interest review of applications for renewal of international section 214 authority. Furthermore, our proposal would require renewal applicants to provide the same information as applicants for international section 214 authority and believe such harmonization would advance the public interest. We seek comment on these proposals and the draft rule provisions in Appendix A.¹⁸⁷

84. Specifically, we propose to require renewal applicants to submit the same application information and certifications that are set out in section 63.18,¹⁸⁸ including:

- *Applicant Information.* Section 63.18(a)-(c) of the rules requires basic information about the applicant and contact information.¹⁸⁹

¹⁸³ See generally, PSI Report.

¹⁸⁴ Appendix A shows the proposed new rules as they would be codified in Part 63, 47 CFR §§ 63.12-63.30.

¹⁸⁵ 47 CFR § 63.18.

¹⁸⁶ Specifically, we propose to apply the requirements of section 63.18(a)-(g), (i)-(k), (m)-(o), (q)-(r) to the application rules that we propose for renewal applicants. See 47 CFR § 63.18(a)-(g), (i)-(k), (m)-(o), (q)-(r).

¹⁸⁷ See *infra* Appx. A.

¹⁸⁸ We tentatively conclude that we will not add two provisions of section 63.18 to the proposed rules for renewal applications. We will not add section 63.18(l), as it no longer contains a rule provision. In addition, we will not add section 63.18(p), which requires, "[i]f the applicant desires streamlined processing pursuant to § 63.12, a statement of how the application qualifies for streamlined processing." 47 CFR § 63.18(p) (emphasis added). As discussed in Section IV.C.2, we propose to adopt streamlined processing procedures for renewal applications in certain circumstances. See *supra* para. 69. We propose to add a new rule specifically for renewal applications that would address any streamlined processing procedures that we adopt for renewal applications.

¹⁸⁹ Section 63.18(a) requires the "name, address, and telephone number of each applicant." 47 CFR § 63.18(a). Section 63.18(b) requires identification of "[t]he Government, State, or Territory under the laws of which each corporate or partnership applicant is organized." 47 CFR § 63.18(b). Section 63.18(c) requires the "name, title, post
(continued....)

- *Type of International Section 214 Authority.* Section 63.18(d)-(f) of the rules requires information pertaining to an applicant's previous receipt of international section 214 authority¹⁹⁰ and the specific authority, either facilities-based and/or resale-based and/or other authorization, that it seeks in the application.¹⁹¹ An applicant for global facilities-based authority must certify that it will comply with the terms and conditions contained in sections 63.21 and 63.22.¹⁹² An applicant for global resale authority must certify that it will comply with the terms and conditions contained in sections 63.21 and 63.23.¹⁹³ An applicant for authority to acquire facilities or to provide services not covered by section (e)(1) and (e)(2) must provide a description of the facilities and services for which it seeks authorization and certify that it will comply with the terms and conditions contained in sections 63.21 and 63.22 and/or 63.23, as appropriate.¹⁹⁴ An applicant may apply for any or all of the authority provided for in section 63.18(e) of the rules in the same application.¹⁹⁵
- *Interlocking Directorates.* Section 63.18(h) requires that applicants provide information about any person or entity that directly or indirectly holds 10% or greater ownership interest in the applicant and identify any interlocking directorates with a foreign carrier.¹⁹⁶ While we

office address, and telephone number of the officer and any other contact point, such as legal counsel, to whom correspondence concerning the application is to be addressed.” 47 CFR § 63.18(c). Collecting minimum contact information allows the Commission to communicate with the applicant including to address any questions or concerns that the Commission has.

¹⁹⁰ Section 63.18(d) requires “[a] statement as to whether the applicant has previously received authority under Section 214 of the Act and, if so, a general description of the categories of facilities and services authorized (i.e., authorized to provide international switched services on a facilities basis).” 47 CFR § 63.18(d).

¹⁹¹ 47 CFR § 63.18(e)(1)-(3).

¹⁹² 47 CFR § 63.18(e)(1) (“*Global facilities-based authority.* If applying for authority to become a facilities-based international common carrier subject to § 63.22 of this part the applicant shall: (i) State that it is requesting Section 214 authority to operate as a facilities-based carrier pursuant to § 63.18(e)(1) of this part of the Commission’s rules; (ii) List any countries for which the applicant does not request authorization under this paragraph (see § 63.22(a) of this part); and (iii) Certify that it will comply with the terms and conditions contained in §§ 63.21 and 63.22 of this part.”).

¹⁹³ 47 CFR § 63.18(e)(2) (“*Global Resale Authority.* If applying for authority to resell the international services of authorized common carriers subject to § 63.23, the applicant shall: (i) State that it is requesting Section 214 authority to operate as a resale carrier pursuant to § 63.18(e)(2) of this section of the Commission's rules; (ii) List any countries for which the applicant does not request authorization under this paragraph (see § 63.23(a) of this part); and (iii) Certify that it will comply with the terms and conditions contained in §§ 63.21 and 63.23 of this part.”).

¹⁹⁴ 47 CFR § 63.18(e)(3) (“*Other authorizations.* If applying for authority to acquire facilities or to provide services not covered by paragraphs (e)(1) and (e)(2) of this section, the applicant shall provide a description of the facilities and services for which it seeks authorization. The applicant shall certify that it will comply with the terms and conditions contained in §§ 63.21 and 63.22 and/or 63.23, as appropriate. Such description also shall include any additional information the Commission shall have specified previously in an order, public notice or other official action as necessary for authorization.”).

¹⁹⁵ 47 CFR § 63.18(f). An applicant seeking facilities-based authority under section 63.18(e)(3) must provide a statement as to whether an authorization of the facilities is categorically excluded from environmental processing as defined by section 1.1306 of the rules. *Id.* § 63.18(g). Section 63.18(g) provides that “[i]f answered affirmatively, an environmental assessment as described in § 1.1311 of this chapter need not be filed with the application.” *Id.*

¹⁹⁶ 47 CFR § 63.18(h). The *Executive Branch Process Reform Order* amended section 63.18(h), as discussed below, and recodified this requirement as section 63.18(h)(3). See *Executive Branch Process Reform Order*, 35 FCC Rcd at (continued....)

propose to modify the ownership disclosure requirements, as discussed below,¹⁹⁷ we propose to require renewal applicants to provide this identification of any interlocking directorates with a foreign carrier.

- *Foreign Carrier Affiliation.* Section 63.18(i)-(k) and (m) of the rules requires applicants to provide information and certifications relating to whether an applicant is, or is affiliated with, a foreign carrier.¹⁹⁸ Section 63.18(i) requires an applicant to certify whether it is or is affiliated with a foreign carrier and identify each foreign country in which the applicant is or is affiliated with a foreign carrier.¹⁹⁹ Section 63.18(j) requires an applicant to certify whether it seeks to provide international telecommunications services to any destination country where the applicant is or controls a foreign carrier in that country;²⁰⁰ or any entity that owns more than 25% of the applicant, or that controls the applicant, controls a foreign carrier in that country;²⁰¹ or two or more foreign carriers (or parties that control foreign carriers) own, in the aggregate, more than 25% of the applicant and are parties to, or the beneficiaries of, a contractual relation affecting the provision or marketing of international basic telecommunications services in the United States.²⁰² If any country identified by the applicant in the certification under section 63.18(j) is not a member of the World Trade Organization (WTO), the applicant must demonstrate whether the foreign carrier has market power or lacks market power.²⁰³ Any applicant that is or is affiliated with a foreign carrier in a country identified in the certification under section 63.18(i), and which seeks to be regulated as non-dominant for the provision of particular international telecommunications services to such country, should demonstrate that it qualifies for non-dominant classification.²⁰⁴
- *No Special Concessions.* Section 63.18(n) of the rules requires an applicant to certify that it has not agreed to accept special concessions directly or indirectly from any foreign carrier with respect to any U.S. international route where the foreign carrier possesses market power

10964, Appx. B. Section 63.18(h) also requires ownership information for the applicant. As discussed below, we propose to make changes to the ownership reporting requirements. *See infra* Section IV.E.1.

¹⁹⁷ *See infra* Section IV.E.4.

¹⁹⁸ *See* 47 CFR § 63.18(i)-(k), (m).

¹⁹⁹ 47 CFR § 63.18(i).

²⁰⁰ 47 CFR § 63.18(j)(1)-(2).

²⁰¹ 47 CFR § 63.18(j)(3).

²⁰² 47 CFR § 63.18(j)(4).

²⁰³ 47 CFR § 63.18(k). (“If any country identified by the applicant in the certification under section 63.18(j) is not a member of the World Trade Organization (WTO), the applicant must make a demonstration as to whether the foreign carrier has market power or lacks market power, with reference to the criteria in section 63.10(a) of the rules.”). Note to paragraph (k) provides that, “[u]nder § 63.10(a), the Commission presumes, subject to rebuttal, that a foreign carrier lacks market power in a particular foreign country if the applicant demonstrates that the foreign carrier lacks 50 percent market share in international transport facilities or services, including cable landing station access and backhaul facilities, intercity facilities or services, and local access facilities or services on the foreign end of a particular route.” *Id.* § 63.18(k), Note to paragraph (k).

²⁰⁴ 47 CFR § 63.18(m) (“With respect to regulatory classification under § 63.10 of this part, any applicant that is or is affiliated with a foreign carrier in a country listed in response to paragraph (i) of this section and that desires to be regulated as non-dominant for the provision of particular international telecommunications services to that country should provide information in its application to demonstrate that it qualifies for non-dominant classification pursuant to § 63.10 of this part.”).

on the foreign end of the route and will not enter into such agreements in the future.²⁰⁵

- *Not Subject to Denial of Federal Benefits.* Section 63.18(o) of the rules requires “[a] certification pursuant to §§ 1.2001 through 1.2003 of this chapter that no party to the application is subject to a denial of Federal benefits pursuant to Section 5301 of the Anti-Drug Abuse Act of 1988. See 21 U.S.C. 853a.”²⁰⁶ We propose to require renewal applicants to provide a certification that is consistent with the amendments we propose for section 63.18(o), as discussed in Section III.E.
- *Other Requirements.* Section 63.18(q) of the current rules requires that applicants provide “[a]ny other information that may be necessary to enable the Commission to act on the application.”²⁰⁷ Section 63.18(r) of the current rules requires that applications must be filed electronically through IBFS.²⁰⁸

85. We also propose to apply the application requirements that were adopted in the *Executive Branch Process Reform Order*, with regard to international section 214 authorizations, to renewal applications. We anticipate that these requirements will improve the Commission’s assessment of evolving national security, law enforcement, foreign policy, and trade policy risks associated with applications for renewal of international section 214 authority.

- *Calculation of Equity Interests Held Indirectly in the Carrier.* The *Executive Branch Process Reform Order* adopted a new subsection (1)(A) in section 63.18(h), which directs that equity interests that are held by an individual or entity indirectly through one or more intervening entities shall be calculated by successive multiplication of the equity percentages for each link in the vertical ownership chain, regardless of whether any particular link in the chain represents a controlling interest in the company positioned in the next lower tier.²⁰⁹ The new section 63.18(h)(1)(A) includes an example.²¹⁰
- *Calculation of Voting Interests Held Indirectly in the Carrier.* The *Executive Branch Process Reform Order* adopted a new subsection (1)(B) in section 63.18(h), which directs that voting interests that are held through one or more intervening entities shall be calculated by successive multiplication of the voting percentages for each link in the vertical ownership chain, except that wherever the voting interest for any link in the chain is equal to or exceeds 50% or represents actual control, it shall be treated as if it were a 100% interest.²¹¹ The new

²⁰⁵ 47 CFR § 63.18(n).

²⁰⁶ 47 CFR § 63.18(o).

²⁰⁷ 47 CFR § 63.18(q). In the *Executive Branch Process Reform Order*, the Commission adopted a new section 63.18(q) and recodified the current requirements of section 63.18(q) as section 63.18(s). *Executive Branch Process Reform Order*, 35 FCC Rcd at 10985, Appx. B, para. 11. The amended rules are not yet effective.

²⁰⁸ 47 CFR § 63.18(r) (“Subject to the availability of electronic forms, all applications described in this section must be filed electronically through the International Bureau Filing System (IBFS). A list of forms that are available for electronic filing can be found on the IBFS homepage. For information on electronic filing requirements, see part 1, §§ 1.1000 through 1.10018 of this chapter and the IBFS homepage at <http://www.fcc.gov/ibfs>. See also §§ 63.20 and 63.53.”). In the *Executive Branch Process Reform Order*, the Commission adopted a new section 63.18(r) and recodified the current requirements of section 63.18(r) as section 63.18(t). *Executive Branch Process Reform Order*, 35 FCC Rcd at 10963-64, para. 95. The amended rules are not yet effective.

²⁰⁹ See *Executive Branch Process Reform Order*, 35 FCC Rcd at 10986, Appx. B, para. 11.

²¹⁰ See *id.*

²¹¹ See *id.* A general partner shall be deemed to hold the same voting interest as the partnership holds in the company situated in the next lower tier of the vertical ownership chain. *Id.* A partner of a limited partnership (other (continued....))

section 63.18(h)(1)(b) includes an example.²¹²

- *Ownership Diagram.* The *Executive Branch Process Reform Order* adopted a new subsection (2) in section 63.18(h), which requires applicants to provide an ownership diagram that illustrates the applicant's vertical ownership structure, including the direct and indirect ownership (equity and voting) interests held by the individuals and entities named in response to section 63.18(h)(1) of this section.²¹³ The ownership diagram shall include both the pre-transaction and post-transaction ownership of the authorization holder.²¹⁴
- *Responses to Standard Questions.* The *Executive Branch Process Reform Order* adopted a new section 63.18(p), which requires that each applicant for which an individual or entity that is not a U.S. citizen holds a 10% or greater direct or indirect equity or voting interest, or a controlling interest, in the applicant, must submit responses to Standard Questions, prior to or at the same time the applicant files its application with the Commission, directly to the Committee.²¹⁵ While we propose to modify the ownership disclosure requirements, as discussed below,²¹⁶ we propose to require renewal applicants to comply with this requirement consistent with the amendments we propose to the new section 63.18(p).²¹⁷
- *Certifications.* The *Executive Branch Process Reform Order* adopted a new section 63.18(q) that requires each applicant to make the following certifications by which they agree
 - (1) to comply with all applicable Communications Assistance for Law Enforcement Act (CALEA) requirements and related rules and regulations;²¹⁸
 - (2) to make communications to, from, or within the United States, as well as records thereof, available in a form and location that permits them to be subject to a valid and

than a general partner) shall be deemed to hold a voting interest in the partnership that is equal to the partner's equity interest. *Id.*

²¹² *See id.*

²¹³ *See id.* at 10987, Appx. B, para. 11. Every individual or entity with ownership shall be depicted and all controlling interests must be identified. *Id.*

²¹⁴ *See id.*

²¹⁵ *See id.* (“(p) Each applicant for which an individual or entity that is not a U.S. citizen holds a ten percent or greater direct or indirect equity or voting interest, or a controlling interest, in the applicant, must submit responses to standard questions, prior to or at the same time the applicant files its application with the Commission, pursuant to Part 1, Subpart CC directly to the Committee for the Assessment of Foreign Participation in the United States Telecommunications Services Sector (Committee). The standard questions and instructions for submitting the responses are available on the FCC website. The required information shall be submitted separately from the application and shall be submitted directly to the Committee with a complete and unredacted copy of its FCC application(s), including the file number(s) and docket number(s), to the Committee within three (3) business days of filing it with the Commission. The instructions for submitting a copy of the FCC application(s) to the Committee are available on the FCC website.”).

²¹⁶ *See infra* para. 89.

²¹⁷ *See infra* para. 169.

²¹⁸ *See Executive Branch Process Reform Order*, 35 FCC Rcd at 10987-88, Appx. B, para. 11 (“(q) Certifications. (1) Each applicant shall make the following certifications by which they agree: (i) To comply with all applicable Communications Assistance for Law Enforcement Act (CALEA) requirements and related rules and regulations, including any and all FCC orders and opinions governing the application of CALEA, pursuant to Communications Assistance for Law Enforcement Act and the Commission’s rules and regulations in part 1, subpart Z—Communications Assistance for Law Enforcement Act . . .”).

lawful request or legal process in accordance with U.S. law;²¹⁹

- (3) to designate a point of contact who is located in the United States and is a U.S. citizen or lawful U.S. permanent resident, for the execution of lawful requests and as an agent for legal service of process;²²⁰
- (4)(A) that the applicant is responsible for the continuing accuracy and completeness of all information submitted, whether at the time of submission of the application or subsequently in response to either the Commission or the Committee's request, as required in section 1.65(a), and that the applicant agrees to inform the Commission and the Committee of any substantial and significant changes while an application is pending;²²¹
- (4)(B) after the application is no longer pending for purposes of section 1.65 of the rules, the applicant must notify the Commission and the Committee of any changes in the authorization holder or licensee information and/or contact information promptly, and in any event within thirty (30) days;²²² and
- (5) that the applicant understands that if the applicant or authorization holder fails to fulfill any of the conditions and obligations set forth in the certifications set out in section 63.18(q) or in the grant of an application or authorization and/or that if the information provided to the U.S. government is materially false, fictitious, or fraudulent, applicant and authorization holder may be subject to all remedies available to the U.S. government, including but not limited to revocation and/or termination of the Commission's authorization or license, and criminal and civil penalties, including penalties under 18 U.S.C. § 1001.²²³

86. *Application Fees.* We propose to adopt a fee for renewal applications and, in the alternative, a fee for periodic review submissions for international section 214 authority that is consistent with the fee for applications for new international section 214 authorizations.²²⁴ The proposed fee is

²¹⁹ See *id.* (“(q) Certifications. (1) Each applicant shall make the following certifications by which they agree . . . (ii) To make communications to, from, or within the United States, as well as records thereof, available in a form and location that permits them to be subject to a valid and lawful request or legal process in accordance with U.S. law, including but not limited to: (1) the Wiretap Act, 18 U.S.C. § 2510 et seq.; (2) the Stored Communications Act, 18 U.S.C. § 2701 et seq.; (3) the Pen Register and Trap and Trace Statute, 18 U.S.C. § 3121 et seq.; and (4) other court orders, subpoenas or other legal process . . .”).

²²⁰ See *id.*

²²¹ See *id.*

²²² See *id.*

²²³ See *Executive Branch Process Reform Order*, 35 FCC Rcd at 10987-89, Appx. B, para. 11.

²²⁴ See 47 U.S.C. § 158(a), 47 CFR § 1.1101, 47 CFR § 1.1107. Section 8(c) of the Communications Act requires the Commission to, by rule, amend the application fee schedule if the Commission determines that the schedule requires amendment so that: (1) such fees reflect increases or decreases in the costs of processing applications at the Commission or (2) such schedule reflects the consolidation or addition of new categories of applications. 47 U.S.C. § 158(c). Section 8(c) of the Act does not mandate a timeframe for making any such amendments under section 8(c). As we noted in the *2020 Application Fee Order*, where the Commission determines that the application fee schedule may require an amendment pursuant to section 8(c), the Commission will initiate a rulemaking to seek comment on any proposed amendment(s) to the application fee schedule. We do so here. *Amendment of the Schedule of Application Fees Set Forth in Sections 1.1102 through 1.1109 of the Commission's Rules*, MD Docket No. 20-270, Report and Order, 35 FCC Rcd 15089 at 15094, para. 15 (2020) (*2020 Application Fee Report and Order*).

consistent with the established fee category of "International Service"²²⁵ and will follow the fee calculation methodology adopted by the Commission in the *2020 Application Fee Report and Order*.²²⁶ Currently, the fee for an application for a new international section 214 authorization is \$875.²²⁷ Since we envision the level of Commission resources required to review a renewal application or periodic review submission will be consistent with review of an application for new international 214 authority, we propose to adopt a fee of \$875. We seek comment on our proposed application fee for a renewal application or periodic review submission

87. We seek comment on these proposals and the draft rule provisions in Appendix A.²²⁸ We propose to incorporate almost all of the application requirements in section 63.18 to the proposed rules for renewal applications or, in the alternative, periodic review submissions. Are there other related provisions of Part 63 that the Commission should require of authorization holders that file a renewal application or periodic review submission? Are there any reasons to modify certain information requirements in Part 63 as applied to renewal applications or periodic review submissions?

E. New Application Requirements for All International Section 214 Applicants and Authorization Holders

88. We propose to adopt new application requirements to improve the Commission's assessment of evolving national security, law enforcement, foreign policy, and trade policy risks following a grant of international section 214 authority. We seek comment on whether to adopt a new 5% ownership reporting threshold for all initial applications for international section 214 authority and applications for modification, assignment, transfer of control, and renewal of international section 214 authority.²²⁹ We propose to require each applicant to provide information about its services, geographic markets, and facilities crossing the United States' borders with Canada and Mexico (cross border

²²⁵ *2020 Application Fee Report and Order*, 35 FCC Rcd 15089 at 15094, para. 15.

²²⁶ *Id.* at 15092, para. 11 (adopting *2020 Application Fee Notice of Proposed Rulemaking* proposed methodology to "base the application fees on an estimate of direct labor costs where possible."), 15134-35, paras. 144-45 (adopting the *2020 Application Fee Notice of Proposed Rulemaking* methodology for non-pro forma international section 214 applications); *Amendment of the Schedule of Application Fees Set Forth in Sections 1.1102 through 1.1109 of the Commission's Rules*, MD Docket No. 20-270, Notice of Proposed Rulemaking, 36 FCC Rcd 1618, 1657, para. 149 (2020) (*2020 Application Fee Notice of Proposed Rulemaking*) ("Applications to obtain an international section 214 authorization are filed online using IBFS and involve staff review. The Commission may also need to coordinate applications with other federal agencies. We estimate the Commission's resources in processing an application for an international section 214 authorization consist of the following: industry analyst processing and review, staff attorney review, and supervisory review.").

²²⁷ *Amendment of the Schedule of Application Fees Set Forth in Sections 1.1102 through 1.1109 of the Commission's Rules*, Order, FCC 22-94, 2022 WL 17886514, Appx. (rel. Dec. 16, 2022); 47 CFR § 1.1107. This fee rate became effective on March 2, 2023. See 88 FR 6169 (Jan. 31, 2023).

²²⁸ See *infra* Appx. A.

²²⁹ We note that section 63.04(b) of the Commission's rules, pertaining to applications for transfer of control of domestic section 214 authorizations, permits joint international and domestic section 214 transfer of control filings and requires applicants filing such joint applications to satisfy the requirements in both sections 63.04 and 63.18 addressing ownership. See 47 CFR §§ 63.04(b), 63.18. This Notice does not propose to modify section 63.04(a)(4), which addresses ownership information required to be disclosed for domestic-only section 214 transfer of control applications. If we adopt a 5% reporting requirement for international section 214 authorizations, we propose to require that applicants filing a joint international and domestic section 214 transfer of control application must continue to submit information that satisfies the requirements in both sections 63.04 and section 63.18, including ownership information that would be required by section 63.18(h) under the proposed 5% ownership reporting threshold.

facilities), and certify that their facilities-based equipment meets certain requirements.²³⁰ Prior to the current global international section 214 licensing scheme, the Commission granted authorizations on a country-by-country basis and collected facilities information.²³¹ That was over 25 years ago. Since that time, the Commission has not collected and does not have any information on critical infrastructure that is used by international section 214 authorization holders to provide services under their international section 214 authority. Additionally, we propose to require all authorization holders to report their reportable ownership and other information on an ongoing basis, starting every three years after grant of a renewal application. We tentatively conclude that these proposed requirements are important and necessary for informing the Commission's evaluation of an applicant's request for international section 214 authority or the modification, assignment, transfer of control, or renewal thereof and would serve the public interest given evolving risks identified by the Commission and the Executive Branch.

1. Five (5) Percent Threshold for Reportable Interests

89. We seek comment on whether to adopt a new ownership reporting threshold that would require disclosure of 5% or greater direct and indirect equity and/or voting interests with respect to applications for international section 214 authority and modifications, assignments, transfers of control, and renewals of international section 214 authority. Over twenty years ago, the Commission found that a 10% reporting threshold would assist the Commission in determining whether a particular international section 214 application raises issues of national security, foreign policy, or law enforcement risks.²³² The national security and law enforcement environment, however, has changed dramatically during this timeframe.²³³ The current 10% reporting threshold may not capture all foreign interests that may present national security, law enforcement, foreign policy, and trade policy concerns. In the *2021 Standard Questions Order*, the Commission noted, with respect to the Standard Questions, the views of Committee staff that “5% threshold is appropriate because in some instances a less-than-ten percent foreign ownership interest—or a collection of such interests—may pose a national security or law enforcement risk.”²³⁴ The Commission further noted, “[t]he Committee staff states that a group of foreign entities or persons, each owning nine percent and working together, could easily reach a controlling interest in a company without having to disclose any of their interests to the Committee for certain FCC application types.”²³⁵

²³⁰ Unless indicated otherwise, we refer to “applicant” or “applicants” in this subsection, Section IV.E, to refer to (1) applicants that file an initial application for international section 214 authority or an application for modification, assignment, transfer of control, or renewal of international section 214 authority, and (2) authorization holders that file a notification of *pro forma* assignment or transfer of control. See 47 CFR §§ 63.18, 63.24(e) (“Applications for substantial transactions”), 63.24(f) (“Notifications for non-substantial or *pro forma* transactions”). Unless indicated otherwise, we refer to “application” or “applications” in this subsection, Section IV.E, to refer to applications and notifications filed under section 63.18 and/or section 63.24 of the Commission’s rules.

²³¹ The Commission adopted global facilities-based international section 214 authorizations in 1996. *1996 Report and Order*, 11 FCC Rcd at 12888-94, paras. 9-20. Prior to the *1996 Report and Order*, the Commission’s rules required that applications for international section 214 authority specify the geographic market (i.e., the country) to be served, the particular services to be provided, and the facilities to be used. See *1995 Streamlining NPRM*, 10 FCC Rcd at 13481 para. 8.

