

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

In the Matter of
Process Reform for Executive Branch Review of
Certain FCC Applications and Petitions Involving
Foreign Ownership
IB Docket No. 16-155

NOTICE OF PROPOSED RULEMAKING

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By the Commission: Chairman Wheeler, Commissioners Clyburn, Rosenworcel, Pai and O’Rielly issuing separate statements.

I. INTRODUCTION

1. In this Notice of Proposed Rulemaking, we propose changes to our rules and procedures related to certain applications and petitions for declaratory ruling involving foreign ownership (together, “applications”). As discussed below, the Commission refers certain applications to the relevant Executive Branch agencies for their input on any national security, law enforcement, foreign policy, and trade policy concerns that may arise from the foreign ownership interests held in the applicants and petitioners (together, “applicants”). As part of our effort to reform the Commission’s processes, we seek to improve the timeliness and transparency of this referral process. More specifically, our goals here are to identify ways in which both the Commission and the agencies might streamline and facilitate the process for obtaining information necessary for Executive Branch review and identify expected time frames, while ensuring that we continue to take Executive Branch concerns into consideration as part of our public interest review.

2. On May 10, 2016, the National Telecommunications and Information Administration (NTIA) filed a letter on behalf of the Executive Branch requesting that the Commission make changes to its processes that would help facilitate a more streamlined Executive Branch review process.1 The Executive Branch asks the Commission to require applicants seeking international section 214 authorizations or transfer of such authorizations, submarine cable landing licenses, satellite earth station authorizations, and section 310(b) foreign ownership rulings, to provide certain information as part of their applications.2 The Executive Branch specifically asks that applicants with reportable foreign ownership provide certain information regarding ownership, network operations, and related matters, and that all applicants, regardless of whether they have reportable foreign ownership, certify that they will comply with applicable law enforcement assistance requirements and respond truthfully and accurately to

1 Letter from the Honorable Lawrence E. Strickling, Assistant Secretary for Communications and Information, U.S. Department of Commerce, to Marlene H. Dortch, Secretary, FCC (May 10, 2016) (NTIA Letter); NTIA Letter Regarding Information and Certifications from Applicants and Petitioners for Certain International Authorizations, IB Docket No. 16-155, Public Notice, DA 16-531 (IB May 12, 2016) (NTIA Letter Public Notice).

2 NTIA Letter at 1.

lawful requests for information and/or legal process.³ The NTIA Letter states that such requirements will improve the ability of the Executive Branch to expeditiously and efficiently review referred applications, particularly in regard to identifying and assessing applications that raise national security or law enforcement concerns.⁴ The letter further states that the proposed certifications, in many cases, may eliminate the need for national security or law enforcement conditions, and thus facilitate expeditious responses to the Commission on specific applications.⁵

3. Based on the NTIA Letter and the comments received, we propose specific changes in our rules, designed to address the Executive Branch's request in a manner that furthers our mandate to serve the public interest. We also propose to adopt time frames for Executive Branch review of applications and other changes to our processing rules. We seek comment on those proposed changes. We believe that implementation of these rule changes would speed the action on applications while continuing to take into consideration relevant national security, law enforcement, foreign policy, and trade policy concerns.

II. BACKGROUND

A. Basis for Executive Branch Review

4. When the Commission, two decades ago, adopted rules applicable to foreign carrier entry into the U.S. telecommunications market, it affirmed that it would consider national security, law enforcement, foreign policy, and trade policy concerns in its public interest review of international section 214 and submarine cable landing license applications, and of petitions for declaratory ruling under section 310(b) of the Communications Act of 1934, as amended (the "Act").⁶ In doing so, the Commission observed that the relevant Executive Branch agencies have specific expertise in these matters.⁷ It stated that its public interest analysis would benefit from seeking the views of the Executive Branch on these matters as they relate to applicants with foreign ownership.⁸ The Commission was clear, however, that it will make an independent decision on whether to grant a particular application.⁹ At that time, the Commission expected "national security, law enforcement, foreign policy, and trade policy concerns to be raised only in very rare circumstances."¹⁰ From 2013 to 2015, an average of 18 percent of all

³ *Id.* at 1, 3-5.

⁴ *Id.* at 1.

⁵ *Id.*

⁶ *Rules and Policies on Foreign Participation in the U.S. Telecommunications Market; Market Entry and Regulation of Foreign-Affiliated Entities*, IB Docket Nos. 97-142 and 95-22, Report and Order and Order on Reconsideration, 12 FCC Rcd 23891, 23919, para. 63 (1997) (*Foreign Participation Order*), Order on Reconsideration, 15 FCC Rcd 18158 (2000).

⁷ *Foreign Participation Order*, 12 FCC Rcd at 23919, para. 62; *see Amendment of the Commission's Regulatory Policies to Allow Non-U.S. Licensed Space Stations to Provide Domestic and International Satellite Service in the United States; Amendment of Section 25.131 of the Commission's Rules and Regulations to Eliminate the Licensing Requirement for Certain International Receive-Only Earth Stations*, IB Docket No. 96-111, CC Docket No. 93-23, RM-7931, Report and Order, 12 FCC Rcd 24094, 24171, para. 179 (1997) (*DISCO II Order*). In the *Disco II Order*, the Commission stated that it would also accord deference to the expertise of the Executive Branch for satellite earth station licenses. *DISCO II Order*, 12 FCC Rcd at 24171, para. 180.

⁸ *Foreign Participation Order*, 12 FCC Rcd at 23919, para. 61; *see DISCO II Order*, 12 FCC Rcd at 24171, para. 179.

⁹ *Foreign Participation Order*, 12 FCC Rcd at 23920-21, paras. 65-66; *see DISCO II Order*, 12 FCC Rcd at 24171-72, paras. 179, 182.