²³² *Biennial Regulatory Review Order*, Report and Order, 14 FCC Rcd at 4940, para. 76.

²³³ See *China Telecom Americas Order on Revocation and Termination*, 36 FCC Rcd at 15967, para. 2; *China Unicom Americas Order on Revocation* at *1, para. 2; *Pacific Networks and ComNet Order on Revocation and Termination* at *1, para. 2; *Executive Branch Process Reform Report and Order*, 35 FCC Rcd at 10932-34, paras. 11-14.

²³⁴ *2021 Standard Questions Order* at *7, para. 16.

²³⁵ *Id.*

90. In furtherance of our objective in this proceeding, and as we review the current rules and their applicability to the proposed renewal or, in the alternative, periodic review process, we seek comment on whether a 5% reporting threshold would better capture foreign interests, including any such interests that are associated—either individually or in the collective—with a foreign adversary country. We seek comment whether a 5% reporting threshold would improve the Commission’s assessment of evolving public interest risks. We seek comment on whether to apply the 5% reporting threshold to encompass all equity and voting interests, regardless whether the interest holder is a domestic or foreign individual or entity. In the *Executive Branch Process Reform Order*, the Commission rejected arguments to seek, for purposes of the Standard Questions, only information regarding foreign investors with 5% or greater interests, noting, “the Executive Agencies’ review extends beyond just foreign policy considerations; the review process also involves national security and law enforcement issues as well, which could be implicated regardless of whether the equity interest holder is a domestic or foreign entity.”²³⁶

91. Currently, the ownership reporting threshold in section 63.18(h) of the Commission’s rules requires applicants for international section 214 authority to disclose the name, address, citizenship, and principal businesses of any person or entity that directly or indirectly owns at least 10% percent of the equity of the applicant, and the percentage of equity owned by each of those entities (to the nearest one percent).²³⁷ Applicants seeking to assign or transfer control of an international section 214 authorization are also subject to the ownership disclosure requirement in section 63.18(h) pursuant to section 63.24 of the Commission’s rules.²³⁸ If we adopt a 5% threshold, we propose to amend the ownership disclosure requirement in section 63.18(h) of the rules to require that all applicants that file an application or notification required by section 63.18 and/or section 63.24 of the Commission’s rules must disclose all individuals and entities with 5% or greater direct and/or indirect equity and/or voting interest in the applicant, as specified in each rule.²³⁹ Where no individual or entity directly or indirectly owns 5% or more of the equity interests and/or voting interests, or a controlling interest of the applicant, we propose that the application must include a statement to that effect.²⁴⁰

92. We seek comment on the burdens that would be placed on applicants to report direct and indirect equity and/or voting ownership at a 5% threshold. A reporting threshold of 5% would be consistent with other similar relevant federal reporting requirements. A reporting threshold of 5% would be consistent with the ownership threshold used by the Committee in its review of applications that are referred by the Commission, to obtain information from applicants concerning their 5% or greater owners. In the *2020 Executive Branch Process Reform Order*, the Commission declined to add to its application forms additional questions regarding an applicant’s investors with 5% or more equity that were suggested by the National Telecommunications and Information Administration (NTIA), given “they are

²³⁶ *Executive Branch Process Reform Order*, 35 FCC Rcd at 10945, para. 46.

²³⁷ 47 CFR § 63.18(h). In the *2020 Executive Branch Process Reform Order*, the Commission amended its rules to require that applicants for domestic section 214 transactions, international section 214 authorizations, and submarine cable licenses must identify the voting interests, in addition to the equity interests, of individuals or entities with 10% or greater direct or indirect ownership in the applicant. *2020 Executive Branch Process Reform Order*, 35 FCC Rcd at 10963-64, para. 95. The amended rules are not yet effective.

²³⁸ See 47 CFR § 62.24. See 47 CFR § 63.18(h); *id.* § 63.24(e) (stating, with respect to applications for substantial transactions, “[t]he information requested in paragraphs (h) through (p) of § 63.18 is required only for the transferee/assignee”); *id.* § 63.24(f) (requiring that notifications for *pro forma* assignment or transfer of control transactions must contain “[t]he information requested in paragraphs (a) through (d) and (h) of § 63.18 for the transferee/assignee”).

²³⁹ See 47 CFR §§ 63.18(h), 63.24.

²⁴⁰ *2020 Executive Branch Process Reform Order*, 35 FCC Rcd at 10985-86, Appx. B (Final Rules).

inconsistent with the Commission's ownership disclosure requirements" for applications concerning international section 214 authorizations, among other applications.²⁴¹ In light of our goal in this proceeding to establish a formalized and systemized process by which the Commission can reassess and continually account for evolving public interest risks, we take this opportunity to review the current ownership disclosure requirement for such applications and tentatively find that an ownership reporting threshold of 5% is consistent with the views previously expressed by the Committee and would better inform the Commission's foreign ownership analysis.

93. A reporting threshold of 5% is also consistent with information that U.S. public companies and their shareholders provide to the SEC.²⁴² The Exchange Act Rule 13d-1 requires a person or "group" that becomes, directly or indirectly, the "beneficial owner" of more than 5% of a class of equity securities registered under Section 12 of the Exchange Act to report the acquisition to the SEC.²⁴³ We further note that various SEC forms filed by issuers, including their annual reports (or proxy statements) and quarterly reports, require the issuer to include a beneficial ownership table that contains, *inter alia*, the name and address of any individual or entity, or "group," who is known to the issuer to be the beneficial owner of more than 5% of any class of the issuer's voting securities.²⁴⁴

94. In addition, a reporting threshold of 5% is consistent with information that the Committee on Foreign Investment in the United States (CFIUS) requires of parties to a covered real estate transaction that file a voluntary notice with CFIUS.²⁴⁵ Specifically, CFIUS regulations require that if an ultimate parent of a foreign person that is a party to the transaction is a public company, the parties to the transaction must provide in the voluntary notice, the name, address, and nationality (for individuals) or place of incorporation or other legal organization (for entities) of "any shareholder with an interest of greater than five percent in such parent."²⁴⁶ Thus, we tentatively conclude that our proposal to adopt a

²⁴¹ See *Process Reform for Executive Branch Review of Certain FCC Applications and Petitions Involving Foreign Ownership*, Notice of Proposed Rulemaking, 31 FCC Rcd 7456, 7459, para. 7 (2016) (*2016 Executive Branch Process Reform NPRM*); *2020 Executive Branch Process Reform Order*, 35 FCC at 10929-30, para. 5, Appx. D (Sample Questions Regarding National Security and Law Enforcement Provided by NTIA).

²⁴² 15 U.S.C. § 78m(d)(1); 17 CFR § 240.13d-1; 17 CFR § 229.403; see *2016 Foreign Ownership Report and Order*, Report and Order, 31 FCC Rcd 11272, 11293-4, para. 45-6, n.130 (2016).

²⁴³ *2016 Foreign Ownership Report and Order*, 31 FCC Rcd at 11293, para. 45. For purposes of Exchange Act Rule 13d-1, Exchange Act Rule 13d-3(a) defines a beneficial owner of a security to include any person who, directly or indirectly, through any contract, arrangement, understanding, relationship, or otherwise has or shares voting power, which includes the power to vote, or to direct the voting of, such security; and/or investment power, which includes the power to dispose, or to direct the disposition of, such security. 17 CFR § 240.13d-3(a). Exchange Act Rule 13d-1(i) defines the term "equity security" as any equity security of a class which is registered pursuant to Section 12 of that Act as well as certain equity securities of insurance companies and equity securities issued by closed-end investment companies registered under the Investment Company Act of 1940. *Id.* at n.128.

²⁴⁴ See SEC Regulation S-K, 17 CFR § 229.403. See also 17 CFR § 229.10; *2016 Foreign Ownership Report and Order*, 31 FCC Rcd at 11294, n.130.

²⁴⁵ CFIUS is "an interagency committee authorized to review certain transactions involving foreign investment in the United States and certain real estate transactions by foreign persons, in order to determine the effect of such transactions on the national security of the United States." U.S. Department of Treasury, *The Committee on Foreign Investment in the United States (CFIUS)*, <https://home.treasury.gov/policy-issues/international/the-committee-on-foreign-investment-in-the-united-states-cfius> (last visited Mar. 20, 2023); see U.S. Department of Treasury, *CFIUS Overview*, <https://home.treasury.gov/policy-issues/international/the-committee-on-foreign-investment-in-the-united-states-cfius/cfius-overview> (last visited Mar. 16, 2023). Parties to a covered transaction may file a Notice, which, if approved, grants a safe harbor. *Id.* See 31 CFR § 800.502

²⁴⁶ 31 CFR §§ 800.502(c)(1)(v)(C), 802.502(b)(1)(vi)(C). In addition, CFIUS regulations require that any individual that has "an ownership interest of five percent or more in the foreign person engaged in the transaction and in the

(continued....)

reporting threshold of 5% would be consistent with other federal agencies and impose minimal burdens on applicants. We seek comment on what, if any, potential burdens would be imposed on applicants under our proposal to establish a 5% equity and/or voting interest reporting threshold.

95. We seek comment on whether a reporting threshold of 5% equity and/or voting interest adequately captures the relationship, association, and/or extent of influence that a foreign investor, including foreign governments, may have with respect to an applicant and/or other individuals or entities in the applicant's chain of ownership. For instance, would a reporting threshold of 5% equity and/or voting interest sufficiently account for circumstances where a foreign government interest holder with comparatively smaller ownership interests may have a disproportionately significant influence on the applicant and its operations, such as through "golden shares"?²⁴⁷ Should the Commission require additional information about an applicant's reportable interest holders? For example, should we require applicants to identify other types of interests or interest holders in addition to equity interests and voting interests, such as management agreements? Is there any other information the Commission could require to fully capture interest holders that are either foreign governments or foreign state-owned entities? What additional ownership information would fully inform and assist the Commission's assessment of national security, law enforcement, foreign policy, and trade policy risks raised by such interest holders?

2. Services and Geographic Markets

96. We propose to adopt rules requiring applicants to include in all initial applications for international section 214 authority and applications for modification, assignment, transfer of control, and renewal of international section 214 authority, information about their current and/or expected future services and the geographic markets where the authorization holder offers service in the United States under its international section 214 authority.²⁴⁸ The Commission's rules currently only require an applicant for international section 214 authority to indicate whether it seeks facilities-based authority, resale authority, and/or authority to acquire facilities or to provide services not covered by section 63.18(e)(1) or (e)(2) of the rules.²⁴⁹ The Commission's rules for modifications, assignments, and transfers of control of international section 214 authority only require that the applicant state "whether the

foreign person's ultimate parent" must provide personal identifier information," including full name, date of birth, and place of birth, among other thing, and a "curriculum vitae or similar professional synopsis" in the voluntary notice. 31 CFR §§ 800.502(c)(5)(vi), 802.502(b)(3)(vi).

²⁴⁷ See, e.g., *In re Franchise Services of North America, Incorporated*, 891 F.3d 198, 205 (5th Cir. 2018) ("Generally speaking, a 'golden share' is '[a] share that controls more than half of a corporation's voting rights and gives the shareholder veto power over changes to the company's charter.' E.g., *Golden Share*, Black's Law Dictionary (10th ed. 2014); see also Mariana Pargendler, *State Ownership and Corporate Governance*, 80 Fordham L. Rev. 2917, 2967 (2012) (noting that in the context of formerly state-owned entities, '[g]olden shares are essentially a special class of stock issued to the privatizing government that grants special voting and veto rights that are disproportionate to, or even independent of, its cash-flow rights in the company'). As used in the bankruptcy context, the term generally refers to the issuance to a creditor of a trivial number of shares that gives the creditor the right to prevent a voluntary bankruptcy petition, potentially among other rights. See, e.g., *In re Intervention Energy Holdings, LLC*, 553 B.R. 258, 261–62 (Bankr. D. Del. 2016)."). See also Ryan McMorro, Qianer Liu, Cheng Leng, *China moves to take 'golden shares' in Alibaba and Tencent units*, (Jan. 23, 2023), <https://www.ft.com/content/65e60815-c5a0-4c4a-bcec-4af0f76462de>; Reuters, *Fretting about data security, China's government expands its use of "golden shares,"* <https://www.reuters.com/article/china-regulation-data-idCAKBN2IU2B7> (Dec. 15, 2021).

²⁴⁸ We refer to "applications" in this section, Section IV.E.2, to include applications for international section 214 authority; applications for modifications, assignments, transfers of control, and renewals of international section 214 authority; and *pro forma* notifications of assignments and transfers of control of international section 214 authority.

²⁴⁹ See 47 CFR §§ 63.18(e)(1) (Global facilities-based authority); *id.* § 63.18(e)(2) (Global Resale Authority); *id.* § 63.18(e)(3) (Other authorizations).

applicant previously received authority under Section 214 of the Act and, if so, a general description of the categories of facilities and services authorized.”²⁵⁰ The current rules do not require applicants to provide the Commission with specific information about the services they provide and/or will provide under the international section 214 authority, the facilities they use and/or will use, or other information related to their operations in the United States and abroad.²⁵¹

97. This information will further help the Commission to properly assess evolving national security, law enforcement, foreign policy, and trade policy risks associated with an applicant.²⁵² In recent revocation actions, the Commission specifically assessed the risks associated with the particular services offered pursuant to international section 214 authority.²⁵³ In addition, we note that the Executive Branch agencies seek “detailed and comprehensive information” from applicants with reportable foreign ownership, including services to be provided.²⁵⁴ We believe information about an applicant’s current and/or planned future services would be important for the Commission’s review of applicants to meaningfully assess national security, law enforcement, and other considerations.

98. Specifically, we propose to require applicants to provide the following information with respect to services they provide and/or expect to provide using the international section 214 authority: (1) identification and description of the specific services they provide and/or will provide using the international section 214 authority; (2) types of customers that are and/or will be served; (3) whether the services will be provided through the facilities for which the applicant has an ownership, indefeasible-right-of use or leasehold interest or through the resale of other companies’ services; and (4) identification of where they currently and/or in the future expect to market, offer, and/or provide services using the particular international section 214 authority, such as a U.S. state or territory and/or U.S.-international route or globally. We note that the International Bureau or its successor entity retains the authority to request additional information during the course of its review²⁵⁵ and, as discussed above, we propose to adopt a similar rule for the Commission’s review of renewal applications.²⁵⁶ We seek comment on this proposal and the potential burdens on applicants. We seek comment on these proposals and whether the Commission should instead require authorization holders to provide this information on an as-needed

²⁵⁰ 47 CFR § 63.24(e)(2) (requiring that applications for substantial transactions “shall include the information requested in paragraphs (a) through (d) of § 63.18 for both the transferor/assignor and the transferee/assignee”); 47 CFR § 63.24(f)(2)(i) (requiring that notifications for non-substantial or *pro forma* transactions must contain “[t]he information requested in paragraphs (a) through (d) and (h) of § 63.18 for the transferee/assignee”); 47 CFR § 63.18(d) (requiring “[a] statement as to whether the applicant has previously received authority under Section 214 of the Act and, if so, a general description of the categories of facilities and services authorized (i.e., authorized to provide international switched services on a facilities basis)”).

²⁵¹ See 47 CFR §§ 63.18, 63.24.

²⁵² The Commission adopted global facilities-based international section 214 authorizations in 1996. *Streamlining the International Section 214 Authorization Process and Tariff Requirements*, IB Docket No. 95-118, Report and Order, 11 FCC Rcd 12884, 12888-94, paras. 9-20 (1996). Prior to that, the Commission’s rules required that applications for international section 214 authority specify the geographic market (i.e., the country) to be served, the particular services to be provided, and the facilities to be used. See *1995 Streamlining NPRM*, 10 FCC Rcd at 13481 para. 8.

²⁵³ See *China Telecom Americas Order on Revocation and Termination*, 36 FCC Rcd at 16011-29, paras. 68-98; *China Unicom Americas Order on Revocation* at *33-46, paras. 77-110; *Pacific Networks and ComNet Order on Revocation and Termination* at *33-44, 46-49, paras. 74-101, 106-113.

²⁵⁴ See e.g., *2021 Standard Questions Order*, 35 FCC Rcd at Appx. C. The Standard Questions are not yet effective.

²⁵⁵ 47 CFR §§ 63.18(q), 63.24(e)(3).

²⁵⁶ See *supra* para. 84.

basis.

3. Foreign-Owned Managed Network Service Providers

99. In this proceeding, we consider managed network service providers (MNSPs) that are third parties with access to telecommunications network, systems, or records to provide Managed Services that supports core domestic and international telecommunications services, functions, or operations.²⁵⁷ We rely on international section 214 authorization holders to protect U.S. records, such as customer proprietary network information (CPNI), and ensure the security and reliability of U.S. telecommunications networks. In October 2021, the Commission adopted an Order requiring certain applicants and petitioners with reportable foreign ownership—including applicants seeking international section 214 authority or modification, assignment, or transfer of control of international section 214 authority—to provide answers to a set of standardized national security and law enforcement questions (Standard Questions).²⁵⁸ The Standard Questions require an applicant, prior to or at the same time the applicant files its application with the Commission, to submit answers to those Questions directly to the Committee, including whether “any third-party Individual or Entity [has] Remote Access to the Applicant’s network, systems, or records to provide Managed Services.”²⁵⁹ Those applicants without foreign ownership are not routinely referred to the Committee. Such applicants, however, also may reach contractual agreements or have other arrangements with foreign-owned MNSPs, thereby granting such foreign-owned MNSPs access to U.S. networks and potentially allowing them to take actions in ways that are contrary to U.S. interests, without the Committee ever being informed.

100. Given the potential vulnerabilities raised by a foreign-owned entity’s access to critical telecommunications infrastructure in the United States, we seek comment on whether the Commission should require all applicants, including those without foreign ownership, to identify in their application whether or not they use and/or will use foreign-owned MNSPs. We seek comment on adopting this requirement for applicants seeking international section 214 authority and modification, assignment, transfer of control, and renewal of international section 214 authority.

101. Should we require applicants without foreign ownership that disclose they use and/or will use foreign-owned MNSPs to answer the Standard Questions currently required by applicants with foreign-ownership?²⁶⁰ Should we ask additional questions, such as requiring applicants to provide ownership information with respect to each foreign-owned MNSP that they use and/or will use? Should the Commission require applicants to identify all entities and/or individuals that hold 5% or greater direct or indirect equity and/or voting interests in the foreign-owned MNSP?²⁶¹ Should an MNSP be considered “foreign-owned” only if it is majority-owned and/or controlled by one or more non-U.S. individual(s) or entity(ies)? Should the Commission require applicants to explain in detail the foreign individuals’ or entities’ involvement and management roles in the foreign-owned MNSP?²⁶²

102. We seek comment on whether we should evaluate the character qualifications of foreign-owned MNSPs using the same standards that we propose herein to rely on for our assessment of applicants seeking international section 214 authority or modification, assignment, transfer of control, or

²⁵⁷ See Petition of Reach Mobile to Adopt Conditions to Authorizations and Licenses, IBFS No. ITC-214-20190131-00073, at 5 (filed June 8, 2020).

²⁵⁸ See generally 2021 Standard Questions Order.

²⁵⁹ *Id.*, 35 FCC Rcd at Appx. C.

²⁶⁰ *Id.*

²⁶¹ See *supra* paras. 88-90.

²⁶² 2021 Standard Questions Order, 35 FCC Rcd at Appx. C.

renewal of international section 214 authority.²⁶³ Because MNSPs are not seeking Commission authorizations, and our character policy is meant to ensure that we can rely on regulated entities to deal truthfully with the Commission and comply with the Act and the Commission's rules, should we be concerned about different types of past misconduct when we assess an authorization holder's relationship with a foreign-owned MNSP?²⁶⁴ Should the Commission require applicants, similar to the questions currently asked in the Standard Questions, to identify whether or not the foreign-owned MNSP or any entity and/or individual with any ownership or controlling interest in such MNSP "has been investigated, arraigned, arrested, indicted, and/or convicted" of criminal violations that are indicative of a propensity to engage in behavior that may jeopardize the security and reliability of U.S. telecommunications networks?²⁶⁵ Should we limit any information requirement regarding MNSPs to a specific prior period of time?

103. Do both facilities-based and resale-based authorization holders contract with foreign-owned MNSPs? Should we collect information on authorization holders' use of MNSPs in any other context? Should applicants that ordinarily would not be subject to review by the Committee identify in their application whether they use and/or will use a non-foreign-owned MNSP(s), or an MNSP with foreign ownership that is less than a reportable threshold, if that MNSP routes or manages traffic using facilities outside of the U.S.? Wireless carriers with international section 214 authorizations may provide international services to their customers. Are there any special concerns raised by use of foreign-owned MNSPs by wireless carriers, including by CMRS providers?

104. If we adopt such requirements, we would propose to routinely refer to the Executive Branch agencies, including the Committee agencies, to assist our public interest determination new international section 214 authorization as well as an application to modify, assign, transfer control of, or renew those authorizations where an applicant discloses that it uses and/or will use a foreign-owned MNSP.²⁶⁶ Similar to our current practice, we propose to delegate to the International Bureau or its successor entity, the authority to develop Standard Questions, modify and harmonize existing questions on MNSPs and other matters and to require applicants to submit answers to the Standard Questions, including personally identifiable information (PII), directly to the Committee prior to or at the same time the applicant files its application with the Commission. We seek comment on this proposal.

4. Cross Border Facilities Information

105. We propose to collect from current international section 214 authorization holders information on critical infrastructure that is used by authorization holders to provide service crossing the

²⁶³ See *supra* note 125.

²⁶⁴ Examples of past MNSP misconduct we might consider relevant include deceptive sales practices, violations of consumer protection statutes and any regulations, and/or other fraud or abuse practices in violation of federal, state, and/or local law; violations of federal, state, or local law in connection with the provision of telecommunications services, equipment, and/or products, and/or any other practices regulated by the Telecommunications Act of 1996 and/or by public utility commissions in the United States.

²⁶⁵ 2021 *Standard Questions Order*, at Appx. D ("Have any of the Relevant Parties or any of their Corporate Officers, Senior Officers, or Directors ever been investigated, arraigned, arrested, indicted, or convicted of any of the following: a) Criminal violations of U.S. law, including espionage-related acts or criminal violations of the International Trade in Arms Regulations (ITAR) or the Export Administration Regulations (EAR)...Deceptive sales practices, violations of the Consumer Fraud Act and regulations, and/or other fraud or abuse practices whether pursuant to Federal, state, or local law...") Such criminal violations of U.S. law would include the Espionage Act (18 U.S.C. §§ 792 et seq.), criminal violations of the International Traffic in Arms Regulations (22 C.F.R. pts. 120-130) or the Export Administration Regulations (15 C.F.R. pt. 730 et seq.).

²⁶⁶ See *supra* para 72.

U.S.-Mexico and U.S.-Canada borders, including the location, ownership, and type of facilities, and to require authorization holders to continue to update this information as part of the ongoing three-year reporting requirement proposed below. We also propose to share this information with relevant Executive Branch agencies, including the Committee agencies. The Commission currently receives this information for submarine cables that land in the United States pursuant to its rules.²⁶⁷ With this proposed new information collection, the Commission would then have an understanding of not only submarine fiber cable connections to U.S. facilities, but also facilities information for terrestrial fiber cables that cross the U.S.-Mexico and U.S.-Canada borders.²⁶⁸ The proposed rules would ensure that the Commission has knowledge of the critical infrastructure at our nation's borders. We seek comment on this proposal.

106. Congress created the Commission, among other reasons, “for the purpose of the national defense [and] for the purpose of promoting safety of life and property through the use of wire and radio communications”²⁶⁹ Throughout the past decade, Congress and the Executive Branch have repeatedly stressed the importance of identifying and eliminating potential security vulnerabilities in U.S. communications networks and supply chains.²⁷⁰ Recently, the Commission has taken a number of targeted steps as part of its ongoing efforts to protect the security of the networks that provide telecommunications services.²⁷¹ The Commission has taken significant steps by blocking access to U.S. communications networks, pursuant to its authority under section 214 of the Act, to providers posing a substantial and serious security threat to U.S. communications networks,²⁷² and continues its efforts to identify and eliminate potential security vulnerabilities in U.S. telecommunications networks and supply chains.²⁷³

²⁶⁷ A cable landing license application must include a description of the cable, including the number of channels and their capacity as well as where the cable lands. *See* 47 CFR § 1.767(a).

²⁶⁸ *See Expanding Flexible Use of the 3.7 to 4.2 GHz Band*, GN Docket No. 18-122, Notice of Proposed Rulemaking and Order, 33 FCC Rcd 6915, 6923-25 paras. 19-21, 23-24, fn. 55 (July 13, 2018) (*C-Band Order*) (“While the Commission has discretion to seek comment before undertaking an information collection, it has never taken the position that such comment is a necessary prerequisite. Because the information collection adopted here is designed solely to obtain the information necessary to evaluate whether to adopt future Commission rules, it has no direct “future effect” and as such is not a rule requiring notice under the APA.”).

²⁶⁹ 47 U.S.C. § 151.

²⁷⁰ *See generally* PSI Report.

²⁷¹ *Public Safety and Homeland Security Bureau Announces Additions to the List of Equipment and Services Covered by Section 2 of the Secure Networks Act*, WC Docket 18-89, ET Docket 21-232, EA Docket 21-233, Public Notice, DA-22-979 (2022) (adding Pacific Networks Corp., its wholly-owned subsidiary ComNet (USA) LLC, and China Unicom (Americas) Operations Limited to the list of communications equipment and services determined by the Executive Branch to pose an unacceptable risk to national security); *Public Safety and Homeland Security Bureau Announces Additions to the List of Equipment and Services Covered by Section 2 of the Secure Networks Act*, WC Docket No. 18-89, Public Notice, DA-22-320 (2022) (adding AO Kaspersky Lab, China Telecom (Americas) Corp., and China Mobile International USA Inc. to the list of covered equipment and service).

²⁷² *See generally China Mobile International (USA) Inc. Application for Global Facilities-Based and Global Resale International Telecommunications Authority Pursuant to Section 214 of the Communications Act of 1934, as Amended*, Memorandum Opinion and Order, 34 FCC Rcd 3361 (2019); *Pacific Networks Corp. and ComNet (USA) LLC*, GN Docket No. 20-111, Order on Revocation and Termination (2022); *China Unicom (Americas) Operations Limited*, GN Docket No. 20-110, Order on Revocation (2022); *China Telecom (Americas) Corporation*, GN Docket No. 20-109, Order on Revocation and Termination, 36 FCC Rcd 15966 (2021).

²⁷³ *See Protecting Against National Security Threats to the Communications Supply Chain Through FCC Programs, Huawei Designation, ZTE Designation*, WC Docket No. 18-89, Report and Order, Further Notice of Proposed Rulemaking, and Order, 34 FCC Rcd 11423 (2019).

107. The security of physical telecommunications facilities is essential to maintaining resilient infrastructure, not only for its role in ensuring that people can communicate but also because it enables all other critical infrastructure sectors, especially the energy, information technology, financial services, emergency services, and transportation systems sectors.²⁷⁴ The Presidential Policy Directive on Critical Infrastructure Security and Resilience,²⁷⁵ released in 2013, called for the federal government to strengthen critical infrastructure in an “integrated, holistic manner to reflect this infrastructure’s interconnectedness and interdependency.”²⁷⁶ The Directive also highlighted the federal government’s plan to engage with international partners to protect U.S. critical infrastructure.²⁷⁷ Recent guidance by the Cybersecurity & Infrastructure Security Agency (CISA) on the convergence between cybersecurity and physical security warns against siloing information/cybersecurity and physical security, instead recommending integrated threat management.²⁷⁸ In addition, with respect to applicants with reportable foreign ownership, the Standard Questions adopted in the *Standard Questions Order* includes questions about the “present and anticipated physical locations” concerning applicants’ network equipment, data centers, and infrastructure, whether applicants’ network equipment, data centers, and infrastructure is owned or leased; descriptions of equipment used; network architecture diagrams, if the applicant will be operating any physical or virtual telecommunications switching platforms; and whether foreign entities will have access to the infrastructure.²⁷⁹

108. The Commission has emphasized the importance of security and sensitivity of physical infrastructure relating to carriers’ provision of telecommunications service in view of significant national security and law enforcement risks. For example, in the *China Unicom Americas Order on Revocation*, the Commission stated that China Unicom (Americas) Operations Limited’s physical Points of Presence (PoPs) in the United States “are highly relevant to its ability to access, monitor, store, disrupt, and/or misroute communications to the detriment of U.S. national security and law enforcement.”²⁸⁰ In the *China Telecom Americas Order on Revocation and Termination*, the Commission addressed concerns, among other things, that China Telecom (Americas) Corporation’s (CTA) physical PoPs in the United States “are highly relevant to the national security and law enforcement risks associated with CTA”²⁸¹ and that “CTA, like any similarly situated provider, can have both physical and remote access to its customers’ equipment.”²⁸² In the *Pacific Networks and ComNet Order on Revocation and Termination*, the Commission stated that the physical location of Pacific Networks Corp.’s and ComNet (USA) LLC’s operations with respect to their points of presence in the United States “is relevant to identified national

²⁷⁴ CISA, *Communications Sector*, <https://www.cisa.gov/topics/critical-infrastructure-security-and-resilience/critical-infrastructure-sectors/communications-sector> (last accessed Feb. 24, 2023).

²⁷⁵ Directive on Critical Infrastructure Security and Resilience, 2013 Daily Comp. Pres. Doc. 92 (Feb. 12, 2013).

²⁷⁶ *Id.* at 2.

²⁷⁷ *Id.*

²⁷⁸ CISA, *Cybersecurity and Physical Security Convergence Action Guide*, <https://www.cisa.gov/cybersecurity-and-physical-security-convergence> (Dec. 22, 2021).

²⁷⁹ 2021 *Standard Questions Order* at *38, Attach. A (“Provide all addresses of the past and anticipated physical locations for all of the Applicant’s network equipment, data centers, and infrastructure, whether owned or leased – if leased, provide details of the owner(s) and a list of goods/services that the owner(s) provides – and the make and model of the primary equipment used,” and “Will the Proposed Authorization Holder(s) be operating any physical and/or virtual telecommunications switching platforms (e.g., TDM and/or VoIP switches?) . . . If yes, provide a network architecture diagram that shows all switches and connection points.”).

²⁸⁰ *China Unicom America Order on Revocation* at *39, para. 102.

²⁸¹ *China Telecom Americas Order on Revocation and Termination*, 36 FCC Rcd at 16027, para. 92.

²⁸² *Id.* at 16027-28, para. 93.

security and law enforcement risks.”²⁸³ Given the potential vulnerabilities associated with carriers’ physical presence and proximity to U.S. communications networks, we seek to collect information and better understand cross border facilities, bringing it in line with information that the Commission already collects in the context of submarine cable landing licenses.

109. Additionally, collecting more information on cross border facilities would assist the Commission and its partners in the federal government in understanding potential vulnerabilities in U.S. telecommunications networks involving traffic rerouting. We are especially concerned about the ability of service providers to move traffic outside of the United States when normal IP routing protocols would not normally take such traffic outside of the United States (for example, when the origination and destination points are both located within the country). We note that misrouting of traffic outside of the United States can be done without the authorization and knowledge of the customer, and may result in traffic that is sent to locations that are not under U.S. legal protection. Cross border facilities are particularly significant because of potential threats raised by U.S.-inbound traffic, such as possible disruption to U.S. telecommunications service through bad actors inserting malware into U.S. networks or inbound denial of service attacks. Improved awareness of these facilities would provide needed insight into the international upstream networks sending traffic into the United States.

110. Based on our concerns above, we propose to require all applicants for facilities-based international section 214 authority to identify in their initial application for international section 214 authority and application for renewal of their international section 214 authority, the facilities, services, and other information concerning the facilities that they use and/or will use to provide services under their international section 214 authority from the United States into Canada and/or Mexico. We propose to require the same information in applications for modifications, assignments, or transfers of control of facilities-based international section 214 authorizations. Similarly, we propose to require all applicants for resale-based international section 214 authority to identify in their initial application for international section 214 authority and renewal application, the facilities they lease and/or will lease to provide services under their international section 214 authority from the United States into Canada and/or Mexico. We propose to require the same information in applications for modifications, assignments, or transfers of control of resale-based international section 214 authorizations.

111. Specifically, we propose requiring the collection of the following information from applicants for international section 214 authority, regardless of whether they seek facilities-based or resale-based authorizations:

- Location of each cross border facility (street address and coordinates);
- Name, street address, email address, and telephone number of the owner(s) of each cross border facility, including the Government, State, or Territory under the laws of which the facility owner is organized;
- Identification of the equipment to be used in the cross border facilities, including equipment used for transmission, as well as servers and other equipment used for storage of information and signaling in support of telecommunications;
- Identification of all IP prefixes and autonomous system domain numbers used by the facilities that have been acquired from the American Registry for Internet Numbers (ARIN); and
- Identification of any services that are and/or will be provided by an applicant through these facilities pursuant to international section 214 authority.

112. Would the public interest be served by requiring less or more specific information? We

²⁸³ *Pacific Networks/ComNet Order on Revocation and Termination* at *48, paras. 112-13.

encourage parties to address whether this information would enhance the Commission's ability to protect U.S. telecommunications infrastructure. Should the Commission share this information with, for example, state and local governments? Are there other sources of information for infrastructure at the U.S.-Canada and U.S.-Mexico borders? What other ways can the Commission ensure that it has information about all critical infrastructure facilities that are used by international section 214 authorization holders to provide services, under their international section 214 authority, crossing the U.S.-Canada and U.S. Mexico borders?

113. We recognize that non-common carrier facilities located across the U.S.-Canada and U.S.-Mexico borders are an important component of cross-border infrastructure security. We seek comment on whether we should require applicants to also provide the information set out above about their non-common carrier facilities offered across the U.S.-Canada and U.S.-Mexico borders. The security and safety of telecommunications network is critical and if we grant an international section 214 authorization, it is essential for the Commission and our federal partners to also receive non-common carrier information to assist in the goals of this proceeding. The Commission currently assesses fees on international non-common carrier services.²⁸⁴ We seek comment generally on this proposal, including the nature and extent of any burdens on applicants and authorization holders. We ask commenters to address whether this would ensure the collection of almost all facilities at the borders. Are there less burdensome alternatives that would achieve our national security objectives?

114. Finally, if we adopt such requirements, we would propose to routinely refer to the Executive Branch agencies, including the Committee agencies, new international section 214 authorization as well as an application to modify, assign, transfer control of, or renew those authorizations where an applicant reports cross border facilities. These applications may separately raise national security, law enforcement, and other concerns that require input from the Executive Branch agencies to assist the Commission's public interest review.²⁸⁵ We seek comment on this proposal.

115. *Cross Border Facilities—Initial Information Collection and Updates in the Ongoing Reports.* We propose requiring all current international section 214 authorization holders to report the information specified above sixty (60) days after the effective date of the rule, following OMB approval. We further propose to require all current and future international section 214 authorization holders to report this information to the Commission as part of the ongoing reporting process discussed further below.

116. *Sharing with Federal Agencies.* We anticipate sharing the information gathered on cross border facilities with the Executive Branch agencies and other federal agencies to improve the Commission's understanding of the information and to augment the Executive Branch's understanding of cross border telecommunications security issues. To the extent that any of the information is confidential, we note that the Commission's existing rules already provide for the sharing of business confidential information with the Committee in the context of reviews within the scope of the Executive Order.²⁸⁶ The rules also provide for sharing of confidential information with other federal agencies upon notice to the party seeking confidential treatment of the information.²⁸⁷ We seek comment on whether sharing of the confidential information with other federal agencies should be subject to the same provisions regarding

²⁸⁴ *Assessment and Collection of Regulatory Fees for Fiscal Year 2022 Review of the Commission's Assessment and Collection of Regulatory Fees*, MD Docket Nos. 22-223, 22-301, Report and Order and Notice of Inquiry, at *52 Appx. B (2022) (assessing fees on international non-common carrier services).

²⁸⁵ *See supra* para. 72.

²⁸⁶ *See* 47 CFR § 1.40001(c).

²⁸⁷ *See* 47 CFR § 0.442.

sharing confidential information with the Committee.²⁸⁸ Disclosure of this information to other federal agencies, if adopted, may require modifications to the applicable System of Record Notice's routine uses.

117. *Updated Facilities Information.* We seek comment on requiring all authorization holders to notify the Commission within thirty (30) days after commencing service in the new facility or commencing service with an underlying facilities provider. We also seek comment on whether we should require applicants for initial authority, modification, assignment, transfer of control, and renewal of international section 214 authority to report, within thirty (30) days, pursuant section 1.65(a), any changes that occur during the pendency of an application relating to the cross border information that was provided in the application with respect to existing facilities, as specified above,²⁸⁹ and/or new facilities they are using or will use to provide services, under their international section 214 authority, crossing the U.S.-Canada and U.S.-Mexico borders.²⁹⁰

118. We believe implementation of this proposal would promote equitable compliance for all entities subject to this requirement. In light of evolving national security, law enforcement, and other threats, it is important for the Commission to collect this information as soon as practicable to ensure that the Commission and its federal partners have the most up-to-date information for their continued efforts to protect this nation's infrastructure.

119. We seek comment on this information collection generally. For example, we seek comment as to whether other information should be submitted. We seek comment on whether subsequent updates by carriers concerning facilities equipment should be limited to identifying changes in or additions to the types of equipment (e.g., next generation firewalls) and manufacturers, instead of a detailed list of equipment. Given the broad scope of our proposed approach, should we instead narrow the information collection and how? Should the Commission require authorization holders to report updated information in ongoing reports required every three years instead of requiring it within 30 days after commencing service in the new facility or commencing service with an underlying facilities provider? We seek comment on whether the Commission should reserve the right to request detailed lists of equipment at the time of the Commission's choosing.

5. Facilities-Based Equipment, Resellers, and Service Certification

120. *Facilities Cybersecurity Certification.* We propose to require applicants for international section 214 authority and modification, assignment, transfer of control, and renewal of international section 214 authority to certify in the application that they will undertake to implement and adhere to baseline cybersecurity standards based on universally recognized standards such as those provided by the Department of Homeland Security's Cybersecurity & Infrastructure Security Agency (CISA) or the Department of Commerce's National Institute of Standards and Technology (NIST). We tentatively conclude that baseline security requirements would help mitigate national security and law enforcement concerns associated with threats to the security of U.S. communications infrastructure. We seek comment on this proposal.

121. Other federal government agencies, namely CISA and NIST, have put forward cross-

²⁸⁸ The Commission will, to the extent required, modify the applicable System of Records Notice under the Privacy Act to account for, among other things, the collection of new information types (e.g., information regarding cross-border facilities) or new disclosures (e.g., to new federal partners) as discussed throughout this Notice. See Federal Communications Commission, *Privacy Act of 1974; System of Records*, IB-1, International Bureau Filing System, 86 F.R. 43,237 (Aug. 6, 2021).

²⁸⁹ See *supra* para. 111.

²⁹⁰ Any change to an applicant's cross border facilities information as discussed herein would be deemed substantial and significant, including deactivation of facilities.

sector security standards.²⁹¹ We seek comment on whether there are other universally recognized baseline cybersecurity standards comparable to the security standards provided by CISA and NIST, and whether applicants should be allowed to certify instead that they will adopt those alternative cybersecurity standards. We seek comment on whether the proposed certification requirement should take into account the size of the applicant and its operations. For example, should the Commission allow large facilities-based providers and small resellers to certify adherence to different baseline security standards? We seek comment on these proposals and the potential burdens, if any, that would be imposed upon applicants.

122. *Facilities “Covered List” Certification.* We seek comment on whether the Commission should require applicants for international section 214 authority and modification, assignment, transfer of control, and renewal of international section 214 authority to certify in the application as to whether or not they use equipment or services identified on the Commission’s “Covered List” of equipment and services deemed pursuant to the Secure and Trusted Communications Networks Act to pose an unacceptable risk to the national security of the United States or the security and safety of United States persons.²⁹² We propose that this certification would apply to covered equipment or services purchased, rented, leased, or otherwise obtained on or after August 14, 2018 (in the case of Huawei, ZTE, Hikvision, Dahua, and Hytera), or on or after 60 days after the date that any equipment or service is placed on the Covered List.²⁹³ We also seek comment on whether applicants must provide notification within 30 days prior to implementing any plan to add new vendors to provide equipment or services that are on the Covered List or plan to add/remove such services for existing or new customers. We also seek comment on whether applicants must provide notification within 30 days after they add new vendors to provide equipment or services that are on the Covered List or add/remove such services for existing or new customers.

123. We seek comment on whether the Commission should require applicants for international section 214 authority and modification, assignment, transfer of control, and renewal of international section 214 authority to certify that they will not purchase and/or use equipment made by entities (and their subsidiaries and affiliates) on the “Covered List” as a condition of the potential grant of the application. We seek comment on this proposal and generally on what other certifications the Commission should adopt concerning the “Covered List.”

124. Finally, if we adopt such requirements, we would propose to routinely refer to the Executive Branch agencies, including the Committee agencies, application for new international section 214 authorizations as well as applications to modify, assign, transfer control of, or renew those authorizations where an applicant certifies that they use equipment or services identified on the Commission’s “Covered List” of equipment and services pursuant to the Secure and Trusted Communications Networks Act. These applications may separately raise national security, law enforcement, and other concerns that require input from the Executive Branch agencies to assist the Commission’s public interest review. We seek comment on this proposal.

6. Regulatory Compliance Certification

125. We propose that all applicants seeking international section 214 authority or modification, assignment, transfer of control, or renewal of international section 214 authority must certify in the applications whether or not they are in compliance with the Commission’s rules and regulations, the Act, and other laws. We propose to consider whether an applicant that files any

²⁹¹ See National Institute of Standards and Technology, *Framework for Improving Critical Infrastructure Cybersecurity, Version 1.1* (Apr. 16, 2018) <https://www.nist.gov/cyberframework/framework>; Cybersecurity and Infrastructure Security Agency, *Cross-Sector Cybersecurity Performance Goals March 2023 Update*, <https://www.cisa.gov/cross-sector-cybersecurity-performance-goals> (last accessed Mar. 24, 2023).

²⁹² See 47 U.S.C. §§ 1601–1609; 47 CFR § 1.50000 *et seq.*; see also *List of Covered Equipment and Services*.

²⁹³ See *List of Covered Equipment and Services*.

application involving international section 214 authority has the requisite character qualifications. Specifically, we propose to require each applicant to certify in its application whether or not the applicant has violated the Act, Commission rules, or U.S. antitrust or other competition laws, has engaged in fraudulent conduct before another government agency, has been convicted of a felony, or has engaged in other non-FCC misconduct the Commission has found to be relevant in assessing the character qualifications of a licensee or authorization holder.²⁹⁴ We seek comment on these proposals. We also seek comment on whether the Commission should require applicants to disclose any pending FCC investigations, including any pending Notice of Apparent Liability, and any adjudicated findings of non-FCC misconduct.

F. Other Changes to Part 63 Rules

126. We propose additional changes to the Commission's rules concerning international section 214 authorizations to ensure that the Commission has current and accurate information about which authorization holders are providing service under their international section 214 authority. As discussed above, although the Commission's records indicate there are approximately 7,000 international 214 authorization holders, we estimate the more accurate number is closer to approximately 1,500 active authorization holders. We tentatively conclude that a substantial majority of international section 214 authorizations are in disuse, including those that may have never commenced use. Without accurate information about who is providing U.S.-international service and how that service is being provided, it is difficult for the Commission to ensure that such service does not raise national security, law enforcement, foreign policy, or trade policy concerns. We seek comment on a number of proposals to improve the information that the Commission has about authorization holders that provide service under their international section 214 authority and the service that they are providing. We also seek comment on whether there are specific rules in Part 63 where the benefits do not outweigh the burdens and whether the Commission should eliminate or modify such rules.

1. Permissible Number of Authorizations

127. We propose to adopt a rule that would allow an authorization holder to hold only one international section 214 authorization except in certain limited circumstances. We propose that, if an authorization holder currently has more than one international section 214 authorization, that carrier must surrender the excess authorization(s). As explained below, an authorization holder may have acquired different types of authorizations and under different circumstances. The Commission's records indicate that approximately 3.43% of authorization holders hold more than one authorization. Under the Commission's current rules, there may be various circumstances through which an authorization holder acquired more than one authorization. An authorization holder may have acquired multiple authorizations as a result of an assignment or transfer of control. Or, an authorization holder may have obtained different types of authorizations, such as global facilities-based authority, global resale authority, and/or other authorization pursuant to section 63.18(e)(1)-(3) of the Commission's rules.²⁹⁵ Our concern is that carriers may have duplicative authorizations that are not required for them to provide U.S.-international service. We recognize that in certain limited circumstances, a carrier may need more than one authorization, such as authority for overseas cable construction for a common carrier submarine cable or if the carrier is affiliated with a foreign carrier with market power on a U.S.-international route. However, we tentatively find that in most circumstances, a carrier only requires one international section 214 authorization to provide service(s) under that authority.

128. We seek comment on this proposal. How should we consider for these purposes multiple authorizations held by commonly controlled entities? Should carriers be allowed to hold more than one

²⁹⁴ See *supra* note 125.

²⁹⁵ 47 CFR § 63.18(e)(1)-(3).

authorization in certain circumstances? If so, commenters should explain in detail why carriers should hold more than one authorization. Would a carrier need a different authorization for each type of authority enumerated in section 63.18(e)(1)-(3)? We seek comment on any additional exceptions that the Commission should consider. Should the Commission replace multiple authorizations held by a carrier with a single, consolidated authorization that includes all of the authority and conditions enumerated in each of the multiple authorizations? We seek comment on whether such a proposed measure is feasible under the Commission's current rules, and the reasons therefor.

2. Commence Service Within One Year

129. Currently an entity can obtain an international section 214 authorization and never provide U.S.-international service pursuant to the authorization. This may occur because business plans change or the entity goes out of business, and this has led to a large number of authorizations in our records where the authorization is not being used to provide service. We note that the Commission has requirements for other licensees of regulated services where the licensee must begin providing service within a set period of time or its license is cancelled.²⁹⁶ We propose to adopt similar requirements for international section 214 authorization holders. This proposed requirement would also provide the Commission with more accurate information as to who is actually providing U.S.-international service and improve the administration of the Commission's rules.

130. We tentatively conclude that authorization holders should retain their authorization only if service is being provided to the public under that authorization. Consequently, we propose to adopt a rule requiring an international section 214 authorization holder to commence service under its international section 214 authority within one year following the grant. Under this proposal, an authorization holder will be required to file a notification with the Commission through IBFS within 30 days of the date when it begins to offer service but in no case later than one year following the grant of international section 214 authority. We propose that the commencement of service notification must include: (1) a certification by an officer or other authorized representative of the authorization holder that the authorization holder has met the commencement of service requirement; (2) the date that the authorization holder commenced service; (3) a certification that the information is true and accurate upon penalty of perjury; and (4) the name, title, address, telephone number, and association with the authorization holder of the officer or other authorized representative who executed the certifications. We propose that an authorization holder may obtain a waiver of the one-year time period if it can show good cause why it is unable to commence service within one year following the grant of its authorization and identify an alternative reasonable timeframe when it can commence service. If an authorization holder does not notify the Commission of the commencement of service or file a request for a waiver within one year following the grant of international section 214 authority, we propose to cancel the authorization.

131. We seek comment on these proposals, including whether one year is sufficient time to initiate U.S.-international service or if another time period is appropriate in certain situations, such as where an international section 214 authorization is acquired in association with a common carrier submarine cable. We seek comment on our proposal that authorization holders may seek a waiver of the one-year requirement. The Commission's rules provide in other contexts that licensees may seek a

²⁹⁶ 47 CFR § 1.946(c) (requiring, with regard to a licensee in the Wireless Radio Services, "[i]f a licensee fails to commence service or operations by the expiration of its construction period or to meet its coverage or substantial service obligations by the expiration of its coverage period, its authorization terminates automatically (in whole or in part as set forth in the service rules), without specific Commission action, on the date the construction or coverage period expires"); *see also id.* § 1.955(a)(2) ("Authorizations automatically terminate (in whole or in part as set forth in the service rules), without specific Commission action, if the licensee fails to meet applicable construction or coverage requirements.").

waiver of certain rules.²⁹⁷ If an authorization holder seeks a waiver of the one-year time period, what facts would establish good cause to extend the time period for commencing U.S.-international service pursuant to its international section 214 authority? We also seek comment on whether the Commission should require authorization holders with authorizations that were or are granted prior to the effective date of the new rules to file with the Commission a commencement of service notification within one year of the effective date of the rules.

3. Changes to the Discontinuance Rule

132. We propose to amend section 63.19 of the Commission's rules to require that all authorization holders that permanently discontinue service under their international section 214 authority must file with the Commission a notification of the discontinuance and surrender the authorization.²⁹⁸ Currently, the discontinuance procedures set out in section 63.19 only apply when an authorization holder discontinues the service for which it has customers.²⁹⁹ Section 63.19 requires that the carrier notify affected customers of the planned discontinuance, reduction, or impairment of service at least 30 days prior to its planned action.³⁰⁰ When the Commission last revised the discontinuance rules in 2007, the Commission did not address the particular situation where an international section 214 authorization holder does not have customers.³⁰¹ As a result, an authorization holder may retain indefinitely an

²⁹⁷ See, e.g., 47 CFR § 1.925.

²⁹⁸ In 2007, the Commission amended its rules "to reduce the notification period for a non-dominant carrier's discontinuance of international service from 60 days to 30 days, to be more consistent with the minimum period generally allowed before a non-dominant carrier can receive authority to discontinue domestic service." *2007 Amendment of Parts 1 & 63 Order*, Report and Order, 22 FCC Rcd at 11402, para. 10. The Commission found that "the further increase in the number of carriers and competition in the U.S. international telecommunications marketplace since 1996 justifies a further reduction in our discontinuance notice period for international services." *Id.* at para. 12. The Commission also modified its rules to require international carriers to file a copy of the discontinuance notification with the Commission at the same time they provide notification to their affected customers. *Id.* at 11402, 11403, paras. 10, 13. The Order did not address a situation where discontinuance of international service occurred where an authorized carrier had no customers.

²⁹⁹ See 47 CFR § 63.19.

³⁰⁰ *Id.* § 63.19(a). Section 63.19(a) requires that "any international carrier that seeks to discontinue, reduce, or impair service, including the retiring of international facilities, dismantling or removing of international trunk lines," must: (1) "notify all affected customers of the planned discontinuance, reduction, or impairment at least 30 days prior to its planned action," and (2) file with the Commission "a copy of the notification on the date on which notice has been given to all affected customers." *Id.* § 63.19(a)(1)-(2). The notification must "be in writing to each affected customer unless the Commission authorizes in advance, for good cause shown, another form of notice." *Id.* § 63.19(a)(1). Section 63.19(b) contains procedural requirements for any international carrier that the Commission has classified as dominant in the provision of a particular international service because the carrier possesses market power in the provision of that service on the U.S. end of the route. *Id.* § 63.19(b). Any such carrier that seeks to retire international facilities, dismantle or remove international trunk lines, but does not discontinue, reduce or impair the dominant services being provided through these facilities, shall only be subject to the notification requirements of section 63.19(a). *Id.* If such carrier discontinues, reduces, or impairs the dominant service, or retires facilities that impair or reduce the service, the carrier shall file an application pursuant to sections 63.62 and 63.500. *Id.* Commercial Mobile Radio Service (CMRS) carriers, as defined in section 20.9 of the Commission's rules, are not subject to the provisions of section 63.19. 47 CFR § 63.19(c).