¹⁰ *Foreign Participation Order*, 12 FCC Rcd at 23919-21, paras. 63, 66; *see DISCO II Order*, 12 FCC Rcd at 24171, para. 180. At that time, the Commission did not have a Public Safety and Homeland Security Bureau (PSHSB). *See* 47 CFR §§ 0.191, 0.392 (PSHSB was organized to advise the Commission on all matters related to national security and coordinate national security activities within the Commission).

international section 214, submarine cable, and section 310(b) applications were referred to the Executive Branch for review.¹¹

5. In 2013, the Commission issued a declaratory ruling addressing the application of section 310(b) to proposed foreign ownership of broadcast licensees.¹² This ruling noted that the bulk of the Commission's precedent under section 310(b)(4) has involved foreign ownership in telecommunications carriers, and that "we are cognizant of the distinctions between common carrier facilities and broadcast stations and of the differences in the Commission's experiences" as to these services.¹³ However, the Commission made clear that it would continue to review proposals to permit broadcast foreign ownership in excess of the section 310(b)(4) statutory benchmark in the exercise of the Commission's public interest discretion afforded under that section.¹⁴ In doing so, the Commission noted, it would also "continue to afford appropriate deference to the expertise of the Executive Branch agencies on issues related to national security, law enforcement, foreign policy, and trade policy," as "[c]onsistent with the Commission's long-standing policy in reviewing foreign ownership of common carrier applicants and licensees."¹⁵

B. Executive Branch Review Process

6. The Commission refers certain applications to the Executive Branch when there is reportable foreign ownership in the applicant.¹⁶ Specifically, where an applicant has a ten percent or greater direct or indirect owner that is not a U.S. citizen, Commission practice has been to refer an application for: (1) international section 214 authority; (2) assignment or transfer of control of domestic or international section 214 authority; (3) a submarine cable landing license; and (4) assignment or transfer of control of a submarine cable landing license. The Commission also refers petitions seeking authority to exceed the section 310(b) foreign ownership limits for broadcast and common carrier wireless licensees, including common carrier satellite earth stations.¹⁷

¹¹ This percentage was derived from the number of applications received by the Commission and the number of applications referred to the Executive Branch for the 2013, 2014, and 2015 calendar years.

¹² *Commission Policies and Procedures Under Section 310(b)(4) of the Communications Act, Foreign Investment in Broadcast Licensees*, MB Docket No. 13-50, Declaratory Ruling, 28 FCC Rcd 16244 (2013) (*Broadcast Declaratory Ruling*). In 2015, proposing generally to extend to broadcast services the streamlined rules and procedures developed for foreign ownership reviews for common carrier and certain aeronautical licensees under section 310(b)(4), the Commission reiterated its view that such rules and procedures would ensure the ability to coordinate applications and petitions with the Executive Branch as needed. *Review of Foreign Ownership Policies for Broadcast, Common Carrier and Aeronautical Radio Licensees Under Section 310(b)(4) of the Communications Act of 1934, as Amended*, GN Docket No. 15-236, Notice of Proposed Rulemaking, 30 FCC Rcd 11830, paras. 10, 25 (2015) (*2015 Foreign Ownership NPRM*).

¹³ *Broadcast Declaratory Ruling*, 28 FCC Rcd at 16250, 16252 paras. 11, 15.

¹⁴ *Id.* at 16250, para. 11.

¹⁵ *Id.* at 16251, para. 14.

¹⁶ The applications are referred to the Department of Homeland Security; the Department of Justice, including the Federal Bureau of Investigations; the Department of Defense; the Department of State; the Department of Commerce, NTIA; the United States Trade Representative; and the Office of Science and Technology Policy.

¹⁷ Section 310(b) of the Act requires the Commission to review foreign investment in broadcast, common carrier, aeronautical en route, and aeronautical fixed radio station licensees. 47 U.S.C. § 310(b). Section 310(b)(4) establishes a 25 percent benchmark for investment by foreign individuals, governments, and corporations in the controlling U.S. parent of these licensees; section 310(b)(3) limits foreign investment in the licensee to 20 percent. 47 U.S.C. §§ 310(b)(3), (4); *see also Review of Foreign Ownership Policies for Common Carrier and Aeronautical Radio Licensees Under Section 310(b)(4) of the Communications Act of 1934, as Amended*, IB Docket No. 11-133, First Report and Order, 27 FCC Rcd 9832, 9832-33, para. 1 (2012) (adopting a forbearance approach to applying the foreign ownership limitations in section 310(b)(3) of the Act to eligible common carrier licensees, noting that the

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7. Our understanding is that the national security and law enforcement agencies generally initiate review of an application by sending the applicant a set of questions seeking information on the five percent or greater owners of the applicant, the names and identifying information of officers and directors of companies, the business plans of the applicant, and details about the network to be used to provide services.¹⁸ The applicant provides answers to these threshold and any follow-up questions directly to the agencies, without involvement of Commission staff. The agencies use the information gathered through the questions to conduct their review and determine whether they need to negotiate a mitigation agreement with the applicant to address potential national security or law enforcement issues. Mitigation agreements can take the form of a letter of assurance (LOA) or a national security agreement (NSA).¹⁹

8. Upon completion of review, the Executive Branch notifies the Commission of its recommendation in typically one of two forms. The national security and law enforcement agencies may have no comment, in which case they file a letter to this effect, and the Commission moves forward with its action on the application. Alternatively, the agencies may advise the Commission that they have no objection to the grant of an application so long as the applicant complies with the terms of the relevant LOA or NSA.²⁰ In such case, a grant of the application will typically be subject to the express condition that the applicant abide by the commitments and undertakings contained in the LOA and or NSA.²¹ A third type of notification might involve a request to deny an application on national security or law enforcement grounds. To date, the agencies have not requested that the Commission deny an application. Regardless of the type of response from the Executive Branch, the Commission acts quickly to dispose of an application after the agencies complete their review.

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Commission's forbearance authority does not extend to broadcast or aeronautical radio licensees). Although section 310(b) addresses foreign ownership of aeronautical en route and aeronautical fixed radio stations, to date the Commission has not received a section 310(b) petition for declaratory ruling for such licensees.

¹⁸ NTIA Letter at 3 ("Because the Commission currently only requires very limited information in these areas, upon receipt of a request to review from the Commission, the reviewing agencies' current practice is to send an applicant a set of initial questions."). The Commission does not require this information in the application process. The Commission's rules, by contrast, require the disclosure of, among other things, the name and citizenship of any person or entity that directly or indirectly owns at least ten percent of the equity in the applicant and the percentage of equity owned by each of those entities to the nearest one percent. 47 CFR §§ 1.767(a)(8), 63.04(a)(4), 63.18(h), 63.24(e)(2).

¹⁹ An LOA is a letter from the applicant to the agencies in which it agrees to undertake certain actions and that is signed only by the applicant. An NSA is a formal agreement between the applicant and the agencies and is signed by all parties.

²⁰ For example, on October 8, 2015, the Executive Branch filed a petition to adopt conditions and the Commission conditioned its grant of the authorization on the applicant's compliance with the terms of the applicant's LOA. Petition of the Department of Justice, National Security Division to Adopt Conditions to Authorizations and Licenses, File No. ITC-214-20140327-00108 (filed Oct. 8, 2015), http://licensing.fcc.gov/cgi-bin/ws.exe/prod/ib/forms/reports/related_filing.hts?f_key=-263203&f_number=ITC2142014032700108; *International Authorizations Granted Section 214 Applications (47 CFR § 63.18)*; *Section 310(b) Requests*, Report No. TEL-01757, Public Notice, 30 FCC Rcd 11018 (IB 2015) (*IB Public Notice*), http://licensing.fcc.gov/ibfswb/ib.page.FetchPN?report_key=1107725.

²¹ More specifically, a typical authorization states that a failure to comply and/or remain in compliance with any of the commitments and undertakings in the LOA or NSA shall constitute a failure to meet a condition of such authorization, and thus grounds for declaring that the authorization has been terminated under the terms of the condition without further action on the part of the Commission. See *IB Public Notice*, 30 FCC Rcd at 11018; see, e.g., *Wypoint Telecom, Inc., Termination of International Section 214 Authorization*, Order, 30 FCC Rcd 13431, 13431-32, para. 2 (IB 2015). Failure to meet a condition of the authorization may also result in monetary sanctions or other enforcement action by the Commission. 47 U.S.C. § 312; 47 U.S.C. § 503.

C. FCC Process Reform

9. In recent years, the Commission has undertaken an extensive effort to ensure that it operates in the most effective, efficient, and transparent way possible, including processing applications more quickly and transparently. In the Process Reform Report, Commission staff proposed a number of changes to the Commission's processes and sought comment on those proposals.²² The report noted that Executive Branch review can add several months of processing time for an application.²³ Recommendation 1.15 of the Process Reform Report sought to increase the timeliness and transparency of the Executive Branch review process by seeking comment on whether to establish firm time frames for Executive Branch review of foreign ownership issues.²⁴ Recommendation 1.15 also asked "whether any modifications to existing application forms or regulatory requirements associated with the application would accelerate the associated review process."²⁵

10. Several commenters on the Process Reform Report stated that the Executive Branch review imposes delays, and expressed support for the Commission to improve coordination and establish time frames for Executive Branch review.²⁶ According to one commenter, time frames for Executive Branch review would be helpful because they "would provide greater certainty and transparency to businesses that are not U.S.-based or that have significant non-U.S. ownership."²⁷ Since the release of the Process Reform Report, our goal has been to establish ways to streamline the review process and increase transparency while continuing to ensure that any national security, law enforcement, foreign policy, and trade policy concerns receive consideration.

D. Public Notice of NTIA Letter

11. On May 12, 2016, the International Bureau released a public notice seeking comment on the May 10, 2016 NTIA Letter.²⁸ Twelve comments were filed in response to the public notice.²⁹ Commenters support the Commission adopting reforms to streamline and ensure a transparent Executive Branch review process.³⁰ Several commenters state that there is a lack of transparency in the Executive

²² *FCC Seeks Public Comment on Report on Process Reform*, GN Docket No. 14-25, Public Notice, 29 FCC Red 1338 (2014), Attach., Report on FCC Process Reform (Process Reform Report); *see also* Diane Cornell, *A Call for Input: Improving Government Efficiency at the FCC* (Nov. 18, 2013), <https://www.fcc.gov/news-events/blog/2013/11/18/call-input-improving-government-efficiency-fcc>.

²³ Process Reform Report at 1354.

²⁴ *Id.* at 1353.

²⁵ *Id.* at 1354.

²⁶ Inmarsat Process Reform Comments at 2 ("Inmarsat supports the recommendation for Commission staff to engage with the relevant Executive Branch agencies to improve coordination and timeframes for review of applications that require foreign ownership review."); National Association of Broadcasters Process Reform Comments at 7 (stating "announcing timelines for Executive Branch review of foreign ownership issues raised in applications (Rec. 1.15) may have some beneficial impact on those agencies"); SES Process Reform Comments at 9 (stating "the Commission should establish firm timetables for review by Executive Branch agencies of foreign ownership issues, as suggested in Recommendation 1.15"); Verizon Process Reform Comments at 4 ("The Commission should adopt the Report's recommendation to engage with the Executive Branch and establish timeframes for its review of foreign ownership.").

²⁷ Inmarsat Process Reform Comments at 2.

²⁸ NTIA Letter Public Notice.

²⁹ *See* Appendix A.

³⁰ *See, e.g.*, CTIA Comments at 3 ("The FCC Process Reform Report accurately identified the Executive Branch review process as one area where action is needed to improve the efficiency, effectiveness, and transparency of the Commission's work."); TelePacific Comments at 2 ("TelePacific views the NTIA proposal as a positive first step, and applauds the efforts of the U.S. government to codify and streamline a process that is, at present, both

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Branch review process and that uncertain time frames have “likely deterred foreign investment in the United States – investment that benefits U.S. businesses and consumers, not just foreign investors.”³¹ Commenters additionally state that standardizing the threshold questions and requiring certifications “could help speed and focus the Executive Agencies’ review,” but also raise concerns regarding the scope of the proposals.³² Most commenters support the Commission adopting reasonable time frames for Executive Branch review to prevent unnecessary delays.³³ Although some suggest that the Commission should adopt a 30-day requirement, most suggest a time frame of 90 days, similar to the time frame followed by the Committee on Foreign Investment in the United States (CFIUS).³⁴ Establishing firm time frames, according to one commenter, seems “to be the most effective way to ensure expedited review of these applications.”³⁵

III. DISCUSSION

12. Based on the NTIA Letter and the comments we have received, we identify below several proposals to make the Executive Branch review process more efficient and transparent. These include proposals that address the following requests set out in the NTIA Letter: (1) requiring certain applicants with reportable foreign ownership to file information regarding ownership, network operations, and related matters; and (2) requiring applicants, regardless of whether they have reportable foreign ownership, to certify they will comply with certain law enforcement assistance requirements and respond truthfully and accurately to lawful requests for information and/or legal process. They also include additional proposals to establish time frames for Executive Branch review of applications and modify our processing rules. We seek comment on these and other ways to expedite the review process and increase transparency while ensuring that relevant Executive Branch concerns receive consideration as part of the Commission’s public interest review.

A. Types of Applications Subject to the Information Requests and Certifications

13. We propose that only certain types of applications may be required to provide the information and certifications requested by the Executive Branch in the NTIA Letter. In the NTIA Letter, the Executive Branch requests that applicants seeking international section 214 authorizations or transfer of such authorizations, submarine cable landing licenses, satellite earth station authorizations, and section 310(b) foreign ownership rulings, provide certain information and certifications as part of their

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unregulated and unclear.”); T-Mobile Comments at 3 (“T-Mobile congratulates the Commission and NTIA for their leadership in initiating efforts to improve the [Executive Branch] review process.”); Wiley Rein Comments at 1-2 (“The Companies are encouraged by the Commission’s initiation of an effort to improve the process by which it refers certain applications involving foreign ownership to the Executive Branch agencies for review as to whether the application poses any national security, law enforcement, foreign policy, or trade concerns.”).