³⁰¹ *2007 Amendment of Parts 1 & 63 Order*, 22 FCC Rcd at 11403, para. 13 ("[W]e amend our rules to require carriers to notify the Commission at the same time they notify their affected customers. A carrier that is discontinuing service should file a discontinuance notice with the Commission's Secretary, with a copy to the Chief of the International Bureau, must identify the file number(s) of the international section 214 authorization(s) pursuant to which the carrier provides service, and include a copy of the notice provided to the affected customers.").

authorization that has never been used or is no longer being used. An authorization holder that ceases to provide international service or goes out of business altogether is not currently required to notify the Commission and surrender the authorization. This makes it difficult to effectively administer international section 214 authorizations given that our records indicate that many of the authorizations are no longer being used to provide U.S.-international service.³⁰²

133. *Permanent Discontinuance of Service.* We propose to modify section 63.19 by adding a requirement that an authorization holder that permanently discontinues service under its international section 214 authority must surrender the authorization. We propose to define permanent discontinuance of service as a period of three consecutive months during which an authorization holder does not provide any service under its international section 214 authority. We will continue to require that an authorization holder with existing customers must comply with the requirements of section 63.19(a) to notify all affected customers prior to discontinuance.³⁰³ If a carrier will discontinue part but not all of its U.S.-international services—for example, by discontinuing service only on a particular U.S.-international route—and will continue to provide other U.S.-international service(s) under its international section 214 authority, it must comply with the requirements of section 63.19(a) to notify affected customers prior to discontinuance of those services.

134. We propose that, if an authorization holder has permanently discontinued service provided pursuant to its international section 214 authority, it must surrender its authorization and file with the Commission a notification that contains the following information: (1) the name, address, and telephone number of the authorization holder; (2) the initial date as of when the authorization holder did not provide service under its international section 214 authority; (3) a statement as to whether any customers were affected, and if so, whether the authorization holder complied with section 63.19(a) of the Commission's rules; (4) whether or not the carrier is also surrendering any ISPCs; and (5) a request to surrender the authorization. We propose that if an authorization holder has permanently discontinued service provided pursuant to its international section 214 authority, the authorization holder must file this notification with the Commission within 30 days after the discontinuance. This proposed requirement applies to authorization holders regardless of whether or not they discontinued service with or without customers. We believe this information will give the Commission and the public sufficient information concerning when the discontinuance occurred and whether customers were affected by the discontinuance. We propose to require authorization holders to file this notification in the IBFS file number associated with its authorization.

135. We seek comment on our proposed framework regarding permanent discontinuance of service and the costs and benefits to the public, authorization holders, and the Commission. We seek comment on whether an alternative length of time should be used to define permanent discontinuance of service. We also seek comment on what may constitute good cause for waiver of these proposed rules.

136. *Additional Changes to Section 63.19.* We propose to modify section 63.19(a) by providing clear and consistent requirements concerning the notification that an authorization holder must provide to affected customers of its planned discontinuance, reduction, or impairment of service. In contrast to the notification requirements that apply to discontinuance, reduction, or impairment of domestic services,³⁰⁴ section 63.19(a)(1) currently does not specify what an authorization holder must include in a notification to affected customers of its planned discontinuance, reduction, or impairment of service under its international section 214 authority. We propose to require that an authorization holder that seeks to discontinue, reduce, or impair service under its international section 214 authority must

³⁰² See *supra* paras. 11-12, 17.

³⁰³ 47 CFR § 63.19.

³⁰⁴ 47 CFR § 63.71.

include the following information in the notification to affected customers:

- Name and address of carrier;
- Date of planned service discontinuance, reduction, or impairment;
- Points of geographic areas of service affected (inside of the United States and U.S.-international routes);
- Brief description of type of service(s) affected; and
- Brief explanation as to whether the service(s) will be discontinued, reduced, or impaired.

137. These proposed requirements are similar to the notification requirements that apply to discontinuance, reduction, or impairment of domestic services.³⁰⁵ We seek comment on this proposal and whether carriers should include any additional information in the notification of planned discontinuance to affected customers.

138. We propose to modify section 63.19(a) to allow an authorization holder to provide notice by email to affected customers of its planned discontinuance, reduction, or impairment of service, if the authorization holder has the email addresses of those affected customers. The Commission's rules concerning discontinuance, reduction, or impairment of domestic service, provide that notice by email constitutes notice in writing.³⁰⁶ We seek comment on whether it is appropriate to similarly allow an authorization holder to provide notice by email to affected customers of its planned discontinuance, reduction, or impairment of service under its international section 214 authority. Alternatively, are there reasons to require different approaches for notifying affected customers of the planned discontinuance, reduction, or impairment of U.S.-international service and domestic service? We also seek comment on whether we should further amend section 63.19 to allow an authorization holder that seeks to discontinue, reduce, or impair any pre-paid calling service that is provided under its international section 214 authority to provide notice by recorded message when a customer makes a call. Would this approach provide sufficient notice for affected customers of pre-paid calling services, or should we also require the authorization holder to provide notice by email and/or letter to affected customers?

139. If we modify section 63.19(a)(1) to provide that notice by email to affected customers of planned discontinuance, reduction, or impairment of service constitutes notice in writing for purposes of section 63.19, we propose to require that an authorization holder must also comply with the following requirements:

- The carrier must have previously obtained express, verifiable, prior approval from customers to send notices via email regarding their service in general, or planned discontinuance, reduction, or impairment in particular;
- The carrier must ensure that the subject line of the message clearly and accurately identifies the subject matter of the email; and
- Any email notice returned to the carrier as undeliverable will not constitute the provision of notice to the customer.

140. These proposed requirements are similar to the requirements that apply to discontinuance of domestic services.³⁰⁷ We seek comment on these proposals and whether an authorization holder should comply with any additional requirements if the Commission were to modify section 63.19(a) to allow an

³⁰⁵ *Id* § 63.71(1)-(4).

³⁰⁶ *Id* § 63.71(a).

³⁰⁷ *Id* § 63.71(b).

authorization holder to provide notice by email to affected customers of its planned discontinuance, reduction, or impairment of service, subject to the requirements proposed herein.

141. We propose to modify section 63.19(a)(2) to require an authorization holder to provide the Commission with a copy of the notification to affected customers through IBFS rather than by letter to the Secretary.³⁰⁸ Section 63.19(a)(2) provides that this filing with the Commission “shall identify the geographic areas of the planned discontinuance, reduction or impairment and the authorization(s) pursuant to which the carrier provides service.”³⁰⁹ We propose to require an authorization holder to also include the following information in a filing accompanying the copy of the notification to affected customers: (1) brief description of the dates and methods of notice to all affected customers; (2) whether or not the authorization holder is surrendering any ISPCs, and (3) any other information that the Commission may require. We propose to require that an authorization holder must file a copy of the notification to affected customers and the accompanying filing proposed herein in the IBFS file number associated with its authorization. We seek comment on these proposals.

142. We propose to make conforming edits to section 63.19(c) to specifically state that Commercial Mobile Radio Service (CMRS) carriers are not subject to the provisions of paragraphs (a) and (b) of the section as modified. Section 63.19(c) states, “Commercial Mobile Radio Service (CMRS) carriers, as defined in § 20.9 of this chapter, are not subject to the provisions of this section.”³¹⁰

143. *Implementation.* We propose that these rule changes become effective at the same time for all authorization holders. We also propose to require that applicants seeking renewal of their international section 214 authority must specifically certify in the renewal application whether or not they discontinued service for three consecutive months at any time during the preceding renewal timeframe, in addition to certifying whether or not they are in compliance with the Commission’s rules and regulations, the Act, and other laws as proposed in this Notice.³¹¹ We tentatively conclude that requiring authorization holders to affirmatively report on their provision of service for the preceding renewal timeframe would help to ensure that authorization holders are in compliance with these proposed requirements concerning the discontinuance, reduction, or impairment of service. We seek comment on these proposals.

4. Ongoing Reporting Requirements

144. We propose that the Commission require authorization holders to provide updated ownership information and other information every three years following the grant of a renewal application filed with the Commission, until the next grant of a renewal application. We further propose to establish a three-year reporting requirement that would commence as of the date that the Commission grants an application for international section 214 authority or modification, assignment, or transfer of control. We propose that an authorization holder must file the required report every three years based on the date of such grant, until and unless the Commission grants a subsequent application filed by the authorization holder, at which point the three-year reporting cycle would commence anew as of the date of the new grant. We propose that these reports must contain information that is current as of thirty (30) days prior to the date of the submission. We note that Commission staff may require any information prior to the three-year reporting deadline. We seek comment on these proposals and whether we should adopt a longer or shorter reporting cycle, instead of three years. Should the Commission instead require authorization holders to submit the reports starting three years after the effective date of the new rules? If so, we would propose to require international section 214 authorization holders to continue to file the reports while its renewal application or other international section 214 application is pending with the

³⁰⁸ See 47 CFR § 63.19(a)(2).

³⁰⁹ *Id.*

³¹⁰ *Id.* § 63.19(c).

³¹¹ See *supra* para. 18.

Commission. We seek comment on the potential burdens of a periodic reporting requirement as part of a renewal framework on authorization holders, including small businesses. We propose that these reports must contain information that is current as of thirty (30) days prior to the date of the submission.

145. We seek comment on the nature and extent of the potential burdens of this requirement. Does any information we address below involve confidential business information or other confidential, proprietary, or private information? As an alternative to this ongoing reporting requirement, should carriers instead provide updated information only when there is a material change in ownership or other relevant information? If so, how should we define what are material changes and relevant information? Are there any other alternatives that would allow for the provision of adequate information on a periodic basis with fewer burdens?

146. Our proposed ongoing reporting requirements will help ensure that the Commission and the Executive Branch agencies have the information necessary to continually account for ownership changes for purposes of assessing any evolving national security, law enforcement, or other risks and compliance with the Commission's rules. We propose to require that all authorization holders must file a report every three years providing current and accurate information about their reportable ownership, consistent with the ownership disclosure requirements we propose to adopt in this proceeding.

147. *Five (5) Percent Reportable Interest Update.* Specifically, we propose that the authorization holder would provide updated information concerning those who hold 5% or greater direct and indirect equity and/or voting interests, or a controlling interest, in the authorization holder. We propose that the reports be submitted through IBFS, or its successor system, and that authorization holders with reportable foreign ownership as of thirty (30) days prior to the date of the submission must also file a copy directly with the Committee. We seek comment on whether an ongoing reporting requirement every three years should be broader and include additional information about ownership, control, and/or influence by foreign governments or foreign state-owned entities. Additionally, we propose that failure to submit timely, consistent, accurate, and complete information would constitute grounds for enforcement action against the authorization holder, up to and including revocation of the authorization.

148. *Cross-Border Facilities Information.* We propose in Section IV.E to require international section 214 authorization holders to file updated information on their cross-border facilities in their three-year reports. We seek comment on whether the Commission should require this information in these reports or whether an alternative reporting framework for providing updated information to the Commission would be preferable, and the reasons therefor.

149. *Current Services/Geographic Market.* We propose to require international section 214 authorization holders to include in their three-year reports updated information concerning the services they currently provide to customers using their international section 214 authority and the geographic markets where they currently market, offer, and/or provide services using the particular international section 214 authority, consistent with the changes we propose to the application requirements.³¹² We propose to require authorization holders to disclose whether or not they have discontinued service as of the most recent renewal process or most recent report.

150. *Facilities-Based Equipment, Resellers, and Service Certification.* We propose to require international section 214 authorization holders to make certifications in the three-year reports. First, we propose to require authorization holders to certify in the report that they will undertake to implement and adhere to baseline cybersecurity standards based on universally recognized standards such as those provided by the CISA or the NIST. Second, we propose to require authorization holders to certify in the report as to whether or not they use equipment or services identified on the Commission's "Covered

³¹² See *supra* para. 96.

List.”

151. *Regulatory Compliance and Character Qualifications.* We propose in Section IV.E. that all applicants seeking international section 214 authority or modification, assignment, transfer of control, or renewal of international section 214 authority must certify in the applications whether or not they are in compliance with the Commission’s rules and regulations, the Act, and other laws.³¹³ We propose to require each applicant to certify in its application as to whether or not the applicant has violated the Act, Commission rules, or U.S. antitrust or other competition laws, has engaged in fraudulent conduct before another government agency, has been convicted of a felony, or has engaged in other non-FCC misconduct the Commission has found to be relevant in assessing the character qualifications of a licensee or authorization holder.³¹⁴ Should the Commission require authorization holders to also certify as to their compliance in the three-year reports?

152. *Data Storage Information.* Serious national security, law enforcement, and other concerns are presented where a foreign government may have access to U.S. telecommunications records through data stored in that foreign country or through the routing of data through such country. We seek comment on whether, as part of their three-year reporting requirement, authorization holders should report, with respect to services provided pursuant to their international section 214 authority, the current location(s) of their data storage facilities; the foreign countries where they currently store U.S. records; the foreign countries from which their infrastructure in the United States is currently and/or can be accessed, controlled, and/or owned; and the countries in which their employees, subsidiaries, and/or offices are currently located. We seek comment on whether authorization holders should also disclose the equipment such as the hardware and software that they currently use to store U.S. records for services provided pursuant to their international section 214 authority. We seek comment on whether the Commission should require applicants to provide any of this information in the initial application for international section 214 authority and the renewal application, or alternative periodic review submission.

153. *Other Information.* We seek comment on what other information the Commission should require generally for all applicants so that we can address evolving national security, law enforcement, and other risks. We seek comment on the types of ongoing information that the Commission would refer to the Executive Branch agencies for review. For example, should the Commission require authorization holders to periodically notify the Commission of any criminal convictions involving the authorization holder? We note that a similar requirement applies to broadcast licensees.³¹⁵

5. International Signaling Point Codes (ISPCs)

154. We propose to adopt a rule requiring that applicants seeking to assign or transfer control of their authorization must identify in their application any ISPCs that they hold and whether the ISPC will be subject to the assignment or transfer of control. As the Commission previously stated, “ISPCs are a scarce resource that are used by international Signaling System 7 (SS7) gateways as addresses for routing domestic voice traffic to an international provider.”³¹⁶ The Commission is the Administrator of

³¹³ See *supra* para. 125.

³¹⁴ See *supra* note 125.

³¹⁵ See 47 CFR § 1.65(c).

³¹⁶ See *China Unicom Americas Order on Revocation* at *50, para. 121; *China Telecom Americas Institution Order*, 35 FCC Rcd at 15040, para. 58; *Reporting Requirements for U.S. Providers of International Telecommunications Services Amendment of Part 43 of the Commission’s Rules*, IB Docket No. 04-112, Notice of Proposed Rulemaking, 19 FCC Rcd 6460, 6474, para. 36, n.83 (2004). ITU-T Recommendation Q.708 defines a signaling point code as a “code with a unique 14-bit format used at the international level for [signaling] message routing and identification of [signaling] points involved.” See International Telecommunication Union, ITU-T Recommendation Q.708 (03/99)

(continued....)

ISPCs for SS7 networks for the United States consistent with the ITU-T Recommendation Q.708. Anyone seeking an ISPC assignment is required by rule to file an application with the Commission.³¹⁷

155. In its letters provisionally assigning the ISPCs to carriers, the International Bureau requires carriers to make certifications in compliance with the ITU-T Recommendation Q.708. Notably, the ITU also advises that ISPCs “may not be transferred, except in the case of a merger, acquisition, divestiture, or joint venture” and that “[t]he Administrator(s) shall be notified of any such transfer by the signalling point operators.”³¹⁸ Based on our experience, carriers may have assigned or transferred control of their ISPCs to other carriers without filing with the Commission the requisite notification of such assignment or transfer of control.³¹⁹ In fact, on June 1, 2020, China Unicom Americas admitted that it had failed to notify the Commission of the transfer of ISPC 3-194-2 from China Netcom (USA) Operations Limited to China Unicom USA Corporation in August 2009.³²⁰ The ISPC authorization holders must comply with the ITU guidelines, which clearly require ISPC operators to inform the Commission of any transfers.³²¹ Currently, we ask carriers informally. We believe, however, that a rule would help to ensure that the carrier provides the required notice if an ISPC is also being transferred in a transaction. We believe this proposal would ensure the Commission has accurate information about current ISPC holders. We seek comment on this proposal and what potential burdens, if any, would be imposed on carriers.

6. Enforcement of International Section 214 Authorization Rules

156. We propose that even if an authorization holder fails to file a notification of discontinuance and surrender the authorization, an authorization will be cancelled if the Commission determines that the authorization holder has permanently discontinued service under the international section 214 authority.³²² We seek comment on what facts would warrant cancellation and the process for such cancellation. For example, if an authorization holder fails to respond to Commission requests, and has not otherwise interacted with the Commission during the same time period, could we conclude that the entity is no longer in business and cancel the authorization? How should the Commission notify the authorization holder of its intent to cancel the authorization and how much time should the Commission afford to such authorization holder for any response?

157. We also propose that the authorizations of authorization holders that fail to comply with other reporting requirements should be subject to cancellation under similar circumstances, i.e., where

at 1, <https://www.itu.int/rec/recommendation.asp?lang=en&parent=T-REC-Q.708-199903-I> (ITU-T Recommendation Q.708).

³¹⁷ ITU-T Recommendation Q.708. The Commission has adopted rules requiring applicants to submit ISPC applications electronically via the International Bureau Filing System (IBFS) and stating that the Commission will take action on ISPC applications via a letter issued to the applicant. See 47 CFR §§ 1.10007(a), 1.10014(h).

³¹⁸ ITU-T Recommendation Q.708, para. 7.10.

³¹⁹ 47 CFR § 63.24(b),(c).

³²⁰ Letter from Denise Coca, Chief, Telecommunications and Analysis Division, FCC International Bureau, to Robert E. Stup, Jr. and Paul C. Besozzi, Counsel for China Unicom (Americas) Operations Limited, March 10, 2021 (reclaiming ISPCs 3-194-2, 3-195-0, and 3-199-2).

³²¹ ITU-T Recommendation Q.708 at 3, para. 7.10.

³²² For instance, with respect to Wireless Radio Service licenses, the Commission’s rules provide that “[a]n authorization will automatically terminate, without specific Commission action, if service or operations are permanently discontinued as defined in this section, even if a licensee fails to file the required form requesting license cancellation.” 47 CFR § 1.953(f); 47 CFR § 1.953(a) (“A licensee’s authorization will automatically terminate, without specific Commission action, if the licensee permanently discontinues service or operations under the license during the license term.”).

there are no other indications that the carrier remains in business.³²³ Should the Commission adopt a rule that conditions international section 214 authorizations on an authorization holder's compliance with the three-year reporting requirements or cross border reporting requirements proposed herein, whereupon failure to file timely and sufficient ongoing reports is grounds for termination?

158. We propose to direct the International Bureau or its successor entity to release an informative public notice announcing the proposed cancellation of the authorization. The authorization holder would have 30 days to respond and explain why the authorization should not be cancelled. If the authorization holder does not respond, the authorization would be automatically cancelled at the end of the 30-day period.³²⁴ We note that an international section 214 authorization holder whose authorization is cancelled for the foregoing reasons may file an application for a new international section 214 authorization. We note that authorization holders that fail to comply with reporting and notification requirements are subject to forfeitures in addition to cancellation. We seek comment on this process.

7. Other Administrative Modifications

159. *Section 214(b) of the Act.* We propose to clarify the requirements of section 1.763(b) of the rules, which implements Section 214(b) of the Act, and to amend section 63.18 to incorporate the requirements of section 1.763. Section 214(b) of the Act requires, “[u]pon receipt of an application for any such certificate, the Commission shall cause notice thereof to be given to, and shall cause a copy of such application to be filed with, the Secretary of Defense, the Secretary of State (with respect to such applications involving service to foreign points), and the Governor of each State in which such line is proposed to be constructed, . . . acquired, or operated”³²⁵ Section 1.763(b) in turn states, “[i]n cases under this section requiring a certificate, notice is given to and a copy of the application is filed with the Secretary of Defense, the Secretary of State (with respect to such applications involving service to foreign points), and the Governor of each State involved. Hearing is held if any of these persons desires to be heard or if the Commission determines that a hearing should be held. Copies of applications for certificates are filed with the regulatory agencies of the States involved.”³²⁶ We propose to amend section 1.763(b) to clarify that an applicant must give notice and file a copy of the application with the Secretary of Defense, the Secretary of State, and the Governor of each State involved, and must file copies of applications for certificates with the regulatory agencies of the State involved.

160. We also propose to amend section 63.18 of the rules by adding a subsection that expressly references the requirement in section 1.763(b) and requires applicants for international section 214 authority to certify service to the Secretary of Defense, the Secretary of State, and the Governor of each State involved on a service list attached to the application or other filing. We seek comment on these proposals.

161. *Anti-Drug Abuse Act Certification.* We propose to amend section 63.18(o) of the Commission's rules to reflect changes in underlying rule and statutory provisions referenced in section 63.18(o).³²⁷ Section 63.18(o) requires “[a] certification pursuant to §§ 1.2001 through 1.2003 of this chapter that no party to the application is subject to a denial of Federal benefits pursuant to Section 5301 of the Anti-Drug Abuse Act of 1988. See 21 U.S.C. 853a.”³²⁸ Specifically, we propose to delete the

³²³ See *supra* at para. 25.

³²⁴ Under the Commission's rules, the authorization holder would have 30 days to file a petition for reconsideration of this action. 47 CFR § 1.106.

³²⁵ 47 U.S.C. § 214(b).

³²⁶ 47 CFR § 1.763(b).

³²⁷ 47 CFR § 63.18(o).

³²⁸ *Id.*

citation to section 1.2003, consistent with the Commission's removal of this provision from the rules.³²⁹ In addition, we propose to replace the citation to 21 U.S.C. 853a with a citation to 21 U.S.C. § 862, consistent with the redesignation of section 5301 of the Anti-Drug Abuse Act of 1988 as section 421 of the Controlled Substances Act.³³⁰

162. *Section 63.19(c).* We propose to amend section 63.19(c) of the Commission's rules to reflect changes in an underlying rule referenced in section 63.19(c). Section 63.19(c) states, "Commercial Mobile Radio Service (CMRS) carriers, as defined in § 20.9 of this chapter, are not subject to the provisions of this section."³³¹ Section 20.9 no longer contains a rule provision. We propose to delete the citation to section 20.9, consistent with the Commission's removal of this provision from the rules,³³² and replace the citation with a citation to section 20.3, which defines "Commercial mobile radio service."³³³

163. *Applications for Substantial Transactions.* We propose to make an administrative correction to section 63.24(e)(1) of the Commission's rules by removing the word "shall," which was previously included in the rule in error. Section 63.24(e)(1) states, "[i]n the case of an assignment or transfer of control shall of an international section 214 authorization that is not pro forma, the proposed assignee or transferee must apply to the Commission for authority prior to consummation of the proposed assignment or transfer of control."³³⁴

164. *Transfers of Control.* We propose to make an administrative correction to section 63.24(c) of the Commission's rules. We also propose to move existing notes into regulatory text as necessary to conform with the Office of Federal Register requirements. This may entail the creation of new subsections. Section 63.24(c) describes what constitutes a transfer of control and states, in part, "[i]n all other situations, whether the interest being transferred is controlling must be determined on a case-by-case basis with reference to the factors listed in Note to paragraph(c)."³³⁵ We propose to amend the reference to Note to paragraph (c) given that section 63.24 no longer contains a Note to paragraph (c). Specifically, we propose to change the citation to paragraph (d) and thus replace the reference to "Note to paragraph (c)" with a reference to what is currently reflected as "Note 1 to paragraph (d)." This reference to Note 1 to paragraph (d) would be consistent with a similar reference set forth in section 63.24(d) of the rules, which describes what constitutes a *pro forma* assignment or transfer of control and includes the statement, "[w]hether there has been a change in the actual controlling party must be determined on a case-by-case basis with reference to the factors listed in Note 1 to this paragraph (d)."³³⁶ Note 1 to paragraph (d) states, "[b]ecause the issue of control inherently involves issues of fact, it must be determined on a case-by-case basis and may vary with the circumstances presented by each case. The

³²⁹ See *Amendment of Parts 0, 1, 73, and 74 of the Commission's Rules*, Order, 26 FCC Rcd 13538, 13543, para. 9 (2011) (finding, "[t]he list of applications in section 1.2003 is outdated, and it is also unnecessary, since section 1.2002, by its express terms, applies to 'all applicants' for an instrument of authorization from the Commission, and to spectrum lessees, whether or not the certification has been incorporated into the application form and even if there is no form").

³³⁰ See Crime Control Act of 1990, PL 101-647 (1990); 47 CFR § 1.2001.

³³¹ 47 CFR § 63.19(c).

³³² *Amendments To Harmonize and Streamline Part 20 of the Commission's Rules Concerning Requirements for Licensees To Overcome a CMRS Presumption*, Report and Order, 32 FCC Rcd 10731, 10731-32, paras. 1-3 (2017) (*Part 20 Report and Order*).

³³³ 47 CFR § 63.20 ("Definitions"); see generally *Part 20 Report and Order*.

³³⁴ 47 CFR § 63.24(e)(1).

³³⁵ 47 CFR § 63.24(c).

³³⁶ 47 CFR § 63.24(d).

factors relevant to a determination of control in addition to equity ownership include, but are not limited to the following: power to constitute or appoint more than fifty percent of the board of directors or partnership management committee; authority to appoint, promote, demote and fire senior executives that control the day-to-day activities of the licensee; ability to play an integral role in major management decisions of the licensee; authority to pay financial obligations, including expenses arising out of operations; ability to receive monies and profits from the facility's operations; and unfettered use of all facilities and equipment.”³³⁷ As discussed below, and reflected in Appendix A, we propose to further convert Notes into respective subsections. We seek comment on this proposed amendment to section 63.24(c) of the rules.

165. *Section 63.24(f)*. Consistent with the proposal in this Notice, we propose to make conforming edits to section 63.24(f) to state that a single notification may be filed for an assignment or transfer of control of more than one authorization if each authorization is identified by the file number under which it was granted,³³⁸ subject to our proposed requirement that each authorization may hold only one authorization except in certain limited circumstances.

166. *Section 63.18(q)*. We propose to amend the current section 63.19(q) to clarify that an application must include any other information that “the Commission or Commission staff have advised will” be necessary to enable the Commission to act on the application. Section 63.19(q) states, “any other information that may be necessary to enable the Commission to act on the application.”³³⁹

167. *Section 63.21(g)*. We propose to amend section 63.21(g) of the rules to state that the Commission reserves the right to review a carrier's authorization “at any time” and to impose additional requirements on U.S. international carriers “where national security, law enforcement, foreign policy, trade policy, or other public interest concerns are raised by the U.S. international carrier’s international section 214 authority.” Section 63.21 states, “[t]he Commission reserves the right to review a carrier’s authorization, and, if warranted, impose additional requirements on U.S. international carriers in circumstances where it appears that harm to competition is occurring on one or more U.S. international routes.”³⁴⁰

168. *Other Administrative Changes*. Throughout Appendix A, we have proposed various ministerial, non-substantive changes not individually discussed in this Notice. These changes include, among other things, the conversion of Notes into respective subsections for consistency with the Office of Federal Register; the inclusion of references to a successor system in relation to IBFS; and corrections to errors in spelling.

169. *Conforming Changes*. We propose to adopt conforming changes to rules that were adopted in the *Executive Branch Process Reform Order* if the Commission adopts the rule changes proposed in this Notice.³⁴¹

- *Section 63.12(c)*. The *Executive Branch Process Reform Order* amended section 63.12(c) of the rules by adding a new subsection (c), which provides that the streamlining processing procedures provided by section 63.12(a) and (b) shall not apply where “[a]n individual or entity that is not a U.S. citizen holds a ten percent or greater direct or indirect equity or voting

³³⁷ 47 CFR § 63.24(d), Note 1 to paragraph (d).

³³⁸ 47 CFR § 63.24(f).

³³⁹ 47 CFR § 63.18(q).

³⁴⁰ 47 CFR § 63.21(g).

³⁴¹ Some of the rule changes adopted in the *Executive Branch Process Reform Order* have not gone into effect yet.

- interest, or a controlling interest, in any applicant.”³⁴² We propose to further amend section 63.12(c) by changing “ten percent or greater” to “five percent or greater,” consistent with our proposal to change the ownership reporting threshold for international section 214 applications from 10% to 5%.
- *Section 63.18(p)*. The *Executive Branch Process Reform Order* amends section 63.18 of the rules by adding a new section 63.18(p), which requires that “[e]ach applicant for which an individual or entity that is not a U.S. citizen holds a ten percent or greater direct or indirect equity or voting interest, or a controlling interest, in the applicant, must submit”: (1) responses to standard questions, prior to or at the same time the applicant files its application with the Commission, pursuant to Part 1, Subpart CC directly to the Committee, and (2) a complete and unredacted copy of its FCC application(s) to the Committee within three (3) business days of filing it with the Commission.³⁴³ We propose to further amend section 63.18(p) by changing “ten percent or greater” to “five percent or greater,” consistent with our proposal to change the ownership reporting threshold for international section 214 applications from 10% to 5%.
 - *Section 1.40001(a)(1)*. The *Executive Branch Process Reform Order* adds a new section 1.40001(a)(1), which provides that “[t]he Commission will generally refer to the Executive Branch applications filed for an international section 214 authorization and submarine cable landing license as well as an application to assign, transfer control of, or modify those authorizations and licenses where the applicant has reportable foreign ownership . . . pursuant to §§ 1.767, 63.18, 63.24, and 1.5000 *et seq.*”³⁴⁴ We propose to amend section 1.40001(a)(1) by adding applications to renew international section 214 authority where the applicant has reportable foreign ownership to the types of applications that the Commission will generally refer to the Executive Branch. We also propose to amend section 1.40001(a)(1) to include that the Commission will generally refer applications for renewal of cable landing licenses
 - We further propose, to the extent the Commission adopts a periodic review process, to amend the foregoing section to state that periodic review process submissions where the filer has reportable foreign ownership generally will be referred to the Executive Branch, unless the only reportable foreign ownership is through wholly owned intermediate holding companies and the ultimate ownership and control is held by U.S. citizens or entities.
 - *Section 1.40001(a)(2)(ii)*. The *Executive Branch Process Reform Order* adds a new section 1.40001(a)(2)(ii), which provides that the Commission will generally exclude from referral to the Executive Branch, when the applicant makes a specific showing in its application, “applications filed pursuant to §§ 1.767, 63.18 and 63.24 if the applicant has reportable foreign ownership and petitions filed pursuant to § 1.5000 *et seq.* where the only reportable foreign ownership is through wholly owned intermediate holding companies and the ultimate ownership and control is held by U.S. citizens or entities.”³⁴⁵ We propose to amend section 1.40001(a)(2)(ii) by adding a reference to section 63.27 where we propose to codify the renewal requirements adopted in this proceeding.
 - *Section 1.40001(a)(2)(iii)*. The *Executive Branch Process Reform Order* adds a new section 1.40001(a)(2)(iii), which provides that when the applicant makes a specific showing in its

³⁴² See *Executive Branch Process Reform Order*, 35 FCC Rcd at 10975, Appx. B.

³⁴³ See *id.* at 10964, Appx. B.

³⁴⁴ *Id.*, 35 FCC Rcd at 10969, Appx. B.

³⁴⁵ *Id.*, 35 FCC Rcd at 10969, Appx. B.

application, the Commission will generally exclude from referral to the Executive Branch “applications filed pursuant to §§ 63.18 and 63.24 where the applicant has an existing international section 214 authorization that is conditioned on compliance with an agreement with an Executive Branch agency concerning national security and/or law enforcement, there are no new reportable foreign owners of the applicant since the effective date of the agreement, and the applicant agrees to continue to comply with the terms of that agreement.”³⁴⁶ We propose to amend the new section 1.40001(a)(2)(iii) by adding a reference to section 63.27 where we propose to codify the renewal application requirements adopted in this proceeding. We note, however, that all applications filed pursuant to sections 63.18 and 63.24 and the new renewal rules will be subject to a new ownership reporting threshold of 5%, upon the effective date of the proposed rules.

- *Section 1.40001(a)(2)(iv).* The *Executive Branch Process Reform Order* adds a new section 1.40001(a)(2)(iv), which provides that when the applicant makes a specific showing in its application, the Commission will generally exclude from referral to the Executive Branch “applications filed pursuant to §§ 63.18 and 63.24 where the applicant was reviewed by the Executive Branch within 18 months of the filing of the application and the Executive Branch had not previously requested that the Commission condition the applicant’s international section 214 authorization on compliance with an agreement with an Executive Branch agency concerning national security and/or law enforcement and there are no new reportable foreign owners of the applicant since that review.”³⁴⁷ We propose to amend the new section 1.40001(a)(2)(iv) by adding a reference to section 63.27 where we propose to codify the renewal application requirements adopted in this proceeding.
- *Section 1.40001(d).* The *Executive Branch Process Reform Order* adds a new section 1.40001(d), which provides that “[a]s used in this section, ‘reportable foreign ownership’ for applications filed pursuant to §§ 1.767, 63.18 and 63.24 means any foreign owner of the applicant that must be disclosed in the application pursuant to § 63.18(h)”³⁴⁸ We propose to amend section 1.40001(d) by adding a reference to section 63.27 where we propose to codify the renewal requirements adopted in this proceeding, including a reference to the proposed provision that would require renewal applicants to disclose individuals or entities with a 5% or greater direct or indirect equity or voting interest in the applicant. We also propose an amendment below to distinguish between “reportable foreign ownership” as it would be applied to international section 214 applications under the new reporting threshold and submarine cable landing license applications.
- We also propose conforming changes to section 63.18(h)(1), as adopted in the *Executive Branch Process Reform Order*, which requires, “[t]he name, address, citizenship, and principal businesses of any individual or entity that directly or indirectly owns ten percent or more of the equity interests and/or voting interests, or a controlling interest, of the applicant, and the percentage of equity and/or voting interest owned by each of those entities (to the nearest one percent). Where no individual or entity directly or indirectly owns ten percent or more of the equity interests and/or voting interests, or a controlling interest, of the applicant, a statement to that effect.”³⁴⁹ We propose to include the word “individuals and” in the first sentence to state, “the percentage of equity and/or voting interest owned by each of those

³⁴⁶ *Id.*, 35 FCC Rcd at 10969, Appx. B.

³⁴⁷ *Id.*, 35 FCC Rcd at 10970, Appx. B.

³⁴⁸ 2021 *Standard Questions Order* at *6.

³⁴⁹ *Id.* at * 10.

individuals and entities” for consistency within that subsection.

170. *Submarine Cable Reportable Ownership.* We note that the Commission’s rule regarding the ownership information required in submarine cable landing license applications refers to the requirement set out in section 63.18(h).³⁵⁰ We have proposed to change the requirement in section 63.18(h) to disclose individuals or entities with a 5% or greater direct or indirect equity or voting interest in the applicant. This Notice does not address the Commission’s cable landing license rules. We propose to amend section 1.767(a)(8)(i) of the rules to remove the reference to section 63.18(h) and retain the current 10% reporting threshold for submarine cable landing license applications.³⁵¹ We propose to incorporate into section 1.767(a)(8)(i) the language that is reflected in section 63.18(h)(1)-(3) as adopted in the *Executive Branch Process Reform Order* with an administrative change discussed above.³⁵²

171. Consistent with this approach, we also propose to amend section 1.40001(d), which provides that, “[a]s used in this section, ‘reportable foreign ownership’ for applications filed pursuant to §§ 1.767, 63.18 and 63.24 means any foreign owner of the applicant that must be disclosed in the application pursuant to § 63.18(h)” Specifically, we propose to remove the reference to section 1.767 in association with section 63.18(h), and include a separate statement that “reportable foreign ownership” for applications filed pursuant to section 1.767 means any foreign owner of the applicant that must be disclosed in the application pursuant to section 1.767(a)(8)(i).

G. Costs and Benefits

172. We seek comment on the potential benefits and costs of the proposals addressed in this Notice. We tentatively find that the rule changes will advance U.S. national security, law enforcement, foreign policy, and trade policy interests by requiring carriers to renew, every ten years, their international section 214 authority. We expect that the resulting changes would improve the Commission’s oversight of international section 214 authorizations and ensure that a carrier’s authorization continues to serve the public interest, as the Act intended. While we tentatively find that a renewal process is a critical component of protecting U.S. national security, law enforcement, and other interests against evolving threats, we acknowledge that such a renewal process may create economic burdens for international section 214 authorization holders.

173. We recognize that the benefits of protecting U.S. national security, law enforcement, foreign policy, and trade policy interests are difficult to quantify in monetary terms. The difficulty in quantifying these benefits does not, however, diminish their importance. These benefits include improved consistency, completeness, and timeliness in the Commission’s review of issues that warrant its attention, more consistent and complete submission of relevant issues to the Committee for its review, and ultimately, improved protection of U.S. telecommunications systems and data transmitted over and stored on these systems. These benefits of regular review cannot be achieved with ad hoc reviews, and they help ensure that the Commission and the Executive Branch agencies with which it partners have the information needed to address evolving security threats.

174. As described above, the Commission has taken numerous actions to address these evolving security threats,³⁵³ while the addition of a regular renewal process, as recommended in the PSI

³⁵⁰ See 47 CFR § 1.767(a)(8)(i).

³⁵¹ We refer in this subsection, Section III.D.6., to “submarine cable landing license applications” or “applications” to include applications for a new cable landing license or modification, assignment, transfer of control, or renewal of a cable landing license, and notifications of *pro forma* assignment or transfer of control of a cable landing license.

³⁵² See Appx. A; *Executive Branch Process Reform Order*, 35 FCC Rcd at 10964, Appx. B; 47 CFR § 63.18(h)(1)-(3); see *supra* para. 169.

³⁵³ See *supra* paras. 12-13.

Report, has until now remained outstanding. The rules proposed here provide this critical additional component needed to protect U.S. national security, law enforcement, foreign policy, and trade policy interests as they relate to U.S. telecommunications systems and data. As the Commission has observed in multiple proceedings, serious risks are present when foreign actors have the ability to access, monitor, store, disrupt, and/or misroute communications,³⁵⁴ and the rules proposed here provide critical information needed to identify these risks.

175. We note that malicious use of such telecommunications and the data they contain could threaten U.S. national security and law enforcement interests in multiple ways. For example, access to PII and Call Detail Records (CDRs) could be used by bad actors to facilitate espionage,³⁵⁵ or to engage in activities such as identity theft that potentially impose significant economic losses on U.S. consumers.³⁵⁶ Further, bad actors that have access to customer telecommunications through the routers, switches and/or servers that store or forward traffic through their networks are well-positioned to inflict serious harm. Such harm may include active attacks such as denial of service in a target's network, or passive attacks that collect information that can later be used for criminal or other nefarious purposes.³⁵⁷ The victims of such attacks may include individual consumers, businesses and other organizations, as well as the U.S. government. As another example, we note the concerns expressed by the Executive Branch agencies that "due to least-cost routing, the communications of U.S. government agencies to any international destinations may conceivably pass through" the networks of potential bad actors with communications networks in the United States, which poses national security and law enforcement risks.³⁵⁸ There are, therefore, clear and substantial benefits to be derived from the Commission and Executive Branch agencies having information that conveys when foreign actors have certain capabilities related to U.S. communications infrastructure and the data it carries.

176. In addition to benefits to national security and law enforcement, our proposed rule changes provide clear regulatory guidance, which generally benefits the efficient operation of markets. For example, it is important that we have accurate and timely records about all authorization holders, including which authorization holders are active and which no longer exist or utilize their international section 214 authority. This information helps the Commission better understand the size, scope, and structure of this market, all of which provide valuable inputs into the public interest regulatory process. Further, the reporting requirements of ownership and financial interests are beneficial because it is possible that some foreign applicants might pose competition or trade policy concerns, and in some

³⁵⁴ See *China Telecom Americas Order on Revocation and Termination*, paras. 65-99; *China Unicom Americas Order on Revocation*, paras. 74-110.

³⁵⁵ *China Unicom Americas Order on Revocation*, paras. 83-86.

³⁵⁶ For reference, the digital economy accounted for \$3.31 trillion of the U.S. economy in 2021, and so preventing a disruption of even 0.000001 (a millionth) of that amount annually would mean that benefits outweigh costs by a wide margin. See Tina Highfill & Christopher Surfield, Bureau of Economic Analysis, U.S. Department of Commerce, *New and Revised Statistics of the U.S. Digital Economy, 2005-2020* (May 2022), <https://www.bea.gov/system/files/2022-05/New%20and%20Revised%20Statistics%20of%20the%20U.S.%20Digital%20Economy%202005-2020.pdf>. See also, *Protecting Against National Security Threats to the Communications Supply Chain Through FCC Programs*, WC Docket No. 18-89, Report and Order, Further Notice of Proposed Rulemaking, and Order, 34 FCC Rcd 11423, 11465, para. 109 (2019).

³⁵⁷ *China Unicom Americas Order on Revocation*, paras. 93-95.

³⁵⁸ Letter from Kathy Smith, Chief Counsel, National Telecommunications and Information Administration, U.S. Department of Commerce, to Denise Coca, Chief, Telecommunications and Analysis Division, FCC International Bureau at 1 (Nov. 16, 2020) (on file in GN Docket No. 20-110, File Nos. ITC 214-20020728-00361, ITC-214-20020724-00427).

instances, these concerns might be related to ownership or financial interest considerations.³⁵⁹

177. Thus, the benefits of our proposed rule changes include significant contributions to U.S. national security and law enforcement interests, better protection of personal data against identity theft or fraud, as well as information efficiencies that improve the regulatory process and safeguards against financial or other manipulation of competitive markets. While it is difficult to quantify these economic benefits, we believe they are far greater than the costs of reporting that will be imposed on international section 214 authorization holders.

178. Our estimate of costs includes all expected ongoing costs that would be incurred as a result of the rules proposed above. We note that this estimate does not include the one-time foreign ownership information collection, as established by this Order. That one-time collection is directed as part of our enforcement authority and not established by rules, and it will not impose ongoing costs. We expect that the costs associated with this one-time collection will be minimal, as each authorization holder likely will have the information to be collected readily available and should be able to provide the information and certify to its accuracy with little effort. All other estimated costs are described immediately below.

179. Our estimate of costs is intentionally focused on the higher end of potential outcomes, thus making an overestimate likely. By taking this approach, we can have additional confidence that the costs of the rules being proposed would be less than the benefits as outlined above. We estimate that the annual aggregate cost of the proposed rules described above could vary, depending on parameters established such as frequency of renewal, filing fees charged, and other factors, but these costs should not exceed approximately \$1,879,000 annually for each of the first ten years, and approximately \$1,267,000 for each year thereafter. We tentatively conclude that the benefits of establishing the proposed renewal process, which include providing the Commission with critical information that allows it to carry out its role in safeguarding national security and law enforcement interests related to telecommunications, will be well in excess of these costs.

180. We base our cost estimate on Commission records, described above, that show approximately 7,000 international section 214 authorization holders. Of these, 748 authorization holders currently are listed as having filed international revenues. We note that the Commission's last collection of traffic and revenue for international section 214 authorization holders was in 2014, at which time between 1,400 and 1,500 international section 214 authorization holders reported revenue. Because some authorization holders may currently be in operation but have failed to file traffic and revenue, and to avoid undercounting affected entities (which would understate the expected costs), we take the higher end of this range and assume that 1,500 international section 214 authorization holders would be impacted by the proposed rules. We further assume that of these 1,500 international section 214 authorization holders, one-third, or 500, have foreign ownership as defined herein.

181. Our cost estimate assumes that these 1,500 authorization holders will go through the process of renewal described above, each falling into one of multiple phases over ten years, resulting in an average of 150 authorization holders filing initial renewals each year for the first ten years. We estimate the costs to authorization holders related to renewal, which include tasks such as review by legal and support staff of the authorization holder's foreign ownership, services provided, and locations of those services, to include cross-border operations. We note that the amount of work for this initial review likely will be greater than the work for a subsequent renewal ten years later, given that much of the information already will have been collected by the authorization holder in the initial review. We estimate that this initial review by each authorization holder will require 20 hours of work by attorneys

³⁵⁹ *Foreign Participation Order*, 12 FCC Rcd at 23897-98, 23910-11, paras. 11, 13, 45-46, 51-53.

and 20 hours of work by support staff, at a cost of \$6,800 per authorization for renewal.³⁶⁰ To this cost, we add the \$875 administrative fee charged for renewal to obtain a total estimate of this burden at \$7,675 per authorization (for the first time an authorization holder must file for renewal). We then multiply the sum by 150 to produce a total estimate of approximately \$1,152,000 per year for the first ten years.³⁶¹

182. We assume that after each authorization holder has completed the renewal process sometime during the initial ten-year phase-in period, subsequent renewal applications (ten years later) will be less financially burdensome. We estimate the tasks related to subsequent renewal applications represent eight hours of work by attorneys and eight hours by support staff per authorization renewal, for a cost of \$2,720 per renewal.³⁶² To this cost, we add the \$875 administrative fee, to obtain a total estimate of this burden for ongoing renewals at \$3,595. We then multiply the sum by 150 to produce a total estimate of approximately \$540,000 per year after the first ten years.³⁶³

183. We further assume that the Commission will process new international section 214 applications on an ongoing basis and also will receive filings that represent reportable issues such as changes in foreign ownership. We assume ten new applicants per year and we note that these entities will incur the greater first-time costs described above. We estimate the aggregate total cost for these ten new filers at \$77,000 per year.³⁶⁴ We also assume ten existing authorization holders will have reportable changes in foreign ownership each year, and we attempt to estimate the costs of this reporting. We note that these authorization holders will incur the lower costs associated with any entity that already has completed this reporting and that only needs to add a specific update (e.g., a new foreign owner or an increase in holdings by an existing foreign owner). We estimate that filing a change in foreign ownership will require three hours of attorney time and three hours of non-attorney time, for an approximate cost of \$1,100 per filing.³⁶⁵ We thus estimate the total costs for these ten existing authorization holders to complete these updates at approximately \$11,000 per year.

184. We similarly estimate the number of authorization holders who need to report cross-border facilities each year. We expect that ten percent of all authorization holders (1,500 total) will need to report cross-border facilities (either owned or leased), which represents 150 authorization holders. We

³⁶⁰ Our cost data on wages for attorneys comes from the Commission's estimates of labor costs as represented in PRAs. Consistent with the Commission's calculations in PRAs, we estimate the median hourly wage for attorneys as \$300 for outside counsel. We assume that this wage reasonably represents an average for all attorney labor, across a range of authorization holders with different sizes and business models, used to comply with the rules established herein. Also consistent with the Commission's calculations in PRAs, we estimate the median hourly wage for support staff (paralegals and legal assistants) as \$40. This means that, 20 hours of work by attorneys would cost \$6,000.00 and 20 hours of work by support staff would cost \$800.00, for a total of \$6,800.00 per authorization.

³⁶¹ Specifically, $\$6,800.00 + \$875.00 = \$7,675.00$ per authorization holder. With 150 authorization holders filing renewal applications each year, we estimate $\$7,675.00 \times 150 = \$1,151,250.00$, which we round up to \$1,152,000.00 to avoid giving the false impression of precision.

³⁶² Specifically, we estimate eight hours of attorney labor at \$2,400 ($8 \times \300) and eight hours of support staff labor at \$320 ($8 \times \40), and the sum of this combined labor is \$2,720.00.

³⁶³ The estimated annual cost of 150 renewals at this point, after the initial ten years to phase in, would be \$539,250 ($\$3,595 \times 150$) which we round up to \$540,000 to avoid giving the false impression of precision.

³⁶⁴ As described above, the estimated cost to the authorization holder for first-time renewal is \$7,675. Assuming 10 new authorization holders each year after the initial ten-year phase in period, $\$7,675.00 \times 10 = \$76,750.00$, which we round up to \$77,000 to avoid giving the false impression of precision.

³⁶⁵ Using the hourly wage rates described above, we calculate the costs to be \$900 ($\300×3) for attorney labor and \$120 ($\40×3) for support staff, for a total of \$1,020.00, which we round up to \$1,100 to avoid giving the false impression of precision.

note that this is an ongoing reporting requirement, and we assume an average of 50 authorization holders would file cross border information each year. We estimate the collection of this information consists of three hours of attorney and three hours of support staff time at a cost of approximately \$1,100 per authorization holder. We expect that the effort to comply with this filing requirement will be low because we are requiring licensees to report only information that they routinely have. We calculate that 50 authorization holders, with a cost of \$1,100 per filing, will entail approximately \$55,000 in total costs related to cross border filing each year.³⁶⁶

185. We also estimate the number of authorization holders who use Managed Network Service Providers (MNSPs) that have foreign ownership, and we attempt to calculate the burden on such authorization holders of providing us this information. We note that authorization holders with foreign ownership already have to provide this information as part of the information required by the Standard Questions that must be submitted to the Committee. Thus, the burden associated with compliance with these proposed rules is the compliance costs for authorization holders that do not have foreign ownership, but that use MNSPs that have foreign ownership. As described above, we estimate that 500 of the 1,500 authorization holders have foreign ownership. We estimate that ten percent of the remaining 1,000 authorization holders (those that do not have foreign ownership) use an MNSP with foreign ownership. Thus, if there are 1,000 authorization holders without foreign ownership, with an average of 100 reporting each year, then ten percent of this total, or ten authorization holders, will need to report the use of an MNSP with foreign ownership each year. We estimate that this reporting would require ten hours of attorney time and ten hours of support staff time, for a cost of \$3,400 per authorization holder.³⁶⁷ We therefore estimate the cost of reporting the use of an MNSP with foreign ownership, for those authorization holders not currently required to report such information, to be \$34,000 each year.

186. In addition, we estimate the costs associated with filing the proposed ongoing review reports that indicate a five percent or greater direct or indirect foreign ownership. We observe that these reports will update ownership information that must be provided in the renewal application that is filed every ten years, which should be simple to provide in most cases. We therefore assume a relatively light burden for compliance at three hours of attorney time and three hours of support staff time, or approximately \$1,100 per authorization holder. With 1,500 estimated authorization holders filing every three years, we assume one third of this total, or 500, will file each year. We therefore estimate \$550,000 in annual costs for all authorization holders to comply with the ongoing ownership reporting requirements.³⁶⁸

187. Combining the estimated costs of these additional filings on an annual basis, we add \$34,000 for authorization holders with no foreign ownership to report their use of MNSPs with foreign ownership, \$55,000 for authorization holders with cross border facilities to report the requested information, \$550,000 for all authorization holders to comply with the ongoing reporting requirements related to foreign ownership, \$11,000 for periodic reporting of changes in ownership, and \$77,000 for renewal applications filed by new entities, for a sum of \$727,000. We add this sum to the estimated costs for renewal, which we estimate to be \$1,152,000 annually for the first ten years and then \$540,000 annually for subsequent years. Therefore, to summarize our estimate of total costs, we expect the initial costs to be \$1,879,000 annually for the first ten years, and we expect costs to be \$1,267,000 for

³⁶⁶ Specifically, at \$1,100 per filing, we estimate \$55,000 ($\$1,100 \times 50$) total annual cost related to cross border filings.

³⁶⁷ Using the hourly wage rates described above, we calculate the costs to be \$3,000 ($\300×10) for attorney labor and \$400 ($\40×10) for support staff, for a total of \$3,400 per filing.

³⁶⁸ Specifically, with three hours of attorney time and three hours of staff times estimated as \$1,100, as noted above, we estimate the total cost for 500 authorization holders at \$550,000 ($\$1,100 \times 500$).

subsequent years.³⁶⁹

188. We seek comment on all these estimates. Do our assumptions represent a reasonable estimate of the likely number of new entrants in this market and the likely percentage of authorization holders with reportable incidents such as change in foreign ownership? Do our assumptions represent a reasonable estimate of the number of attorney and non-attorney labor hours needed to meet the requirements of the proposed rules? Are there other potential burdens that we have not captured here? How would an alternative, periodic review approach, in lieu of a renewal framework, affect our projected costs and benefits? Are there other approaches that would use alternative means to provide the same benefits, in terms of advancing national security, law enforcement, and other interests, at lower costs? If so, what are those means of obtaining the same benefits and what are the expected costs? Any suggestions of alternative approaches should include clear explanations of the cost estimates, as well as estimates as to whether the benefits under any proposed alternatives would increase or decrease compared to the benefits described above.