³¹ Level 3 Comments at 1; *see, e.g.*, Pillsbury Comments at 1-2; Wiley Rein Comments at 4-6; CTIA Comments at 2.

³² T-Mobile Comments at 2; *see, e.g.*, Wiley Rein Comments at 9 (stating that “such information and certifications requirements should not be used to expand the scope of [Executive Branch] review”); T-Mobile Comments at 10 (“Certain of the NTIA Letter’s proposed certification provisions are written so broadly as to go beyond the requirements of existing U.S. laws or to legislate new requirements where litigation and public debate is ongoing.”).

³³ Wiley Rein Comments at 3; Level 3 Comments at 5; Pillsbury Comments at 2; CMIUSA Comments at 2; T-Mobile Comments at 12; CTIA Comments at 3; Sprint Comments at 2; USTelecom Comments at 2; TelePacific Comments at 3.

³⁴ *See, e.g.*, Level 3 Comments at 5 (“The Commission should establish CFIUS-style timeframes for considering national security and law enforcement issues within its licensing, foreign-ownership review, and transaction review processes”); Wiley Rein Comments at 14 (“The Companies recommend the FCC adopts a 90-day clock for [Executive Branch] review of an application.”); T-Mobile Comments at 12; CMIUSA Comments at 2-3.

³⁵ USTelecom Comments at 2.

applications.³⁶ We currently refer to the Executive Branch applications with reportable foreign ownership for international section 214 authorizations, applications to assign or transfer control of domestic or international section 214 authority, submarine cable landing licenses and applications to assign or transfer control of such licenses, and petitions for section 310(b) foreign ownership rulings (broadcast, common carrier wireless, and common carrier satellite earth stations).³⁷ We do not propose to expand the types of applications that we refer to the Executive Branch.

14. Currently, we refer applications for transfer of control of domestic section 214 authority that have reportable foreign ownership and that do not have a corresponding international section 214 transfer of control application. The NTIA Letter does not seek to review these types of applications, nor do we propose to include these applications among those we will refer to the Executive Branch or to require the requested information and certifications. We seek comment on this and whether there are situations where we should refer a domestic-only section 214 authority transfer of control application to the Executive Branch.

15. EchoStar/Hughes and SIA raise concerns that the NTIA Letter seeks to require non-common carrier earth station licenses to be subject to the information and certification requests by the Executive Branch.³⁸ We have not been referring earth station applications to the Executive Branch because most earth stations are authorized on a non-common carrier basis,³⁹ and we do not collect ownership information in the applications.⁴⁰ We propose to maintain our current practice and only refer common carrier earth station applications if the applicant requires a section 310(b) foreign ownership ruling. Consequently, an applicant for an earth station license would not be required to provide the information and certifications sought by the Executive Branch as part of its application, but would only need to provide such information as part of its section 310(b) petition if it required a foreign ownership ruling. Similarly, we propose that an applicant for a broadcast or common carrier wireless license not be required to provide the information as part of its application, but only need to provide such information as part of its section 310(b) petition if it required a foreign ownership ruling. We seek comment on whether these are the appropriate types of applications to be required to provide the information and certifications requested by the Executive Branch and be considered for referral to the Executive Branch for national security, law enforcement, foreign policy, and trade policy concerns.

B. Ownership, Network Operations, and Other Information Requirements

16. We propose to require applicants with reportable foreign ownership to provide information on ownership, network operations, and related matters when filing their applications.⁴¹ The NTIA Letter states that receiving the requested information as part of an application will allow the Executive Branch to start its review of the application sooner than is possible under the current review

³⁶ NTIA Letter at 1.

³⁷ See *supra* para. 6.

³⁸ EchoStar/Hughes Comments at 2-3, SIA Comments at 2-4.

³⁹ An earth station application, however, may be included as part of a referral of associated applications, such as an international section 214 application or an assignment or transfer of control application.

⁴⁰ See FCC, Earth Station Licensing & Sample Form 312 Applications (FCC Form 312), <https://transition.fcc.gov/ib/sd/se/elichome.html>.

⁴¹ For international section 214 authorizations and submarine cable landing licenses, the applicant must report all individuals or entities with a ten percent or greater direct or indirect ownership interest in the applicant. 47 CFR §§ 1.767(a)(8), 63.18(h). For assignment or transfer of control applications, the applicant must report all individuals or entities with a ten percent or greater direct or indirect ownership interest in the applicant. 47 CFR §§ 1.767(a)(11), 63.24. Common carrier wireless licensees, common carrier satellite earth station licensees, and broadcast licensees must seek a foreign ownership ruling if their foreign ownership would exceed the relevant benchmark set out in section 310(b) of the Act. 47 U.S.C. § 310(b).

process.⁴² We agree. We propose to require that the information be filed at the time an applicant submits its application to the Commission. We seek comment on this proposal and any alternative or additional methods to streamline the application process and increase transparency, while providing the Executive Branch with the information needed to conduct its national security and law enforcement review.

17. *Categories of Information.* Under the current process, the questions asked of applicants by the Executive Branch require information that is not included in the applications submitted to the Commission.⁴³ The NTIA Letter states that the relevant agencies need answers to these questions to evaluate whether an application may raise national security or law enforcement concerns.⁴⁴ The questions may vary depending on the specifics of the application. The applicant generally cannot prepare answers in advance of receiving the questions. Because tailoring the questions sent to each applicant takes time, there often is some delay between when the Commission refers the application and when the agencies send questions to the applicant. The NTIA Letter notes that there is currently no required timeline on the applicant's response to the questions.⁴⁵ Thus, it may take the Executive Branch additional time to obtain complete answers from applicants, which adds delay. The agencies also may have follow-up questions for the applicant upon review of the initial set of answers. This, among other factors, can lead to longer time periods for review.