H. Digital Equity and Inclusion

189. Finally, the Commission, as part of its continuing effort to advance digital equity for all,³⁷⁰ including people of color, persons with disabilities, persons who live in rural or Tribal areas, and others who are or have been historically underserved, marginalized, or adversely affected by persistent poverty or inequality, invites comment on any equity-related considerations³⁷¹ and benefits (if any) that may be associated with the proposals and issues discussed herein. Specifically, we seek comment on how our proposals may promote or inhibit advances in diversity, equity, inclusion, and accessibility, as well the scope of the Commission's relevant legal authority.

I. Conclusion

190. Our action today is intended to protect the nation's telecommunications infrastructure from threats in an evolving national security and law enforcement landscape by proposing to establish a 10-year renewal scheme or, in the alternative, a periodic review process for all international section 214 authorization holders. We tentatively find that the rules proposed in the Notice will improve the Commission's oversight of authorization holders while also providing regulatory certainty to authorization holders. Importantly, we believe that changed circumstances mandate that the Commission adopt a renewal process to ensure that an international section 214 authorization continues to serve the public interest in an ever-evolving national security and law enforcement environment.³⁷²

³⁶⁹ For the first ten years we estimate total costs as \$1,907,000 (\$1,152,000 + \$755,000) annually and for subsequent years we estimate total costs as \$1,295,000 (\$540,000 + \$755,000) annually.

³⁷⁰ Section 1 of the Communications Act of 1934 as amended provides that the FCC "regulat[es] interstate and foreign commerce in communication by wire and radio so as to make [such service] available, so far as possible, to all the people of the United States, without discrimination on the basis of race, color, religion, national origin, or sex." 47 U.S.C. § 151.

³⁷¹ The term "equity" is used here consistent with Executive Order 13985 as the consistent and systematic fair, just, and impartial treatment of all individuals, including individuals who belong to underserved communities that have been denied such treatment, such as Black, Latino, and Indigenous and Native American persons, Asian Americans and Pacific Islanders and other persons of color; members of religious minorities; lesbian, gay, bisexual, transgender, and queer (LGBTQ+) persons; persons with disabilities; persons who live in rural areas; and persons otherwise adversely affected by persistent poverty or inequality. See Exec. Order No. 13985, 86 Fed. Reg. 7009, Executive Order on Advancing Racial Equity and Support for Underserved Communities Through the Federal Government (Jan. 20, 2021).

³⁷² See *infra* Appx. B, para. 18.

V. PROCEDURAL ISSUES

191. *Ex Parte Rules.* This proceeding this Notice initiates shall be treated as a “permit-but-disclose” proceeding in accordance with the Commission’s *ex parte* rules.³⁷³ Persons making *ex parte* presentations must file a copy of any written presentation or a memorandum summarizing any oral presentation within two business days after the presentation (unless a different deadline applicable to the Sunshine period applies). Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentation must (1) list all persons attending or otherwise participating in the meeting at which the *ex parte* presentation was made, and (2) summarize all data presented and arguments made during the presentation. If the presentation consisted in whole or in part of the presentation of data or arguments already reflected in the presenter’s written comments, memoranda, or other filings in the proceeding, the presenter may provide citations to such data or arguments in his or her prior comments, memoranda, or other filings (specifying the relevant page and/or paragraph numbers where such data or arguments can be found) in lieu of summarizing them in the memorandum. Documents shown or given to Commission staff during *ex parte* meetings are deemed to be written *ex parte* presentations and must be filed consistent with rule 1.1206(b). In proceedings governed by rule 1.49(f) or for which the Commission has made available a method of electronic filing, written *ex parte* presentations and memoranda summarizing oral *ex parte* presentations, and all attachments thereto, must be filed through the electronic comment filing system available for that proceeding, and must be filed in their native format (e.g., .doc, .xml, .ppt, searchable .pdf). Participants in this proceeding should familiarize themselves with the Commission’s *ex parte* rules.

192. *Regulatory Flexibility Act.* The Regulatory Flexibility Act of 1980, as amended (RFA),³⁷⁴ requires that an agency prepare a regulatory flexibility analysis for notice and comment rulemakings, unless the agency certifies that “the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities.”³⁷⁵ Accordingly, we have prepared an Initial Regulatory Flexibility Analysis (IRFA) concerning the potential impact of rule and policy changes in this Notice of Proposed Rulemaking on small entities. The IRFA is set forth in Appendix B. Written public comments are requested on the IRFA. Comments must be filed by the deadlines for comments on the Notice indicated on the first page of this document and must have a separate and distinct heading designating them as responses to IRFA. Because the Order does not adopt a rule and therefore does not require notice and comment, no Final Regulatory Flexibility Analysis is required.³⁷⁶

193. *Final Paperwork Reduction Act Analysis.* This document may contain new or modified information collection requirements subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104-13. All such new or modified information collection requirements will be submitted to the Office of Management and Budget (OMB) for review under Section 3507(d) and (j) of the PRA. OMB, the general public, and other Federal agencies will be invited to comment on any new or modified information collection requirements contained in this proceeding.

194. *Initial Paperwork Reduction Act Analysis.* This Notice of Proposed Rulemaking may contain proposed new or modified information collection requirements. The Commission, as part of its continuing effort to reduce paperwork burdens, invites the general public and the OMB to comment on any information collection requirements contained in this document, as required by the Paperwork Reduction Act of 1995, Public Law 104-13. In addition, pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107-198, see 44 U.S.C. § 3506(c)(4), we seek specific comment on how we

³⁷³ 47 CFR § 1.1200 *et seq.*

³⁷⁴ See 5 U.S.C. § 603.

³⁷⁵ See *id.* § 605(b).

³⁷⁶ 5 U.S.C. § 604(a).

might further reduce the information collection burden for small business concerns with fewer than 25 employees.

195. *Filing of Comments and Reply Comments.* Pursuant to sections 1.415 and 1.419 of the Commission's rules, 47 CFR §§ 1.415, 1.419, interested parties may file comments and reply comments on or before the dates indicated on the first page of this document. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS). See *Electronic Filing of Documents in Rulemaking Proceedings*, 63 FR 24121 (1998).

- Electronic Filers: Comments may be filed electronically using the Internet by accessing the ECFS: <https://www.fcc.gov/ecfs/>.
- Paper Filers: Parties who choose to file by paper must file an original and one copy of each filing.
- Filings can be sent by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.
- Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9050 Junction Drive, Annapolis Junction, MD 20701. U.S. Postal Service first-class, Express, and Priority mail must be addressed to 45 L Street NE Washington, DC 20554
- Effective March 19, 2020, and until further notice, the Commission no longer accepts any hand or messenger delivered filings. This is a temporary measure taken to help protect the health and safety of individuals, and to mitigate the transmission of COVID-19.³⁷⁷ See FCC Announces Closure of FCC Headquarters Open Window and Change in Hand-Delivery Policy, Public Notice, DA 20-304 (March 19, 2020). (<https://www.fcc.gov/document/fcc-closes-headquarters-open-window-and-changes-hand-delivery-policy>)

196. *People with Disabilities.* To request materials in accessible formats for people with disabilities (braille, large print, electronic files, audio format), send an e-mail to fcc504@fcc.gov or call the Consumer & Governmental Affairs Bureau at 202-418-0530 (voice), 202-418-0432 (TTY).

197. *Additional Information.* For further information regarding Notice of Proposed Rulemaking please contact Gabrielle Kim, Attorney Advisor, Telecommunications and Analysis Division, International Bureau, at Gabrielle.Kim@fcc.gov or 202-418-0730.

VI. ORDERING CLAUSES

198. Accordingly, **IT IS ORDERED** that, pursuant to sections 218, 219, and 403 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 218, 219, and 403, this Order IS HEREBY ADOPTED.

199. **IT IS FURTHER ORDERED** that, pursuant to sections 4(i), 4(j), 201, 214, 218, 219, 403, and 413 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 154(j), 201, 214, 218, 219, 403, and 413, this Notice of Proposed Rulemaking IS HEREBY ADOPTED.

200. **IT IS FURTHER ORDERED** that this Order SHALL BE EFFECTIVE after the Office of Management and Budget completes review of any information collection requirements that the International Bureau, or its successor entity, determines are required under the Paperwork Reduction Act.

201. **IT IS FURTHER ORDERED** that the International Bureau, or its successor entity, shall

³⁷⁷ See *FCC Announces Closure of FCC Headquarters Open Window and Change in Hand-Delivery Policy*, Public Notice, 35 FCC Red 2788 (2020).

conduct the information collection required by the Order, including the creation of any information collection forms or other instrument, and shall publish notice of the effective date of the information collection required by the Order and the filing deadline in the Federal Register. The filing deadline shall be no fewer than 30 days following the effective date of this Order. The International Bureau, or its successor entity, shall announce the effective date and the filing deadline for the requirements in this Order by subsequent Public Notice.

202. **IT IS FURTHER ORDERED** that the Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, SHALL SEND a copy of this Notice of Proposed Rulemaking, including the Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary

APPENDIX A**Proposed Rules**

Parts 1 and 63 of the Commission rules are amended as follows:

PART 1 – PRACTICE AND PROCEDURE

1. The authority citation for part 1 continues to read as follows:

Authority: 47 U.S.C. chs. 2, 5, 9, 13; 28 U.S.C. 2461 note, unless otherwise noted.

2. Amend § 1.763(b) to read as follows:

§ 1.763 Construction, extension, acquisition or operation of lines.

(a) * * *

- (b) In cases under this section requiring a certificate, applicants shall provide notice to and file a copy of the application with the Secretary of Defense, the Secretary of State (with respect to such applications involving service to foreign points), and the Governor of each State involved. Hearing is held if the Secretary of Defense, the Secretary of State, or the Governor of each State desires to be heard or if the Commission determines that a hearing should be held. The applicants must also file copies of applications for certificates with the regulatory agencies of the States involved.

3. Amend § 1.767 by revising paragraph (a)(8)(i) to read as follows:

§ 1.767 Cable landing licenses.

(a) * * *

(8) * * *

- (i) The name, address, citizenship, and principal businesses of any individual or entity that directly or indirectly owns 10 percent or more of the equity interests and/or voting interests, or a controlling interest, of the applicant, and the percentage of equity and/or voting interest owned by each of those individuals or entities (to the nearest one percent). Where no individual or entity directly or indirectly owns 10 percent or more of the equity interests and/or voting interests, or a controlling interest, of the applicant, a statement to that effect.

(A)(1) *Calculation of equity interests held indirectly in the carrier.* Equity interests that are held by an individual or entity indirectly through one or more intervening entities shall be calculated by successive multiplication of the equity percentages for each link in the vertical ownership chain, regardless of whether any particular link in the chain represents a controlling interest in the company positioned in the next lower tier. Example: Assume that an entity holds a non-controlling 30 percent equity and voting interest in Corporation A which, in turn, holds a non-controlling 40 percent equity and voting interest in the carrier. The entity's equity interest in the carrier would be calculated by multiplying the individual's equity interest in Corporation A by that entity's equity interest in the carrier. The entity's equity interest in the carrier would be calculated as 12 percent ($30\% \times 40\% = 12\%$). The result would be the same

even if Corporation A held a de facto controlling interest in the carrier.

(A)(2) *Calculation of voting interests held indirectly in the carrier.* Voting interests that are held through one or more intervening entities shall be calculated by successive multiplication of the voting percentages for each link in the vertical ownership chain, except that wherever the voting interest for any link in the chain is equal to or exceeds 50 percent or represents actual control, it shall be treated as if it were a 100 percent interest. A general partner shall be deemed to hold the same voting interest as the partnership holds in the company situated in the next lower tier of the vertical ownership chain. A partner of a limited partnership (other than a general partner) shall be deemed to hold a voting interest in the partnership that is equal to the partner's equity interest. Example: Assume that an entity holds a non-controlling 30 percent equity and voting interest in Corporation A which, in turn, holds a controlling 70 percent equity and voting interest in the carrier. Because Corporation A's 70 percent voting interest in the carrier constitutes a controlling interest, it is treated as a 100 percent interest. The entity's 30 percent voting interest in Corporation A would flow through in its entirety to the carrier and thus be calculated as 30 percent ($30\% \times 100\% = 30\%$).

(B) An ownership diagram that illustrates the applicant's vertical ownership structure, including the direct and indirect ownership (equity and voting) interests held by the individuals and entities named in response to paragraph (a)(8)(i) of this section. Every individual or entity with ownership shall be depicted and all controlling interests must be identified. The ownership diagram shall include both the pre-transaction and post-transaction ownership of the authorization holder.

(C) The applicant shall also identify any interlocking directorates with a foreign carrier.

(D) The information and certifications required in § 63.18(o), (p), and (q) of this chapter.

* * * * *

4. Amend § 1.40001 by revising paragraphs (a) and (d) to read as follows:

§ 1.40001 Executive branch review of applications, petitions, other filings, and existing authorizations or licenses with reportable foreign ownership.

(a) The Commission, in its discretion, may refer applications, petitions, and other filings to the executive branch for review for national security, law enforcement, foreign policy, and/or trade policy concerns.

(1) The Commission will generally refer to the executive branch:

(i) an application for a new international section 214 authorization as well as an application to modify, assign, transfer control of, or renew those authorizations where the applicant has reportable foreign ownership pursuant to §§ 63.18, 63.24, and 63.27 of this chapter.

(ii) an application for a new international section 214 authorization as well as an application to modify, assign, transfer control of, or renew those authorizations where the applicant with or without reportable foreign ownership certifies that it uses and/or will use facilities to provide services under their international section 214 authority from the United States into Canada and/or Mexico.

(iii) an application for a new submarine cable landing license as well as an application to modify,

assign, transfer control of, or renew those licenses where the applicant has reportable foreign ownership pursuant to § 1.767 of this chapter.

(iv) petitions for section 310(b) foreign ownership rulings for broadcast, common carrier wireless, and common carrier satellite earth station licenses, pursuant to §§ 1.5000 through 1.5004.

(2) The Commission will generally exclude from referral to the executive branch certain applications set out in paragraph (a)(1) of this section when the applicant makes a specific showing in its application that it meets one or more of the following categories:

(i) Pro forma notifications and applications;

(ii) Applications filed pursuant to §§ 1.767, 63.18, 63.24, and 63.27 of this chapter if the applicant has reportable foreign ownership and petitions filed pursuant to §§ 1.5000 through 1.5004 where the only reportable foreign ownership is through wholly owned intermediate holding companies and the ultimate ownership and control is held by U.S. citizens or entities;

(iii) Applications filed pursuant to §§ 63.18, 63.24, and 63.27 of this chapter where the applicant has an existing international section 214 authorization that is conditioned on compliance with an agreement with an executive branch agency concerning national security and/or law enforcement, there are no new reportable foreign owners of the applicant since the effective date of the agreement, and the applicant agrees to continue to comply with the terms of that agreement; and

(iv) Applications filed pursuant to §§ 63.18, 63.24, and 63.27 of this chapter where the applicant was reviewed by the executive branch within 18 months of the filing of the application and the executive branch had not previously requested that the Commission condition the applicant's international section 214 authorization on compliance with an agreement with an executive branch agency concerning national security and/or law enforcement and there are no new reportable foreign owners of the applicant since that review.

(3) In circumstances where the Commission, in its discretion, refers to the executive branch an application, petition, or other filing not identified in this paragraph (a)(3) or determines to refer an application or petition identified in paragraph (a)(2) of this section, the Commission staff will instruct the applicant, petitioner, or filer to follow the requirements for a referred application or petition set out in this subpart, including submitting responses to the standard questions to the Committee and making the appropriate certifications.

(b) * * *

(c) * * *

(d) As used in this subpart, "reportable foreign ownership" for applications filed pursuant to §§ 63.18, 63.24, and 63.27 of this chapter means any foreign owner of the applicant that must be disclosed in the application pursuant to § 63.18(h); for applications filed pursuant to § 1.767 "reportable foreign ownership" means any foreign owner of the applicant that must be disclosed in the application pursuant to § 1.767(a)(8)(i); and for petitions filed pursuant to §§ 1.5000 through 1.5004 "reportable foreign ownership" means foreign disclosable interest holders pursuant to § 1.5001(e) and (f).

PART 63 – EXTENSION OF LINES, NEW LINES, AND DISCONTINUANCE, REDUCTION, OUTAGE AND IMPAIRMENT OF SERVICE BY COMMON CARRIERS; AND GRANTS

OF RECOGNIZED PRIVATE OPERATING AGENCY STATUS

5. The authority citation for part 63 continues to read as follows:

Authority: 47 U.S.C. 151, 154(i), 154(j), 160, 201-205, 214, 218, 403, 571, unless otherwise noted.

6. Amend § 63.12 by revising paragraph (c)(3) to read as follows:

§ 63.12 Processing of international Section 214 applications.

* * * * *

(c) * * *

(3) An individual or entity that is not a U.S. citizen holds a five percent or greater direct or indirect equity or voting interest, or a controlling interest, in any applicant; or

* * * * *

7. Amend § 63.18 by revising paragraphs (h), (k), and (o), redesignating paragraphs (r), (s), and (t) as (w), (x), and (y) and adding new paragraphs (r), (s), (t), (u), and (v) to read as follows:

§ 63.18 Contents of applications for international common carriers.

* * * * *

(h)(1) The name, address, citizenship, and principal businesses of any individual or entity that directly or indirectly owns five percent or more of the equity interests and/or voting interests, or a controlling interest, of the applicant, and the percentage of equity and/or voting interest owned by each of those individuals and entities (to the nearest one percent). Where no individual or entity directly or indirectly owns five percent or more of the equity interests and/or voting interests, or a controlling interest, of the applicant, a statement to that effect.

* * * * *

(k) For any country that the applicant has listed in response to paragraph (j) of this section that is not a member of the World Trade Organization, the applicant shall make a demonstration as to whether the foreign carrier has market power, or lacks market power, with reference to the criteria in § 63.10(a).

(1) Under § 63.10(a), the Commission presumes, subject to rebuttal, that a foreign carrier lacks market power in a particular foreign country if the applicant demonstrates that the foreign carrier lacks 50 percent market share in international transport facilities or services, including cable landing station access and backhaul facilities, intercity facilities or services, and local access facilities or services on the foreign end of a particular route.

(2) [Reserved]

* * * * *

(o) A certification pursuant to §§ 1.2001 through 1.2002 of this chapter that no party to the application is subject to a denial of Federal benefits pursuant to Section 5301 of the Anti-Drug Abuse Act of 1988. See 21 U.S.C. § 862.

(p) Each applicant for which an individual or entity that is not a U.S. citizen holds a five percent or greater direct or indirect equity or voting interest, or a controlling interest, in the applicant, must submit:

(1) Responses to standard questions, prior to or at the same time the applicant files its application with the Commission, pursuant to part 1, subpart CC, of this chapter directly to the Committee for the Assessment of Foreign Participation in the United States Telecommunications Services Sector (Committee). The standard questions and instructions for submitting the responses are available on the FCC website. The required information shall be submitted separately from the application and shall be submitted directly to the Committee.

(2) A complete and unredacted copy of its FCC application(s), including the file number(s) and docket number(s), to the Committee within three (3) business days of filing it with the Commission. The instructions for submitting a copy of the FCC application(s) to the Committee are available on the FCC website.

* * * * *

(r) Each applicant shall provide the following information with respect to services it expects to provide using the international section 214 authority:

(1) Identification and description of the specific services that the applicant will provide using the international section 214 authority;

(2) Types of customers that will be served;

(3) Whether the services will be provided through the facilities for which the applicant has an ownership, indefeasible-right-of use or leasehold interest or through the resale of other companies' services; and

(4) Identification of where the applicant in the future expects to market, offer, and/or provide services using the particular international section 214 authority, such as a U.S. state or territory and/or U.S.-international route or globally.

(s) Each applicant shall provide the following information concerning facilities crossing the U.S.-Mexico and U.S.-Canada borders (cross border facilities) that it will use or lease:

(1) Location of each cross border facility (street address and coordinates);

(2) Name, street address, email address, and telephone number of the owners of each cross border facility, including the Government, State, or Territory under the laws of which the facility owner is organized;

(3) Identification of the equipment to be used in the cross border facilities, including equipment used for transmission, as well as servers and other equipment used for storage of information and signaling in support of telecommunications;

(4) Identification of all IP prefixes and autonomous system domain numbers used by the facilities that have been acquired from the American Registry for Internet Numbers (ARIN); and

(5) Identification of any services that are and/or will be provided by an applicant through these

facilities using the international section 214 authority.

(t) Each applicant shall certify that it will undertake to implement and adhere to baseline cybersecurity standards based on universally recognized standards such as those provided by the Department of Homeland Security's Cybersecurity & Infrastructure Security Agency (CISA) or the Department of Commerce's National Institute of Standards and Technology (NIST).

(u) Each applicant shall make the following certifications with respect to its regulatory compliance:

(1) Whether or not the applicant is in compliance with the Commission's rules and regulations, the Communications Act, and other laws;

(2) Whether or not the applicant has violated the Communications Act, Commission rules, or U.S. antitrust or other competition laws, has engaged in fraudulent conduct before another government agency, has been convicted of a felony, or has engaged in other non-FCC misconduct the Commission has found to be relevant in assessing the character qualifications of a licensee or authorization holder.

(v) Each applicant shall comply with the requirement of § 1.763 to give notice and file a copy of the application with the Secretary of Defense, the Secretary of State, the Governor of each State involved, and the regulatory agencies of the States involved. Each applicant shall certify such service on a service list attached to its application for international section 214 authority or other filing with the Commission.

* * * * *

(x) Any other information that the Commission or Commission staff have advised will be necessary to enable the Commission to act on the application.

(y) Subject to the availability of electronic forms, all applications described in this section must be filed electronically through the International Bureau Filing System (IBFS) or its successor system. A list of forms that are available for electronic filing can be found on the IBFS homepage. For information on electronic filing requirements, see part 1, §§ 1.1000 through 1.10018 of this chapter and the IBFS homepage at <https://www.fcc.gov/ibfs>. See also §§ 63.20 and 63.53.

* * * * *

8. Amend § 63.19 by revising paragraphs (a) and (c), redesignating paragraph (d) as paragraph (f) and adding new paragraphs (d) and (e) to read as follows:

§ 63.19 Special procedures for discontinuances of international services.

(a) With the exception of those international carriers described in paragraph (b) of this section, any international carrier that seeks to discontinue, reduce, or impair service, including the retiring of international facilities, dismantling or removing of international trunk lines, shall be subject to the following procedures in lieu of those specified in §§ 63.61 through 63.602:

(1) The carrier shall notify all affected customers of the planned discontinuance, reduction or impairment at least 30 days prior to its planned action. Notice shall be in writing to each affected customer unless the Commission authorizes in advance, for good cause shown, another form of notice. For purposes of this section, notice by email constitutes notice in writing. Notice shall

include the following information:

- (i) Name and address of carrier;
 - (ii) Date of planned service discontinuance, reduction, or impairment;
 - (iii) Points of geographic areas of service affected (inside of the United States and U.S.-international routes);
 - (iv) Brief description of type of service(s) affected; and
 - (v) Brief explanation as to whether the service(s) will be discontinued, reduced, or impaired.
- (2) If an international section 214 authorization holder uses email to provide notice to affected customers, it must comply with the following requirements in addition to the requirements generally applicable to the notice:
- (i) The carrier must have previously obtained express, verifiable, prior approval from customers to send notices via email regarding their service in general, or planned discontinuance, reduction, or impairment in particular;
 - (ii) The carrier must ensure that the subject line of the message clearly and accurately identifies the subject matter of the email; and
 - (iii) Any email notice returned to the carrier as undeliverable will not constitute the provision of notice to the customer.
- (3) The international section 214 authorization holder shall file with this Commission a copy of the notification on the date on which notice has been given to all affected customers. The notification shall be filed electronically through the International Bureau Filing System (IBFS), or its successor system, in the file number associated with the carrier's international section 214 authorization. The authorization holder shall also provide the following information to the Commission in the same filing that includes a copy of the notification:
- (i) Identification of the geographic areas of the planned discontinuance, reduction or impairment and the authorization(s) pursuant to which the carrier provides service;
 - (ii) Brief description of the dates and methods of notice to all affected customers;
 - (iii) Whether or not the authorization holder is surrendering any International Signaling Point Codes (ISPCs); and
 - (iv) Any other information that the Commission may require.

* * * * *

- (c) Commercial Mobile Radio Service (CMRS) carriers, as defined in § 20.3 of this chapter, are not subject to the provisions of paragraphs (a) and (b) of this section.
- (d) For purposes of this section, a period of three consecutive months during which an international section 214 authorization holder does not provide any service under its international section 214 authority is referred to as permanent discontinuance of service.

(1) An international section 214 authorization holder that permanently discontinues service under its international section 214 authority shall surrender the international section 214 authorization.

(2) An international section 214 authorization holder with existing customers shall comply with the requirements of § 63.19(a) to notify all affected customers prior to the planned discontinuance. If a carrier will discontinue part but not all of its U.S.-international services (for example, by discontinuing service only on a particular U.S.-international route) and will continue to provide other U.S.-international service(s) under its international section 214 authority, it shall comply with the requirements of § 63.19(a) to notify affected customers prior to discontinuance of those services.