18. To help ensure that the relevant departments and agencies have the information needed to review an application promptly, the Executive Branch requests that we require applicants with reportable foreign ownership seeking international section 214 authorizations or transfer of such authorization, submarine cable landing licenses, and satellite earth station authorizations, as well as petitioners for section 310(b) foreign ownership rulings, to provide as part of their applications detailed and comprehensive information in the following areas:

- (1) Corporate structure and shareholder information;
- (2) Relationships with foreign entities;
- (3) Financial condition and circumstances;
- (4) Compliance with applicable laws and regulations; and
- (5) Business and operational information, including services to be provided and network infrastructure.⁴⁶

19. The Executive Branch asks the Commission “to adopt requirements that focus on the above categories of information to be collected, while also providing sufficient flexibility for the Commission to prescribe and, as necessary, modify the specific questions posed to applicants.”⁴⁷ The Executive Branch recommends that the Commission propose and seek comment on specific questions through an information collection process consistent with the Paperwork Reduction Act of 1995 (PRA) process.⁴⁸ For illustrative purposes, the Executive Branch also filed sample questions that show the types and extent of the information it seeks to obtain, which is provided in Appendix D.⁴⁹ The introductory

⁴² NTIA Letter at 3.

⁴³ *Id.* at 2-3.

⁴⁴ *Id.* at 2.

⁴⁵ *Id.* at 3.

⁴⁶ *Id.*

⁴⁷ *Id.*

⁴⁸ *Id.* (stating that “the Commission could retain flexibility to modify the questions through a later PRA process if experience shows that specific questions or wording could be improved”).

⁴⁹ On June 2, 2016, NTIA provided sample questions, subject to further refinement, showing the type and extent of information that the Executive Branch may require of applicants. See Letter from Kathy D. Smith, Chief Counsel,

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language for the sample questions states that the questions seek “information regarding the business organization and services, network infrastructure, relationships with foreign entities or persons, historical regulatory and penal actions, and capabilities to comply with applicable legal requirements, and would be shared with relevant Executive Branch departments and agencies to assist in the review of public interest factors.”⁵⁰

20. The NTIA Letter states that this information is necessary for the agencies to assess whether an application with reportable foreign ownership raises national security or law enforcement concerns, including preventing abuses of U.S. communications systems, protecting the confidentiality, integrity and availability of U.S. communications, protecting the national infrastructure, preventing fraudulent or other criminal activity, and preserving the ability to effectuate legal process for communications data.⁵¹ It states that receiving the information at the time of referral, rather than having to request it after referral, will help the Executive Branch begin review of the application promptly after referral.⁵² Commenters state that requiring these categories of information may help expedite the process, but may go beyond the information the Executive Branch currently requests.⁵³ For example, one commenter asserts that seeking information on financial condition and circumstances and compliance with applicable laws and regulations “seems far outside the scope of [the Executive Branch’s] review of applications for ‘national security, law enforcement, foreign policy, or trade concerns.’”⁵⁴ Others argue that the requested information is duplicative of information provided as part of the Commission’s application.⁵⁵ We seek comment on this request and on the proposed categories of information. Are there more narrowly tailored questions that can adequately serve the goals sought in the NTIA Letter? Are there additional questions that should be included, and, if so, what are those questions?

21. *Information Filing.* We propose to require applicants with reportable foreign ownership seeking an international section 214 authorization or a submarine cable landing license or to assign or transfer control of such authorizations, and petitioners for section 310(b) foreign ownership rulings (common carrier wireless, common carrier satellite earth stations, or broadcast) to provide the information requested by the NTIA Letter at the time they file their applications or petitions. We seek comment on whether there are situations where an applicant should not be required to file the information. For example, should the Commission require an applicant to provide such information when the applicant has an existing LOA or NSA and there has been no material change in the foreign ownership since it negotiated the LOA or NSA? Should non-facilities-based carriers be subject to the information request?

22. *Publicly Available Questions.* We propose that the Commission retain flexibility regarding the specific questions to be answered and thus propose to include in the rules the categories of questions to be answered but not to place the specific questions in the rules. The NTIA Letter urges the Commission to adopt requirements that focus on the categories of information to be collected so as to afford the Commission flexibility to vary the specific questions as appropriate to the circumstances at the time. The NTIA Letter notes that the specific questions would be subject to the PRA as an information collection.⁵⁶ We propose to adopt the approach described in the Executive Branch request, and after the

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NTIA, U.S. Department of Commerce, to Marlene H. Dortch, Secretary, FCC, IB Docket No. 16-155, at 1 (June 2, 2016). See Appendix D.

⁵⁰ See *id.* at 1.

⁵¹ NTIA Letter at 4.

⁵² *Id.* at 3.

⁵³ See, e.g., Wiley Rein Comments at 10; Level 3 Comments at 4-5; T-Mobile Comments at 8-9.

⁵⁴ Wiley Rein Comments at 10.

⁵⁵ Broadcaster Representatives Comments at 2; see also Wiley Rein Comments at 9-10; T-Mobile Comments at 9.

⁵⁶ NTIA Letter at 3.

new rules are adopted, we would start a PRA process with the specific questions, and then make the questions publicly available on a website as a downloadable document so it is readily available to applicants. This approach would be similar to our practice of outlining the requirements for an application in our rules and then including specific questions that elicit the required information during the PRA process to adopt the forms for filing the application.⁵⁷ If we adopt this proposal, applicants and other interested parties will have the opportunity to comment on the specific questions during the PRA review process. We seek comment on this proposal.

23. We also seek comment on whether the use of a publicly available set of standardized questions for which the answers must be provided at the time of filing an application will help to streamline the Executive Branch review process. For instance, will the inclusion of responses to the standardized questions at the time the application is filed result in more timely review than the use of individualized questions that are sent to the applicant after the application has been filed? Many of the commenters support having the questions publicly available and the answers provided at the time the application is filed, stating that this should expedite Executive Branch review.⁵⁸ CTIA, while supporting publicly-available standardized questions, recommends that the answers not be provided when the application is filed because the answers would likely delay and complicate applications. CTIA instead suggests that applicants “certify in their application that they will provide complete responses to the questionnaire within a particular time frame after filing the application.”⁵⁹ We seek comment on whether the answers should be provided when the application is filed with the Commission, and if not, how a later filing would serve the goal of expediting Executive Branch review of the applications.

24. We propose that, although the questions would be standardized, they vary by category of application. For example, an applicant for an international section 214 authorization would not be required to provide information about cable landing location sites. We also seek comment on whether there is information that the Executive Branch may require that cannot be provided when an application is filed, but which could be made available later in the review process. For example, Level 3 notes that submarine cable landing applicants usually cannot provide answers to all the questions at the time the application is filed.⁶⁰ Should an application be considered complete and acceptable for filing if there is information that an applicant cannot provide at the time of filing? Are there specific questions for submarine cable applicants or other applicants that should not be required at the time the applicant files?

25. *FCC Review of Responses.* We propose that, as part of our review of an application for acceptability for filing, the Commission staff review the responses to the threshold questions for completeness, but leave the substantive review to the Executive Branch. CTIA and Level 3 question the usefulness of submitting the answers to the Commission and suggest that they be sent directly to the Executive Branch.⁶¹ We seek comment on whether the Commission should receive and/or review the answers in the first instance. We seek comment on what Commission staff should look for to determine if the responses are sufficient to find the application acceptable for filing. We also seek comment on alternatives if Commission staff does not review the responses to the questions. For example, should we

⁵⁷ See, e.g., Federal Communications Commission, Information Collection Being Reviewed by the Federal Communications Commission, 81 Fed. Reg. 5439 (Feb. 2, 2016) (seeking PRA comments on revision to FCC Form 312).

⁵⁸ See, e.g., CTIA Comments at 4 (“Standardizing and making public the Executive Branch questionnaires would help make the review process more efficient and transparent.”); Wiley Rein Comments at 9 (“To the extent that the requirements are limited to applicants and applications currently subject to [Executive Branch] review, the Companies believe that appropriate upfront information and certification requirements could help to expedite the review process.”).

⁵⁹ CTIA Comments at 5.

⁶⁰ Level 3 Comments at 10-11.

⁶¹ CTIA Comments at 5; Level 3 Comments at 10.

require a certification that the applicant has provided the responses to the Executive Branch at the time of filing or will do so within a specified period of time? If so, what would be an appropriate period? If the Commission staff does not review the responses, how would that affect the proposed time frames for Executive Branch review?⁶² When would the 90-day period for the review start if the Executive Branch has to go back and forth with the applicant to get complete responses to the questions?

26. We recognize that the responses to some of these threshold questions may contain confidential commercial information.⁶³ The Commission's rules provide a mechanism for requesting confidential treatment of such information.⁶⁴ Under these rules, such information will be accorded confidential treatment until the Commission acts on the confidentiality request and all subsequent agency review and judicial stay proceedings have been exhausted.⁶⁵ To the extent the information qualifies as trade secrets or confidential commercial or financial information that is exempt from disclosure under the Freedom of Information Act,⁶⁶ our rules require a "persuasive showing" for public release of the information, showing among other factors that the information is relevant to a public interest issue before the Commission.⁶⁷ In application proceedings, the Commission may rely upon protective orders to limit disclosure and use of competitively sensitive and other confidential information.⁶⁸ We seek comment on whether these established procedures serve to provide appropriate protections in such situations. Given the scope of this information, the likelihood that some of it may already be public, and the relevance of context in evaluating competitive concerns, we do not propose to designate such information in our rules as the kind that is presumed confidential and therefore does not require the filing of a request for confidentiality.⁶⁹ We seek comment on this view. We seek comment on whether some of this information can be presumed to be confidential and request that commenters specify which types of information should be presumed confidential.

27. If we require the responses to the questions to be filed with the Commission, we seek comment on whether the Commission should take special steps to ensure that the responses to threshold questions submitted by applicants are secure, such as having applicants submit their responses through a secure portal. We note that the Commission has experience in receiving confidential information and sharing that information with other agencies. Currently, the Commission has in place secure portals, such as the Network Outage Reporting System (NORS).⁷⁰ We would anticipate developing a similar system to facilitate receiving, reviewing, sharing, and generally storing any confidential or sensitive information in the applicants' submissions in response to the threshold questions. We also invite suggestions about other

⁶² See *infra* Section III.D.

⁶³ Some of the threshold questions would seek personally identifiable information (PII). Any questions that seek PII would require the Commission to assess whether by obtaining and using such PII it would be creating a system of records under the Privacy Act. 5 U.S.C. § 552a. With respect to any information we may receive that includes PII, we intend to comply fully with the requirements of that statute and related statutes that protect PII.

⁶⁴ 47 CFR § 0.459.

⁶⁵ 47 CFR §§ 0.459(d)(3), 0.459(g).

⁶⁶ 5 U.S.C. § 552.

⁶⁷ See 47 CFR § 0.457(d); *Applications of Charter Communications, Inc., Time Warner Cable Inc., and Advance/Newhouse Partnership for Consent to Assign or Transfer Control of Licenses and Authorizations*, MB Docket No. 15-149, Order, 30 FCC Rcd 10360, 10378-79, para. 36 (2015) (*Charter Order*); *Examination of Current Policy Concerning the Treatment of Confidential Information Submitted to the Commission*, GN Docket No. 96-55, Report and Order, 13 FCC Rcd 24816 (1998).

⁶⁸ *Charter Order*, 30 FCC Rcd at 10367-68, para. 16.

⁶⁹ 47 CFR § 0.457(d)(1).

⁷⁰ FCC, Network Outage Reporting System (NORS), <http://transition.fcc.gov/pshs/services/cip/nors/nors.html> (last visited June 21, 2016).

heightened security measures that the Commission can undertake to ensure the protection of the information submitted by applicants.

28. In this case, our proposals contemplate sharing of confidential information submitted as part of the application with Executive Branch agencies, who would continue to review it in the first instance for national security, law enforcement, foreign policy, and trade policy concerns. Under our rules, such sharing is subject to the requirement that the Executive Branch agencies must comply with the protections applicable both to the Commission and to themselves relating to the unlawful disclosure of information.⁷¹ Because current practice already involves submission of similar information for review by these agencies, and in light of their legitimate need for the information, we propose to amend section 0.442 of the Commission's rules to make clear that sharing with Executive Branch agencies under these restrictions is permissible without the pre-notification procedures of that rule.⁷² We seek comment on this proposal. Are the obligations of the various Executive Branch agencies different than the Commission's obligation to protect the information? If so, what are the differences and what is the possible impact of those differences?

29. We seek comment on whether there are reasons why the Commission should or should not undertake the initial review of the answers for completeness. We seek comment on whether there are concerns with Commission staff receiving, reviewing, storing, and forwarding to the Executive Branch such personally identifiable and business sensitive information. What are the benefits and burdens of the Commission receiving and reviewing the answers to the threshold questions? We invite suggestions on heightened confidentiality protections for sensitive and proprietary financial, operational, and privacy related information that applicants would provide as part of the Commission's application process.⁷³

C. Certification Requirement

30. We propose to add a certification requirement to our rules,⁷⁴ and seek comment on the scope of this proposal. The Executive Branch requests that the Commission require *all* applicants to certify that they agree to comply with several mitigation measures, as discussed below.⁷⁵ The NTIA Letter states that requiring an applicant to certify to compliance with these measures as part of its application should reduce the need for routine mitigation, which should facilitate a faster response to the Commission by the Executive Branch on its review and advance the shared goal of making the Executive Branch review process as expeditious and efficient as possible.⁷⁶

31. The NTIA Letter observes that national security and law enforcement review frequently requires time both to negotiate assurances from an applicant that it will comply with applicable law enforcement assistance requirements and to draft an individualized LOA upon which the Executive Branch will rely to address national security and law enforcement concerns.⁷⁷ It states that the proposed certification would simplify and expedite the review process.⁷⁸ The Executive Branch therefore requests

⁷¹ 47 CFR § 0.442(b)(3), citing 44 U.S.C. § 3510(b).