(3) An international section 214 authorization holder that has permanently discontinued service shall file a notification with the Commission through the International Bureau Filing System (IBFS), or its successor system, in the file number associated with the carrier's international section 214 authorization within 30 days after the discontinuance. The notification shall contain the following information:

(i) the name, address, and telephone number of the authorization holder;

(ii) the initial date as of when the authorization holder did not provide service under its international section 214 authority;

(iii) a statement as to whether any customers were affected, and if so, whether the authorization holder complied with section 63.19(a) of the Commission's rules;

(iv) whether or not the carrier is also surrendering any International Signaling Point Codes (ISPCs); and

(v) a request to surrender the authorization.

(e) Even if an international section 214 authorization holder fails to file a notification of discontinuance and surrender its international section 214 authorization, the authorization shall be cancelled if the Commission determines that the authorization holder has permanently discontinued service under its international section 214 authority. Upon determination that an authorization holder has permanently discontinued service under its international section 214 authority:

(1) The International Bureau or its successor entity shall release an informative public notice announcing the proposed cancellation of the authorization;

(2) The authorization holder shall have 30 days to respond and explain why the authorization should not be cancelled; and

(3) If the authorization holder does not respond, the authorization shall be automatically cancelled at the end of the 30-day period.

(f) Subject to the availability of electronic forms, all filings described in this section must be filed electronically through the International Bureau Filing System (IBFS) or its successor system. A list of forms that are available for electronic filing can be found on the IBFS homepage. For information on electronic filing requirements, see part 1, §§ 1.1000 through 1.10018 of this

chapter and the IBFS homepage at <https://www.fcc.gov/ibfs>. See also §§ 63.20 and 63.53.

9. Amend § 63.21 by revising paragraph (g), redesignating paragraphs (a) through (j) as paragraphs (d) through (m), and adding new paragraphs (a), (b), and (c) to read as follows:

§ 63.21 Conditions applicable to all international Section 214 authorizations.

International carriers authorized under section 214 of the Communications Act of 1934, as amended, must follow the following requirements and prohibitions:

(a) ***Authorization Period.*** An international section 214 authorization will have a term not to exceed 10 years from the date of grant or renewal. A carrier's international section 214 authority may be renewed for additional periods not to exceed 10 years upon proper application to the Commission pursuant to § 63.27 of this chapter, subject to the Commission's grant of the renewal application. The Commission reserves the discretion to shorten the renewal timeframe on a case-by-case basis where the Commission deems it appropriate to require an international section 214 authorization holder to seek renewal of its international section 214 authority sooner than a 10 year period, or to adopt conditions on renewal where the Commission determines that renewal of the carrier's international section 214 authority otherwise would not be in the public interest.

(b) ***Permissible Number of Authorizations.*** An international section 214 authorization holder shall hold only one international section 214 authorization except in certain limited circumstances.

(1) An authorization holder that holds more than one authorization shall surrender the excess authorization(s) except in certain limited circumstances where a carrier may need more than one authorization for different authority and conditions, such as:

- (i) Authority for overseas cable construction for a common carrier submarine cable; or
- (ii) The carrier is affiliated with a foreign carrier with market power on a U.S.-international route; or
- (iii) Other limited circumstance as approved by the Commission, or the International Bureau or its successor entity.

(c) ***Commencement of Service Requirement.*** An international section 214 authorization holder shall commence service under its international section 214 authority within one year following the grant.

(1) An authorization holder shall file a notification with the Commission through IBFS, or its successor system, within 30 days of the date when it begins to offer service but in no case later than one year following the grant of international section 214 authority. The commencement of service notification shall include:

- (i) A certification by an officer or other authorized representative of the authorization holder that the authorization holder has met the commencement of service requirement;
- (ii) The date that the authorization holder commenced service;
- (iii) A certification that the information is true and accurate upon penalty of perjury; and

(iv) The name, title, address, telephone number, and association with the authorization holder of the officer or other authorized representative who executed the certifications.

(2) An authorization holder may obtain a waiver of the one-year time period if it can show good cause why it is unable to commence service within one year following the grant of its authorization and identify an alternative reasonable timeframe when it can commence service

(3) If an authorization holder does not notify the Commission of the commencement of service or file a request for a waiver within one year following the grant of international section 214 authority, the authorization shall be cancelled.

(j) The Commission reserves the right to review a carrier's authorization at any time, and, if warranted, impose additional requirements on U.S. international carriers in circumstances where it appears that harm to competition is occurring on one or more U.S. international routes or where national security, law enforcement, foreign policy, trade policy, or other public interest concerns are raised by the U.S. international carrier's international section 214 authority.

(m) Subject to the availability of electronic forms, all notifications and other filings described in this section must be filed electronically through the International Bureau Filing System (IBFS) or its successor system. A list of forms that are available for electronic filing can be found on the IBFS homepage. For information on electronic filing requirements, see part 1, §§ 1.1000 through 1.10018 of this chapter and the IBFS homepage at <https://www.fcc.gov/ibfs>. See also §§ 63.20 and 63.53.

10. Amend § 63.24 by revising paragraphs (b), (c), (d), (e), (f), and (h), redesignating paragraphs (g) and (h) as paragraphs (h) and (i), and adding new paragraph (g) to read as follows:

§ 63.24 Assignments and transfers of control.

(b) **Assignments.** For purposes of this section, an assignment of an authorization is a transaction in which the authorization is assigned from one entity to another entity. Following an assignment, the authorization is held by an entity other than the one to which it was originally granted.

(1) The sale of a customer base, or a portion of a customer base, by a carrier to another carrier, is a sale of assets and shall be treated as an assignment, which requires prior Commission approval under this section.

(2) [Reserved]

(c) **Transfers of control.** For purposes of this section, a transfer of control is a transaction in which the authorization remains held by the same entity, but there is a change in the entity or entities that control the authorization holder. A change from less than 50 percent ownership to 50 percent or more ownership shall always be considered a transfer of control. A change from 50 percent or more ownership to less than 50 percent ownership shall always be considered a transfer of control. In all other situations, whether the interest being transferred is controlling

must be determined on a case-by-case basis with reference to the factors listed in (d)(1).

(d) ***Pro forma assignments and transfers of control.*** Transfers of control or assignments that do not result in a change in the actual controlling party are considered non-substantial, or “pro forma.” Whether there has been a change in the actual controlling party must be determined on a case-by-case basis with reference to the factors listed in (d)(1). The types of transactions listed in (d)(2) shall be considered presumptively pro forma and prior approval from the Commission need not be sought.

(1) Because the issue of control inherently involves issues of fact, it must be determined on a case-by-case basis and may vary with the circumstances presented by each case. The factors relevant to a determination of control in addition to equity ownership include, but are not limited to the following: power to constitute or appoint more than fifty percent of the board of directors or partnership management committee; authority to appoint, promote, demote and fire senior executives that control the day-to-day activities of the licensee; ability to play an integral role in major management decisions of the licensee; authority to pay financial obligations, including expenses arising out of operations; ability to receive monies and profits from the facility's operations; and unfettered use of all facilities and equipment.

(2) If a transaction is one of the types listed further, the transaction is presumptively pro forma and prior approval need not be sought. In all other cases, the relevant determination shall be made on a case-by-case basis. Assignment from an individual or individuals (including partnerships) to a corporation owned and controlled by such individuals or partnerships without any substantial change in their relative interests; Assignment from a corporation to its individual stockholders without effecting any substantial change in the disposition of their interests; Assignment or transfer by which certain stockholders retire and the interest transferred is not a controlling one; Corporate reorganization that involves no substantial change in the beneficial ownership of the corporation (including re-incorporation in a different jurisdiction or change in form of the business entity); Assignment or transfer from a corporation to a wholly owned direct or indirect subsidiary thereof or vice versa, or where there is an assignment from a corporation to a corporation owned or controlled by the assignor stockholders without substantial change in their interests; or Assignment of less than a controlling interest in a partnership.

(e) ***Applications for substantial transactions.***

(1) In the case of an assignment or transfer of control of an international section 214 authorization that is not pro forma, the proposed assignee or transferee must apply to the Commission for authority prior to consummation of the proposed assignment or transfer of control.

(2) The application shall include:

(i) The information requested in paragraphs (a) through (d) of § 63.18 for both the transferor/assignor and the transferee/assignee;

(ii) The information requested in paragraphs (h) through (p) and (w) of § 63.18 is required only for the transferee/assignee;

(iii) The ownership diagram required under § 63.18(h)(2) shall include both the pre-transaction and post-transaction ownership of the authorization holder. The applicant shall include a narrative describing the means by which the proposed transfer or assignment will take place; and

(iv) The information requested in paragraphs (r) through (v) is required for the authorization holder whose authorization is subject to the proposed transfer of control or assignment.

(f) *Notifications for non-substantial or “pro forma” transactions.*

(1) ***

(2) A *pro forma* assignee or a carrier that is subject to a pro forma transfer of control must file a notification with the Commission no later than thirty (30) days after the assignment or transfer is completed. The notification must contain the following:

(i) The information requested in paragraphs (a) through (d) and (h) of § 63.18 for the transferee/assignee;

(ii) The ownership diagram required under § 63.18(h)(2) shall include both the pre-transaction and post-transaction ownership of the authorization holder;

(iii) A certification that the transfer of control or assignment was pro forma and that, together with all previous pro forma transactions, does not result in a change in the actual controlling party; and

(iv) The information requested in paragraphs (r) through (v) of § 63.18 for the authorization holder whose authorization is subject to the transfer of control or assignment.

(3) Subject to § 63.21(b), a single notification may be filed for an assignment or transfer of control of more than one authorization if each authorization is identified by the file number under which it was granted.

(g) ***International Signaling Point Codes (ISPCs).*** An international section 214 authorization holder seeking to assign or transfer control of its international section 214 authorization must identify in the application any ISPCs that it holds, and state whether the ISPC will be subject to the assignment or transfer of control.

(i) ***Electronic Filing.*** Subject to the availability of electronic forms, all applications and notifications described in this section must be filed electronically through the International Bureau Filing System (IBFS) or its successor system. A list of forms that are available for electronic filing can be found on the IBFS homepage. For information on electronic filing requirements, see part 1, §§ 1.1000 through 1.10018 of this chapter and the IBFS homepage at <https://www.fcc.gov/ibfs>. See also §§ 63.20 and 63.53.

11. Add a new § 63.26 to read as follows:

§ 63.26 Renewal of International Section 214 Authority

(a) ***Renewal Timeframe.*** Each international section 214 authorization shall be subject to a renewal timeframe not to exceed 10 years from the date of the grant of international section 214 authority or modification, assignment, transfer of control, or renewal of the international section

214 authority. The Commission reserves its discretion to shorten the renewal timeframe on a case-by-case basis where the Commission deems it appropriate to require the international section 214 authorization holder to seek renewal of its international section 214 authority sooner than otherwise would be required, or to adopt conditions on the renewal of the international section 214 authority where the Commission determines that renewal otherwise would not be in the public interest.

(b) ***Filing Requirements.*** Any party granted authority pursuant to section 214 of the Communications Act of 1934, as amended, to construct a new line, or acquire or operate any line, or engage in transmission over or by means of such additional line for the provision of common carrier communications services between the United States, its territories or possessions, and a foreign point shall request renewal of the authority by formal application. The application for renewal of international section 214 authority shall contain the information required by § 63.27.

(c) ***Streamlined Renewal Processing Procedures.*** A complete application seeking renewal of international section 214 authority shall be granted by the Commission 14 days after the date of public notice listing the application as accepted for filing if:

(1) the Commission does not refer the application to the Executive Branch agencies because the applicant does not have reportable foreign ownership and the application does not raise other national security, law enforcement, or other considerations warranting Executive Branch review;

(2) the application does not raise other public interest considerations, including regulatory compliance;

(3) the Executive Branch agencies do not separately request during the comment period that the Commission defer action and remove the application from streamlined processing; and

(4) no objections to the application are timely raised by an opposing party.

(d) ***Authorizations Pending Renewal.*** An applicant that has timely applied for renewal of its international section 214 authorization may continue providing service(s) under its international section 214 authority while its renewal application is pending review.

(e) ***Referral of Applications to the Executive Branch Agencies.***

(1) The Commission will refer to the Executive Branch agencies an application for renewal of international section 214 authority where the applicant has reportable foreign ownership, consistent with § 1.40002 of this chapter.

(2) The Commission will also refer to the Executive Branch agencies the following applications for renewal of international section 214 authority, irrespective of whether the applicant has reportable foreign ownership:

(i) Renewal application where an applicant discloses that it uses and/or will use a foreign-owned managed network service provider;

(ii) Renewal application where an applicant discloses it has cross-border facilities; and

(iii) Renewal application where an applicant certifies that it uses equipment or services identified on the Commission's "Covered List" of equipment and services deemed pursuant to the Secure

and Trusted Communications Networks Act to pose an unacceptable risk to the national security of the United States or the security and safety of United States persons.

(f) **Expiration and Cancellation of Authorization.** If an authorization holder fails to timely file an application for renewal of its international section 214 authority, the international section 214 authorization shall expire and be cancelled by operation of law.

(1) Authority is delegated to the International Bureau or its successor entity to provide notice in advance of the renewal deadline.

12. Add a new § 63.27 to read as follows:

§ 63.27 Applications for Renewal of International Section 214 Authority

An application for renewal of international section 214 authority shall include information demonstrating how the grant of the application will serve the public interest, convenience, and necessity. The application shall include the following information:

(a) The information requested in paragraphs (a) through (d), (h) through (k), (m) through (v), and (x) of § 63.18;

(b) One or more of the following statements, as pertinent:

(1) **Global facilities-based authority.** If applying for renewal of authority to operate as a facilities-based international common carrier subject to § 63.22, the applicant shall:

(i) State that it is requesting renewal of section 214 authority to operate as a facilities-based carrier pursuant to § 63.27(b)(1) of the Commission's rules;

(ii) List any countries for which the applicant does not request renewal of section 214 authority under this paragraph (see § 63.22(a)); and

(iii) Certify that it will comply with the terms and conditions contained in §§ 63.21 and 63.22.

(2) **Global Resale Authority.** If applying for renewal of authority to resell the international services of authorized common carriers subject to § 63.23, the applicant shall:

(i) State that it is requesting renewal of section 214 authority to operate as a resale carrier pursuant to § 63.27(b)(2) of the Commission's rules;

(ii) List any countries for which the applicant does not request renewal of section 214 authority under this paragraph (see § 63.23(a) of this part); and

(iii) Certify that it will comply with the terms and conditions contained in §§ 63.21 and 63.23 of this part.

(3) Other authorizations. If applying for renewal of authority to acquire operate facilities or to

provide services not covered by paragraphs (e)(1) and (e)(2) of this section, the applicant shall provide a description of the facilities and services for which it seeks renewal of authority. The applicant shall certify that it will comply with the terms and conditions contained in § 63.21 and § 63.22 and/or § 63.23, as appropriate. Such description also shall include any additional information the Commission shall have specified previously in an order, public notice or other official action as necessary for authorization. The applicant shall also state whether it has separately filed an application for international section 214 authority to acquire facilities or to provide new services not covered by §§ 63.18(e)(1), 63.18(e)(2), 63.27(e)(1), and 63.27(e)(2) nor covered by the previous grant of authority under § 63.18(e)(3) and explain whether the applicant is seeking approval to hold more than one authorization pursuant to the exception in § 63.21(b)(iii).

(c) Applicants shall apply for renewal of any or all of the authority provided for in paragraph (e) of this section in the same renewal application. The applicant may want to file separate applications for renewal of those services not subject to streamlined processing under § 63.12.

(d) Where the applicant is seeking renewal of facilities-based authority under paragraph (e)(3) of this section, a statement whether an authorization of the facilities is categorically excluded as defined by § 1.1306 of this chapter. If answered affirmatively, an environmental assessment as described in § 1.1311 of this chapter need not be filed with the application.

(e) Subject to the availability of electronic forms, all applications described in this section must be filed electronically through the International Bureau Filing System (IBFS) or its successor system. A list of forms that are available for electronic filing can be found on the IBFS homepage. For information on electronic filing requirements, see part 1, §§ 1.1000 through 1.10018 of this chapter and the IBFS homepage at <https://www.fcc.gov/ibfs>. See also §§ 63.20 and 63.53.

13. Add a new § 63.28 to read as follows:

§ 63.28 Ongoing Reporting Requirements for International Section 214 Authorization Holders

(a) Each international section 214 authorization holder shall provide updated ownership information and other information to the Commission every three years following the date of the initial grant of an application to renew the international section 214 authority.

(1) An authorization holder shall file a report every three years based on the date of the initial grant of its renewal application, until and unless the Commission grants a subsequent application for modification, assignment, transfer of control, or renewal of the international section 214 authority as filed by the authorization holder, at which point the three-year reporting cycle shall commence anew as of the date of the new grant.

(b) Each authorization holder shall include the following information in the report. The report must contain information that is current as of thirty (30) days prior to the date of the submission.

(1) The information requested in paragraphs (h) and (r)-(u) of § 63.18;

(c) Each authorization holder shall submit its report through the International Bureau Filing System (IBFS), or its successor system, in the file number associated with its international section 214 authorization.

(d) An authorization holder that has reportable foreign ownership pursuant to § 63.18(h) as of thirty (30) days prior to the date of the submission must also file a copy of the report directly with the Committee.

(e) Failure to submit timely, consistent, accurate, and complete information shall constitute grounds for enforcement action against the authorization holder, up to and including revocation of the international section 214 authorization.

14. Add a new § 63.29 to read as follows:

§ 63.29 Cross Border International Telecommunications Facilities.

Initial Information Collection. For purposes of the initial information collection, each international section 214 authorization holder shall report the information required in § 63.18(s) sixty (60) days after the International Bureau announces the completion of review by the Office of Management and Budget and revises this paragraph accordingly.

15. Add a new § 63.30 to read as follows:

§ 63.30 Failure to Comply with One-Time Information Collection

(a) ***Automatic Cancellation of International Section 214 Authorization.*** An international section 214 authorization will be automatically cancelled upon the authorization holder's failure to file the information required by the Order adopted in FCC 23-XXX within thirty (30) days after publication of a notice in the Federal Register identifying international section 214 authorization holders that failed to file the required information by the deadline announced in the Federal Register notice establishing the effective date of the Order.

(b) ***Office of Management and Budget Review.*** The information required by the Order adopted in FCC 23-XXX shall not be required until the International Bureau announces the completion of review by the Office of Management and Budget and the required compliance date and revises this section accordingly.

(c) ***New Application.*** An international section 214 authorization holder whose international section 214 authorization is cancelled for failure to timely file the information required by the Order adopted in FCC 23-XXX, may file an application for a new international 214 authorization in accordance with the Commission's rules.

(d) ***Reinstatement Nunc Pro Tunc.*** An international section 214 authorization holder whose international section 214 authorization is cancelled for failure to timely file the information required by the Order adopted in FCC 23-XXX may file a petition for reinstatement *nunc pro tunc* of the international section 214 authorization. A petition for reinstatement will be considered if:

- (1) it is filed within six months after publication of the Federal Register notice identifying international section 214 authorization holders that failed to file the required information by the deadline described in in paragraph (a);
- (2) it demonstrates that the authorization holder is currently in operation and has customers;
and
- (3) demonstrates good cause for the failure to timely file the information required by the Order adopted in FCC 23-XXX.

APPENDIX B

Initial Regulatory Flexibility Analysis

1. As required by the Regulatory Flexibility Act of 1980, as amended (RFA),¹ the Commission has prepared this Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on a substantial number of small entities by the policies and rules proposed in this Notice of Proposed Rulemaking (Notice). Written public comments are requested on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments on the Notice provided in paragraph 195 of the item. The Commission will send a copy of the Notice, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration (SBA).² In addition, the Notice and IRFA (or summaries thereof) will be published in the Federal Register.³

A. Need for, and Objectives of, the Proposed Rules

2. In the Notice, we take another important step to protect the nation's telecommunications infrastructure from threats in an evolving national security and law enforcement landscape by proposing comprehensive changes to the Commission's rules that allow carriers to provide international telecommunications service pursuant to section 214 of the Communications Act of 1934, as amended (Act). The overarching objective of this proceeding is to adopt rule changes that will enable the Commission, in close collaboration with relevant Executive Branch agencies, to better protect telecommunications services and infrastructure in the United States in light of evolving national security, law enforcement, foreign policy, and trade policy risks. By this Notice, we propose rules that would require carriers to renew, every 10 years, their international section 214 authority. In the alternative, we seek comment on adopting rules that would require all international section 214 authorization holders to periodically update information enabling the Commission to review the public interest and national security implications of those authorizations based on that updated information. Through these proposals, we seek to ensure that the Commission is exercising appropriate oversight of international section 214 authorization holders to safeguard U.S. telecommunications networks.

3. In 2020, the United States Senate Committee on Homeland Security and Government Affairs, Permanent Subcommittee on Investigations' report (PSI Report) recommended the periodic review and renewal of foreign carriers' international section 214 authorizations to ensure that the Commission and the Executive Branch account for evolving national security, law enforcement, foreign policy, and trade risks.⁴ Based on the PSI Report recommendation, the Notice propose several changes to improve the Commission's oversight of international section 214 authorizations and ensure that a carrier's authorization continues to serve the public interest, as the Act intended.

4. *Executive Summary of the Proposed Rules.* To establish an effective and expeditious process for the renewal or, in the alternative, periodic review of international section 214 authorizations, in this Notice, we propose and seek comment on the following issues:

- *Renewal of International Section 214 Authority.* We propose to adopt a 10-year renewal requirement for all international section 214 authorization holders. In the alternative, we seek

¹ See 5 U.S.C. § 603. The RFA, see 5 U.S.C. §§ 601-12, has been amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), Pub. L. No. 104-121, Title II, 110 Stat. 857 (1996).

² See 5 U.S.C. § 603(a).

³ *Id.*

⁴ PSI Report at 9, 12-13 ("Congress should require the periodic review and renewal of foreign carriers' authorizations to provide international telecommunications services.").

comment on adopting a periodic review process.

- We propose to adopt a process that establishes a system of priorities for renewal applications according to the existence and nature of reportable foreign ownership and the likelihood that the applications will raise national security, law enforcement, foreign policy, or trade policy concerns.
 - Consistent with Commission practice, we will continue to coordinate with the Executive Branch agencies for assessment of any national security, law enforcement, foreign policy, and trade policy concerns. To minimize administrative burdens, we propose to adopt streamlined and simplified procedures for renewal applications that do not have reportable foreign ownership.
 - We propose, as a baseline, to apply to renewal applications the same rules applicable to initial applications for international section 214 authority and thus harmonize the application requirements.
- *Proposed Rules Applicable to All Applicants.* In addition, to continue to address evolving national security, law enforcement, and other risks, we propose or seek comment on other improvements to the Commission's rules applicable to applications for international section 214 authority and modification, assignment, transfer of control, and renewal of international section 214 authority.
 - *Five (5) Percent Threshold for Reportable Ownership Interests.* We seek comment on whether to adopt a new ownership reporting threshold that would require disclosure of 5% or greater direct and indirect equity and/or voting interests.
 - *Services and Geographic Markets.* We propose to adopt rules requiring applicants to provide information about their current and/or expected future services and geographic markets.
 - *Foreign-Owned Managed Network Service Providers (MNSPs).* We seek comment on whether the Commission should require certain applicants, without reportable ownership, to provide information on foreign-owned MNSPs.
 - *Cross Border Facilities Information.* We propose to require applicants to identify the facilities that they use and/or will use to provide services under their international section 214 authority from the United States into Canada and/or Mexico and to provide updated information on a periodic basis.
 - *Facilities Certifications.*
 - *Facilities Cybersecurity Certification.* We propose to require applicants to certify in their application that they will undertake to implement and adhere to baseline cybersecurity standards based on universally recognized standards.
 - *Facilities "Covered List" Certification.* We seek comment on whether the Commission should require applicants to certify in their application whether or not they use equipment or services identified in the Commission's "Covered List" of equipment and services deemed pursuant to the Secure and Trusted Communications Networks Act to pose an unacceptable risk to the national security of the United States or the security and safety of United States persons.
- *Other Changes to Parts 1 and 63 of the Commission's Rules.* To further ensure that carriers' use of their international section 214 authority is consistent with the public interest, we propose and seek comment on modifications to Part 1 and 63 rules.

- *Permissible Number of Authorizations.* We propose to adopt a rule that would allow an authorization holder to hold only one international section 214 authorization except in certain limited circumstances.
- *Commence Service Within One Year.* We propose to adopt a rule requiring an international section 214 authorization holder to commence service under its international section 214 authority within one year following the grant.
- *Changes to the Discontinuance Rule.* We propose to amend section 63.19 of the Commission's rules to require all authorization holders that permanently discontinue service provided pursuant to their international section 214 authority, to file a notification of the discontinuance and surrender the authorization.
- *Ongoing Reporting Requirements.* We propose to require authorization holders to provide updated ownership information, cross border facilities information, and other information every three years.
- *International Signaling Point Codes (ISPCs).* We propose to adopt a rule requiring applicants seeking to assign or transfer control of their international section 214 authorization to identify in their applications any ISPCs that they hold and whether the ISPC will be subject to the assignment or transfer of control.
- *Administrative Modifications.* We propose to adopt other administrative corrections to Parts 1 and 63 of the Commission's rules.⁵

A. Legal Basis

5. The proposed action is authorized under sections 4(i), 4(j), 201, 214, 403, and 413 of the Communications Act as amended, 47 U.S.C. §§ 154(i), 154(j), 201, 214, 403, and 413.

C. Description and Estimate of the Number of Small Entities to Which the Proposed Rules Will Apply

6. The RFA directs agencies to provide a description of, and where feasible, an estimate of the number of small entities that may be affected by the proposed rules, if adopted.⁶ The RFA generally defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction."⁷ In addition, the term "small business" has the same meaning as the term "small business concern" under the Small Business Act.⁸ A "small business concern" is one which: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA).⁹

7. *Wired Telecommunications Carriers.* The U.S. Census Bureau defines this industry as establishments primarily engaged in operating and/or providing access to transmission facilities and infrastructure that they own and/or lease for the transmission of voice, data, text, sound, and video using

⁵ See *supra* at para. 4.

⁶ 5 U.S.C. § 603(b)(3).

⁷ 5 U.S.C. § 601(6).

⁸ 5 U.S.C. § 601(3). (incorporating by reference the definition of "small-business concern" in the Small Business Act, 15 U.S.C. § 632). Pursuant to 5 U.S.C. § 601(3), the statutory definition of a small business applies "unless an agency, after consultation with the Office of Advocacy of the Small Business Administration and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the Federal Register."

⁹ 15 U.S.C. § 632.

wired communications networks.¹⁰ Transmission facilities may be based on a single technology or a combination of technologies. Establishments in this industry use the wired telecommunications network facilities that they operate to provide a variety of services, such as wired telephony services, including VoIP services, wired (cable) audio and video programming distribution, and wired broadband internet services.¹¹ By exception, establishments providing satellite television distribution services using facilities and infrastructure that they operate are included in this industry.¹² Wired Telecommunications Carriers are also referred to as wireline carriers or fixed local service providers.¹³

8. The SBA small business size standard for Wired Telecommunications Carriers classifies firms having 1,500 or fewer employees as small.¹⁴ U.S. Census Bureau data for 2017 show that there were 3,054 firms that operated in this industry for the entire year.¹⁵ Of this number, 2,964 firms operated with fewer than 250 employees.¹⁶ Additionally, based on Commission data in the 2021 Universal Service Monitoring Report, as of December 31, 2020, there were 5,183 providers that reported they were engaged in the provision of fixed local services.¹⁷ Of these providers, the Commission estimates that 4,737 providers have 1,500 or fewer employees.¹⁸ Consequently, using the SBA's small business size standard, most of these providers can be considered small entities.

9. *Competitive Local Exchange Carriers (LECs)*. Neither the Commission nor the SBA has developed a size standard for small businesses specifically applicable to local exchange services. Providers of these services include several types of competitive local exchange service providers.¹⁹ Wired Telecommunications Carriers²⁰ is the closest industry with a SBA small business size standard. The SBA small business size standard for Wired Telecommunications Carriers classifies firms having

¹⁰ See U.S. Census Bureau, *2017 NAICS Definition, "517311 Wired Telecommunications Carriers,"* <https://www.census.gov/naics/?input=517311&year=2017&details=517311>.

¹¹ *Id.*

¹² *Id.*

¹³ Fixed Local Service Providers include the following types of providers: Incumbent Local Exchange Carriers (ILECs), Competitive Access Providers (CAPs) and Competitive Local Exchange Carriers (CLECs), Cable/Coax CLECs, Interconnected VOIP Providers, Non-Interconnected VOIP Providers, Shared-Tenant Service Providers, Audio Bridge Service Providers, and Other Local Service Providers. Local Resellers fall into another U.S. Census Bureau industry group and therefore data for these providers is not included in this industry.

¹⁴ See 13 CFR § 121.201, NAICS Code 517311 (as of 10/1/22, NAICS Code 517111).

¹⁵ See U.S. Census Bureau, *2017 Economic Census of the United States, Selected Sectors: Employment Size of Firms for the U.S.: 2017*, Table ID: EC1700SIZEEMPFIIRM, NAICS Code 517311, <https://data.census.gov/cedsci/table?y=2017&n=517311&tid=ECNSIZE2017.EC1700SIZEEMPFIIRM&hidePreview=false>.

¹⁶ *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard.

¹⁷ Federal-State Joint Board on Universal Service, Universal Service Monitoring Report at 26, Table 1.12 (2021), <https://docs.fcc.gov/pub/Id.lic/attachments/DOC-379181A1.pdf>.

¹⁸ *Id.*

¹⁹ Competitive Local Exchange Service Providers include the following types of providers: Competitive Access Providers (CAPs) and Competitive Local Exchange Carriers (CLECs), Cable/Coax CLECs, Interconnected VOIP Providers, Non-Interconnected VOIP Providers, Shared-Tenant Service Providers, Audio Bridge Service Providers, Local Resellers, and Other Local Service Providers.

²⁰ See U.S. Census Bureau, *2017 NAICS Definition, "517311 Wired Telecommunications Carriers,"* <https://www.census.gov/naics/?input=517311&year=2017&details=517311>.

1,500 or fewer employees as small.²¹ U.S. Census Bureau data for 2017 show that there were 3,054 firms that operated in this industry for the entire year.²² Of this number, 2,964 firms operated with fewer than 250 employees.²³ Additionally, based on Commission data in the 2021 Universal Service Monitoring Report, as of December 31, 2020, there were 3,956 providers that reported they were competitive local exchange service providers.²⁴ Of these providers, the Commission estimates that 3,808 providers have 1,500 or fewer employees.²⁵ Consequently, using the SBA's small business size standard, most of these providers can be considered small entities.

10. *Interexchange Carriers (IXCs)*. Neither the Commission nor the SBA have developed a small business size standard specifically for Interexchange Carriers. Wired Telecommunications Carriers²⁶ is the closest industry with a SBA small business size standard.²⁷ The SBA small business size standard for Wired Telecommunications Carriers classifies firms having 1,500 or fewer employees as small.²⁸ U.S. Census Bureau data for 2017 show that there were 3,054 firms that operated in this industry for the entire year.²⁹ Of this number, 2,964 firms operated with fewer than 250 employees.³⁰ Additionally, based on Commission data in the 2021 Universal Service Monitoring Report, as of December 31, 2020, there were 151 providers that reported they were engaged in the provision of interexchange services. Of these providers, the Commission estimates that 131 providers have 1,500 or fewer employees.³¹ Consequently, using the SBA's small business size standard, the Commission estimates that the majority of providers in this industry can be considered small entities.

11. *Prepaid Calling Card Providers*. Neither the Commission nor the SBA has developed a small business size standard specifically for prepaid calling card providers. Telecommunications Resellers³² is the closest industry with a SBA small business size standard. The Telecommunications Resellers industry comprises establishments engaged in purchasing access and network capacity from

²¹ See 13 CFR § 121.201, NAICS Code 517311 (as of 10/1/22, NAICS Code 517111).

²² See U.S. Census Bureau, *2017 Economic Census of the United States, Selected Sectors: Employment Size of Firms for the U.S.: 2017*, Table ID: EC1700SIZEEMPFI, NAICS Code 517311, <https://data.census.gov/cedsci/table?y=2017&n=517311&tid=ECNSIZE2017.EC1700SIZEEMPFI&hidePreview=false>.

²³ *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard.

²⁴ Federal-State Joint Board on Universal Service, Universal Service Monitoring Report at 26, Table 1.12 (2021), <https://docs.fcc.gov/public/attachments/DOC-379181A1.pdf>.

²⁵ *Id.*

²⁶ See U.S. Census Bureau, *2017 NAICS Definition, "517311 Wired Telecommunications Carriers,"* <https://www.census.gov/naics/?input=517311&year=2017&details=517311>.

²⁷ See 13 CFR § 121.201, NAICS Code 517311 (as of 10/1/22, NAICS Code 517111).

²⁸ *Id.*

²⁹ See U.S. Census Bureau, *2017 Economic Census of the United States, Selected Sectors: Employment Size of Firms for the U.S.: 2017*, Table ID: EC1700SIZEEMPFI, NAICS Code 517311, <https://data.census.gov/cedsci/table?y=2017&n=517311&tid=ECNSIZE2017.EC1700SIZEEMPFI&hidePreview=false>.

³⁰ *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard.

³¹ Federal-State Joint Board on Universal Service, Universal Service Monitoring Report at 26, Table 1.12 (2021), <https://docs.fcc.gov/public/attachments/DOC-379181A1.pdf>.

³² See U.S. Census Bureau, *2017 NAICS Definition, "517911 Telecommunications Resellers,"* <https://www.census.gov/naics/?input=517911&year=2017&details=517911>.

owners and operators of telecommunications networks and reselling wired and wireless telecommunications services (except satellite) to businesses and households. Establishments in this industry resell telecommunications; they do not operate transmission facilities and infrastructure.³³ Mobile virtual network operators (MVNOs) are included in this industry.³⁴ The SBA small business size standard for Telecommunications Resellers classifies a business as small if it has 1,500 or fewer employees.³⁵ U.S. Census Bureau data for 2017 show that 1,386 firms in this industry provided resale services for the entire year.³⁶ Of that number, 1,375 firms operated with fewer than 250 employees.³⁷ Additionally, based on Commission data in the 2021 Universal Service Monitoring Report, as of December 31, 2020, there were 58 providers that reported they were engaged in the provision of payphone services.³⁸ Of these providers, the Commission estimates that 57 providers have 1,500 or fewer employees.³⁹ Consequently, using the SBA's small business size standard, most of these providers can be considered small entities.

12. *Local Resellers.* Neither the Commission nor the SBA have developed a small business size standard specifically for Local Resellers. Telecommunications Resellers is the closest industry with a SBA small business size standard.⁴⁰ The Telecommunications Resellers industry comprises establishments engaged in purchasing access and network capacity from owners and operators of telecommunications networks and reselling wired and wireless telecommunications services (except satellite) to businesses and households.⁴¹ Establishments in this industry resell telecommunications; they do not operate transmission facilities and infrastructure.⁴² Mobile virtual network operators (MVNOs) are included in this industry.⁴³ The SBA small business size standard for Telecommunications Resellers classifies a business as small if it has 1,500 or fewer employees.⁴⁴ U.S. Census Bureau data for 2017 show that 1,386 firms in this industry provided resale services for the entire year.⁴⁵ Of that number, 1,375

³³ *Id.*

³⁴ *Id.*

³⁵ See 13 CFR § 121.201, NAICS Code 517911 (as of 10/1/22, NAICS Code 517121).

³⁶ See U.S. Census Bureau, *2017 Economic Census of the United States, Selected Sectors: Employment Size of Firms for the U.S.: 2017*, Table ID: EC1700SIZEEMPFI, NAICS Code 517911, <https://data.census.gov/cedsci/table?y=2017&n=517911&tid=ECNSIZE2017.EC1700SIZEEMPFI&hidePreview=false>.

³⁷ *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard.

³⁸ Federal-State Joint Board on Universal Service, Universal Service Monitoring Report at 26, Table 1.12 (2021), <https://docs.fcc.gov/pubId.lic/attachments/DOC-379181A1.pdf>.

³⁹ *Id.*

⁴⁰ See U.S. Census Bureau, *2017 NAICS Definition*, “517911 Telecommunications Resellers,” <https://www.census.gov/naics/?input=517911&year=2017&details=517911>.

⁴¹ *Id.*

⁴² *Id.*

⁴³ *Id.*

⁴⁴ See 13 CFR § 121.201, NAICS Code 517911 (as of 10/1/22, NAICS Code 517121).

⁴⁵ See U.S. Census Bureau, *2017 Economic Census of the United States, Selected Sectors: Employment Size of Firms for the U.S.: 2017*, Table ID: EC1700SIZEEMPFI, NAICS Code 517911, <https://data.census.gov/cedsci/table?y=2017&n=517911&tid=ECNSIZE2017.EC1700SIZEEMPFI&hidePreview=false>.

firms operated with fewer than 250 employees.⁴⁶ Additionally, based on Commission data in the 2021 Universal Service Monitoring Report, as of December 31, 2020, there were 293 providers that reported they were engaged in the provision of local resale services.⁴⁷ Of these providers, the Commission estimates that 289 providers have 1,500 or fewer employees.⁴⁸ Consequently, using the SBA's small business size standard, most of these providers can be considered small entities.

13. *Toll Resellers.* Neither the Commission nor the SBA have developed a small business size standard specifically for Toll Resellers. Telecommunications Resellers⁴⁹ is the closest industry with a SBA small business size standard. The Telecommunications Resellers industry comprises establishments engaged in purchasing access and network capacity from owners and operators of telecommunications networks and reselling wired and wireless telecommunications services (except satellite) to businesses and households. Establishments in this industry resell telecommunications; they do not operate transmission facilities and infrastructure.⁵⁰ Mobile virtual network operators (MVNOs) are included in this industry.⁵¹ The SBA small business size standard for Telecommunications Resellers classifies a business as small if it has 1,500 or fewer employees.⁵² U.S. Census Bureau data for 2017 show that 1,386 firms in this industry provided resale services for the entire year.⁵³ Of that number, 1,375 firms operated with fewer than 250 employees.⁵⁴ Additionally, based on Commission data in the 2021 Universal Service Monitoring Report, as of December 31, 2020, there were 518 providers that reported they were engaged in the provision of toll services.⁵⁵ Of these providers, the Commission estimates that 495 providers have 1,500 or fewer employees.⁵⁶ Consequently, using the SBA's small business size standard, most of these providers can be considered small entities.

14. *Other Toll Carriers.* Neither the Commission nor the SBA has developed a definition for small businesses specifically applicable to Other Toll Carriers. This category includes toll carriers that do not fall within the categories of interexchange carriers, operator service providers, prepaid calling card providers, satellite service carriers, or toll resellers. Wired Telecommunications Carriers⁵⁷ is the closest

⁴⁶ *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard.

⁴⁷ Federal-State Joint Board on Universal Service, Universal Service Monitoring Report at 26, Table 1.12 (2021), <https://docs.fcc.gov/pubId/lic/attachments/DOC-379181A1.pdf>.

⁴⁸ *Id.*

⁴⁹ See U.S. Census Bureau, 2017 NAICS Definition, "517911 Telecommunications Resellers," <https://www.census.gov/naics/?input=517911&year=2017&details=517911>.

⁵⁰ *Id.*

⁵¹ *Id.*

⁵² See 13 CFR § 121.201, NAICS Code 517911 (as of 10/1/22, NAICS Code 517121).

⁵³ See U.S. Census Bureau, 2017 Economic Census of the United States, Selected Sectors: Employment Size of Firms for the U.S.: 2017, Table ID: EC1700SIZEEMPFIEM, NAICS Code 517911, <https://data.census.gov/cedsci/table?y=2017&n=517911&tid=ECNSIZE2017.EC1700SIZEEMPFIEM&hidePreview=false>.

⁵⁴ *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard.

⁵⁵ Federal-State Joint Board on Universal Service, Universal Service Monitoring Report at 26, Table 1.12 (2021), <https://docs.fcc.gov/pubId/lic/attachments/DOC-379181A1.pdf>.

⁵⁶ *Id.*

⁵⁷ See U.S. Census Bureau, 2017 NAICS Definition, "517311 Wired Telecommunications Carriers," <https://www.census.gov/naics/?input=517311&year=2017&details=517311>.

industry with a SBA small business size standard.⁵⁸ The SBA small business size standard for Wired Telecommunications Carriers classifies firms having 1,500 or fewer employees as small.⁵⁹ U.S. Census Bureau data for 2017 show that there were 3,054 firms in this industry that operated for the entire year.⁶⁰ Of this number, 2,964 firms operated with fewer than 250 employees.⁶¹ Additionally, based on Commission data in the 2021 Universal Service Monitoring Report, as of December 31, 2020, there were 115 providers that reported they were engaged in the provision of other toll services.⁶² Of these providers, the Commission estimates that 113 providers have 1,500 or fewer employees.⁶³ Consequently, using the SBA's small business size standard, most of these providers can be considered small entities.

15. *Wireless Telecommunications Carriers (except Satellite).* This industry comprises establishments engaged in operating and maintaining switching and transmission facilities to provide communications via the airwaves.⁶⁴ Establishments in this industry have spectrum licenses and provide services using that spectrum, such as cellular services, paging services, wireless Internet access, and wireless video services.⁶⁵ The SBA size standard for this industry classifies a business as small if it has 1,500 or fewer employees.⁶⁶ U.S. Census Bureau data for 2017 show that there were 2,893 firms in this industry that operated for the entire year.⁶⁷ Of that number, 2,837 firms employed fewer than 250 employees.⁶⁸ Additionally, based on Commission data in the 2021 Universal Service Monitoring Report, as of December 31, 2020, there were 797 providers that reported they were engaged in the provision of wireless services.⁶⁹ Of these providers, the Commission estimates that 715 providers have 1,500 or fewer employees.⁷⁰ Consequently, using the SBA's small business size standard, most of these providers can be considered small entities.

16. *All Other Telecommunications.* This industry is comprised of establishments primarily

⁵⁸ See 13 CFR § 121.201, NAICS Code 517311 (as of 10/1/22, NAICS Code 517111).

⁵⁹ *Id.*

⁶⁰ See U.S. Census Bureau, *2017 Economic Census of the United States, Selected Sectors: Employment Size of Firms for the U.S.: 2017*, Table ID: EC1700SIZEEMPFI, NAICS Code 517311, <https://data.census.gov/cedsci/table?y=2017&n=517311&tid=ECNSIZE2017.EC1700SIZEEMPFI&hidePreview=false>.

⁶¹ *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard.

⁶² Federal-State Joint Board on Universal Service, Universal Service Monitoring Report at 26, Table 1.12 (2021), <https://docs.fcc.gov/pubId.lic/attachments/DOC-379181A1.pdf>.

⁶³ *Id.*

⁶⁴ See U.S. Census Bureau, *2017 NAICS Definition*, "517312 Wireless Telecommunications Carriers (except Satellite)," <https://www.census.gov/naics/?input=517312&year=2017&details=517312>.

⁶⁵ *Id.*

⁶⁶ See 13 CFR § 121.201, NAICS Code 517312 (as of 10/1/22, NAICS Code 517112).

⁶⁷ See U.S. Census Bureau, *2017 Economic Census of the United States, Employment Size of Firms for the U.S.: 2017*, Table ID: EC1700SIZEEMPFI, NAICS Code 517312, <https://data.census.gov/cedsci/table?y=2017&n=517312&tid=ECNSIZE2017.EC1700SIZEEMPFI&hidePreview=false>.

⁶⁸ *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard.

⁶⁹ Federal-State Joint Board on Universal Service, Universal Service Monitoring Report at 26, Table 1.12 (2021), <https://docs.fcc.gov/pubId.lic/attachments/DOC-379181A1.pdf>.

⁷⁰ *Id.*

engaged in providing specialized telecommunications services, such as satellite tracking, communications telemetry, and radar station operation.⁷¹ This industry also includes establishments primarily engaged in providing satellite terminal stations and associated facilities connected with one or more terrestrial systems and capable of transmitting telecommunications to, and receiving telecommunications from, satellite systems.⁷² Providers of Internet services (e.g. dial-up ISPs) or Voice over Internet Protocol (VoIP) services, via client-supplied telecommunications connections are also included in this industry.⁷³ The SBA small business size standard for this industry classifies firms with annual receipts of \$35 million or less as small.⁷⁴ U.S. Census Bureau data for 2017 show that there were 1,079 firms in this industry that operated for the entire year.⁷⁵ Of those firms, 1,039 had revenue of less than \$25 million.⁷⁶ Based on this data, the Commission estimates that the majority of “All Other Telecommunications” firms can be considered small.

D. Description of Projected Reporting, Recordkeeping and Other Compliance Requirements for Small Entities

17. The Notice is intended to adopt rules that will further our goal of ensuring that the Commission continually accounts for evolving public interest considerations associated with international section 214 authorizations following an initial grant of the authority. *First*, we propose to cancel the authorizations of those authorization holders that fail to respond to the one-time collection required by the *Order*. *Second*, we propose to implement a formalized renewal framework for the Commission’s reassessment of all authorizations or, in the alternative, seek comment on a periodic review process of such authorizations. *Third*, we propose to adopt a 10-year renewal requirement for international section 214 authorization holders that prioritizes renewal applications with foreign ownership to take into account national security, law enforcement, foreign policy, and trade policy concerns. *Fourth*, we propose new application rules to capture critical information from applicants and require additional certifications. *Finally*, to further ensure that carriers’ use of their international section 214 authority is in the public interest, we propose and seek comment on modifications to other Part 63 rules.

18. Given the increasing concerns about ensuring the security and integrity of U.S. telecommunications infrastructure, we propose new rules to capture critical information from applicants and require additional certifications. We propose to apply the requirements applicable to initial applications for international section 214 authority to renewal applications. We propose to adopt new application requirements to improve the Commission’s assessment of evolving national security, law enforcement, foreign policy, and trade policy risks. We propose to adopt a new 5% ownership reporting threshold for all initial international section 214 authority, modification, assignment, transfer of control, and renewal applications. We also propose to require each applicant to provide information about its

⁷¹ See U.S. Census Bureau, *2017 NAICS Definition*, “517919 All Other Telecommunications,” <https://www.census.gov/naics/?input=517919&year=2017&details=517919>.

⁷² *Id.*

⁷³ *Id.*

⁷⁴ See 13 CFR § 121.201, NAICS Code 517919 (as of 10/1/22, NAICS Code 517810).

⁷⁵ See U.S. Census Bureau, *2017 Economic Census of the United States, Selected Sectors: Sales, Value of Shipments, or Revenue Size of Firms for the U.S.: 2017*, Table ID: EC1700SIZEREVFIRM, NAICS Code 517919, <https://data.census.gov/cedsci/table?y=2017&n=517919&tid=ECNSIZE2017.EC1700SIZEREVFIRM&hidePreview=false>.

⁷⁶ *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard. We also note that according to the U.S. Census Bureau glossary, the terms receipts and revenues are used interchangeably, see https://www.census.gov/glossary/#term_ReceiptsRevenueServices.

services, geographic markets, and facilities crossing the United States' borders with Canada and Mexico (cross border facilities), and seek comment on whether applicants should certify that their facilities-based equipment meets certain requirements. We seek comment on whether to require applicants to provide ownership information for each foreign-owned MNSP the applicant uses or will use. Additionally, we propose to require all authorization holders to report on their reportable ownership and other information every three years. Finally, we propose to require carriers to certify as to their compliance with the ongoing reporting requirement in the renewal application. We tentatively conclude that these proposed requirements are important and necessary for informing the Commission's evaluation of an applicant's request for international section 214 authority and would serve the public interest given evolving risks identified by the Commission and the Executive Branch.

19. We propose additional changes to the Commission's rules for international services to ensure that the Commission has current and accurate information about which entities are providing international service. We propose to adopt a rule that would allow an authorization holder to hold only one international section 214 authorization except in certain limited circumstances. We propose to adopt a rule requiring an international section 214 authorization holder to commence service(s) within one year following the grant. We propose to amend section 63.19 of the Commission's rules to require that all authorization holders that permanently discontinue service under their international section 214 authority to file with the Commission a notification of the discontinuance and surrender the authorization. We seek comment on whether the Commission should require authorization holders to provide updated ownership, cross-border facilities information, and other information every three years. We propose to adopt a rule requiring that applicants seeking to assign or transfer control of their authorization must identify in their application any ISPCs that they hold and whether the ISPC will be subject to the assignment or transfer of control.

20. We are especially interested in estimates that address alternative means to provide the same benefits, in terms of advancing national security and law enforcement interests, at lower costs. We invite comment on the costs and burdens of the proposals in the Notice, including for small entities. We expect the information we receive in comments including, where requested, cost and benefit analyses, to help the Commission identify and evaluate relevant compliance matters for small entities, including compliance costs and other burdens that may result if the proposals and associated requirements discussed in the Notice are adopted.

E. Steps Taken to Minimize the Significant Economic Impact on Small Entities and Significant Alternatives Considered

21. The RFA requires an agency to describe any significant, specifically small business, alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives (among others): "(1) the establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance and reporting requirements under the rule for such small entities; (3) the use of performance rather than design standards; and 4) an exemption from coverage of the rule, or any part thereof, for such small entities."

22. The Notice seeks comment from all interested parties on the proposals and what potential burdens, if any, would be imposed on applicants and authorization holders, including small entities. We seek comment on whether there are compliance costs and other burdens we should consider, particularly for small entities. For example, each authorization holder will require 20 hours of work by attorneys and 20 hours of work by support staff, at a cost of \$6,800 per authorization for renewal.⁷⁷ The

⁷⁷ Our cost data on wages for attorneys comes from the Commission's estimates of labor costs as represented in PRAs. Consistent with the Commission's calculations in PRAs, we estimate the median hourly wage for attorneys as \$300 for outside counsel. We assume that this wage reasonably represents an average for all attorney labor,

(continued....)

Commission also concludes that the \$875 administrative fee charged for renewal to obtain a total estimate of this burden at \$7,675 per authorization (for the first time an authorization holder must file for renewal). The Notice specifically seeks comment on whether the proposed certification requirement concerning implementation and adherence to baseline cybersecurity standards should take into account the size of the applicant and its operations. Ultimately the Commission multiplies the sum by 150 to produce a total estimate of approximately \$1,151,250 per year for the first ten years.⁷⁸ The Notice seeks comment, for example, whether the Commission should allow large facilities-based providers and small resellers to certify adherence to different baseline security standards. Small entities are encouraged to bring to the Commission's attention any specific concerns they may have with the proposals outlined in the Notice.

23. The Commission expects to consider the economic impact on small entities, as identified in comments filed in response to the Notice, in reaching its final conclusions in this proceeding.

24. To assist in the Commission's evaluation of the economic impact on small entities, as a result of actions that have been proposed in the Notice, and to better explore options and alternatives, the Commission has sought comment from the parties. In particular, the Commission seeks comment on whether any of the burdens associated the filing, recordkeeping and reporting requirements described above can be minimized for small entities. Additionally, the Commission seeks comment on whether any of the costs associated with our proposed requirements can be alleviated for small entities. The Commission expects to more fully consider the economic impact and alternatives for small entities following the review of comments filed in response to the Notice.

F. Federal Rules that May Duplicate, Overlap, or Conflict with the Proposed Rules

25. None.

across a range of authorization holders with different sizes and business models, used to comply with the rules established herein. Also consistent with the Commission's calculations in PRAs, we estimate the median hourly wage for support staff (paralegals and legal assistants) as \$40. This means that, 20 hours of work by attorneys would cost \$6,000.00 and 20 hours of work by support staff would cost \$800.00, for a total of \$6,800.00 per authorization.

⁷⁸ Specifically, $\$6,800 + \$875.00 = \$7,675$ per authorization holder. With 159 authorization holders filing renewal applications each year, we estimate $\$7,675 \times 15040 = \$1,151,200$.