⁷² See Appendix B (47 CFR § 0.442(d)(3)).

⁷³ Pillsbury Comments at 2; Level 3 Comments at 11-12; TelePacific Comments at 3-4.

⁷⁴ See Appendix B (47 CFR §§ 1.767, 1.991, 63.18). We note that the Commission is currently considering amendments to sections 1.990-994 that would include renumbering them to sections 1.5000-5004. *2015 Foreign Ownership NPRM*, 30 FCC Rcd 11830.

⁷⁵ NTIA Letter at 1, 4-5, Attachment A.

⁷⁶ *Id.* at 1, 4.

⁷⁷ *Id.* at 5.

⁷⁸ *Id.*

that an applicant certify that, with respect to the communications services to be provided under the requested license or authorization, it will:

- (1) comply with applicable provisions of the Communications Assistance for Law Enforcement Act (CALEA);⁷⁹
- (2) 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 lawful request or valid legal process under U.S. law, for services covered under the requested Commission license or authorization;⁸⁰ and
- (3) agree to designate a point of contact located in the United States who is a U.S. citizen or lawful permanent resident for the execution of lawful requests and/or legal process.⁸¹

The Executive Branch suggests that by requiring applicants to certify compliance with these law enforcement requirements as part of the application process, the applicant would consider and address these requirements prior to submitting the application.⁸² The NTIA Letter states that the requested certifications “would continue to require applicants to declare that all information submitted is complete, up-to-date, and truthful, and that the applicant understands that failure to fulfill the obligations contained in the certifications could result in revocation or termination of the requested license or authorization, as well as criminal and civil penalties.”⁸³ It asserts that these certifications would strengthen compliance because an applicant would understand that failure to comply with the certifications could be a basis for the Commission to terminate or revoke the authorization or license.⁸⁴ We invite comment on the certifications above and seek specific comments as to whether any changes should be made and why. We also seek comment on whether the Executive Branch’s suggestions will be burdensome, and if so, the nature and extent, of any burden.

32. *Eliminating the Need to Negotiate LOAs.* We believe that eliminating the need to negotiate LOAs for routine mitigation measures should help to streamline the Executive Branch review process and provide the opportunity to allocate resources to resolution of more complicated applications. Our experience shows that in 2014 almost half (13 of 29) of all mitigation agreements filed with the Commission concerned only issues that would have been adequately addressed by the certification requirement; in 2015, the figure was over half (17 of 29). We encourage those who have had experience in negotiating routine LOAs that cover compliance with CALEA and other law enforcement assistance requirements to address whether and in what ways and by how much time the proposed certifications might have expedited Executive Branch review of their applications.

33. *Applicants.* We seek comment on the Executive Branch request that all applicants seeking an international section 214 authorization or a submarine cable landing license, or applications to assign or transfer control of such authorizations, and petitioners for section 310(b) foreign ownership rulings (common carrier wireless, common carrier satellite earth stations, or broadcast) be required to make the foregoing certifications, not just those applicants with reportable foreign ownership.⁸⁵

⁷⁹ 47 U.S.C. § 1001 *et seq.*

⁸⁰ The proposed certifications cite to the following U.S. laws and other legal processes: (1) the Wiretap Act, 18 U.S.C. § 2501 *et seq.*; (2) the Stored Communication Act, 18 U.S.C. § 2701 *et seq.*; (3) the Pen Register and Trap and Trace Statute, 18 U.S.C. § 3121; and (4) other court orders, subpoenas or other legal process. NTIA Letter at Attachment A.

⁸¹ *Id.*

⁸² *Id.* at 5.

⁸³ *Id.*

⁸⁴ *Id.*

⁸⁵ *Id.* at 4-5.

Specifically, we seek comment on the premise that the certification requirement would address legitimate law enforcement concerns that should apply regardless of foreign ownership. We note that extension of this requirement to all applicants would encompass the vast majority of such applications, including many that do not require Executive Branch review. Several commenters oppose requiring applicants that do not have reportable foreign ownership to make the requested certification. For example, CTIA argues that the NTIA letter “does not explain why [the proposed] certifications should be extended to all applicants” when the Executive Branch review process is currently limited to applicants with reportable foreign ownership.⁸⁶ In addition, T-Mobile claims that “[t]here is no basis to require applicants without cognizable foreign ownership to submit to these new requirements.”⁸⁷ Moreover, USTelecom contends that applicants should not have to “submit up front information or certifications if their applications have no meaningful nexus to national security, law enforcement, foreign policy, or trade concerns,” which are the main reasons behind the Executive Branch review.⁸⁸ We seek comment on their concerns.⁸⁹ Are there reasons why the certification should apply only to applicants with reportable foreign ownership? How would requiring certifications from all applicants expedite the review of applications with reportable foreign ownership? Would distinguishing between applicants with reportable foreign ownership and those without foreign ownership raise concerns with any U.S. treaty obligations, such as the non-discrimination/national treatment obligations common to U.S. free trade agreements?⁹⁰ We invite comments on whether the benefits of the certifications outweigh the burdens related to compliance with the requirement.⁹¹

34. *Extent of Current Laws and Obligations.* We seek comment on whether, and in what ways, the proposed certifications might add any new requirements beyond those set out in the applicable statutes and rules. The NTIA Letter states that the requested certification essentially reflects current laws and obligations.⁹² Several commenters disagree, arguing that the certifications go beyond the existing obligations of carriers under current statute and rules.⁹³ For example, CTIA contends that the second proposed certification could be interpreted as requiring carriers to “take steps beyond what is currently required to assist with breaking security measures on customers’ accounts and devices.”⁹⁴ In particular, T-Mobile and Wiley Rein are concerned that the certification is broad enough to be read as prohibiting encryption, establishing duties to decrypt, and requiring disclosure to government agencies that is not legally compelled.⁹⁵ T-Mobile further contends that the “certification language also appears to be trying to improperly enforce localization and repatriation in the United States,” running contrary to the Commerce Department’s policy of favoring the “free flow of information.”⁹⁶ USTelecom ultimately finds

⁸⁶ CTIA Comments at 6.

⁸⁷ T-Mobile Comments at 7.

⁸⁸ USTelecom Comments at 3.

⁸⁹ See USTelecom Comments at 3-4; CTIA Comments at 6; Echostar/Hughes Comments at 2 (non-common carrier earth station applications should not be subject to proposed information or certification requirements intended to facilitate Executive Branch review process); TelePacific Comments at 4.

⁹⁰ See, e.g., U.S.-Korea Free Trade Agreement, Chapter 12, Cross Border Trade in Services, Article 12.2: National Treatment, https://ustr.gov/sites/default/files/uploads/agreements/fta/korus/asset_upload_file315_12711.pdf (last visited May 20, 2016).

⁹¹ See USTelecom Comments at 3.

⁹² NTIA Letter at 5.

⁹³ CTIA Comments at 6-7; Wiley Rein Comments at 11-12; T-Mobile Comments at 10; USTelecom Comments at 4.

⁹⁴ CTIA Comments at 7; see also T-Mobile Comments at 10; Wiley Rein Comments at 12.

⁹⁵ T-Mobile Comments at 10; Wiley Rein Comments at 12.

⁹⁶ T-Mobile Comments at 11; see also Wiley Rein Comments at 11-12.

that some certifications such as the second certification are “subject to differing legal interpretation and potential legal challenge,” making their “validity and wisdom . . . unclear.”⁹⁷ We seek comment on these concerns as well as alternatives to the second certification offered by these parties, such as T-Mobile’s proposal that it should be limited to compliance with obligations otherwise established in statute or regulation.⁹⁸ We also seek comment on whether there are conflicts between U.S. law and other laws applicable to communications made to or from other countries or records associated therewith, and if so how should applicants resolve any such conflicts? Would the proposed certifications raise foreign policy or other concerns regarding potential reciprocal demands by foreign regulatory authorities on U.S. entities? Would this burden vary by the type of license or authorization to which the certification applies? What experience have prior applicants had with any similar provisions under existing LOAs or NSAs?⁹⁹

35. We also seek comment on whether the certifications regarding compliance with CALEA and making communications within the United States as well as records thereof available in a form and location that permits them to be subject to lawful request or valid legal process under U.S. law, should be applied to all applicants or only applied to certain applicants.¹⁰⁰ We also seek comment on whether the certifications regarding compliance with CALEA and making communications within the United States, as well as records thereof, available in a form and location that permits them to be subject to lawful request or valid legal process under U.S. law should be applied more narrowly than proposed in the NTIA Letter. Should they only apply to common carrier licensees? For example, the Broadcaster Representatives argue that the CALEA compliance and intercept capabilities have nothing to do with broadcasting, or with broadcast licensees or applicants that file a petition for a foreign ownership ruling under section 310(b). The Broadcaster Representatives state that broadcasters “do not have compliance obligations” under CALEA and recommend the Commission consider differentiating the requirements in the broadcast context.¹⁰¹ We seek comment on considerations of the scope and implications of the certifications proposal.

D. Time Frames for Executive Branch Review

36. We propose to adopt a 90-day period for the Executive Branch to complete its review of referred applications and petitions.¹⁰² In rare instances, we propose to allow a one-time additional 90-day extension provided the Executive Branch demonstrates that issues of complexity warrant such an extension and provides to the Commission the status of its review every 30 days thereafter. We also propose that the time period would start from the date the application is placed on the Commission’s acceptable for filing public notice. We believe that time frames will bring additional clarity and certainty to the review process. Such transparency would benefit the Commission and applicants alike, by keeping all parties better informed of the application’s status and facilitating expectations for resolution of pending cases. Several commenters agree, stating that time frames (including a 90-day period) should be established for Executive Branch review in order to promote transparency and certainty of action.¹⁰³

⁹⁷ USTelecom Comments at 4.

⁹⁸ See T-Mobile Comments at 10.

⁹⁹ We note that many LOAs and NSAs filed with the Commission have contained conditions similar to the certifications proposed in the NTIA Letter.

¹⁰⁰ See Broadcaster Representatives Comments at 3.

¹⁰¹ *Id.*

¹⁰² We propose to refer only those applications with reportable foreign ownership. This is consistent with our current referral practice. See *supra* para. 6.

¹⁰³ See, e.g., Pillsbury Comments at 2 (“A fixed deadline [for Executive Branch review] would provide a degree of certainty that is much sought after by applicants, and should reduce the length of the process.”); USTelecom Comments at 2 (stating that the Commission should “propose that the Executive Branch commit to adhering to a reasonable schedule for review and recommendation to the FCC starting from the time the FCC submits an application for Executive Branch review”); CTIA Comments at 4 (the Commission “should propose a reasonable

(continued....)

Because these time frames will affect multiple types of applications with requirements that are set out in different parts of the Commission's rules, we propose to establish a new subpart U in Part 1 of the rules for referral of applications to the Executive Branch.¹⁰⁴

37. *Acceptability for Filing.* Under our proposal, Commission staff will review the application to ensure it is acceptable for filing. If the threshold questions have been answered, the certification is complete, and the application otherwise complies with our rules, the Commission proposes to place the application on public notice, with appropriate protections, and forward the application, including the answers to the threshold questions, to the Executive Branch. In instances where the Commission finds that any of the threshold questions have not been answered or the certification is incomplete, we propose that the Commission notify the applicants and give them a reasonable time to respond. We seek comment on what a reasonable time frame should be (such as, for example, seven days). Failure to respond within the time frame will be grounds for dismissal of the application without prejudice to refile. We seek comment on this proposal and any other recommendations on the process to ensure transparency to the public and applicants and to promote an efficient review process. One commenter suggested that to enhance transparency, applicants should have names and contact information of the individuals in the Executive Branch who are reviewing their applications.¹⁰⁵ We seek comment regarding whether the Executive Branch agencies should identify a single point of contact or point agency for referral of applications and any inquiries the Commission or applicants have during the course of the Executive Branch review process for any given application. In the alternative, we seek comment on whether each participating agency should identify its own point of contact. If obtained, we propose to provide Executive Branch contact information on our website along with the standardized national security and law enforcement questions. We seek comment on this proposal.

38. *Non-Streamlined Processing.* We propose to process on a non-streamlined basis international section 214 and submarine cables applications with foreign ownership that are referred to the Executive Branch for review. Streamlined processing of an international section 214 application means that the application is granted on the 14th day after the application is placed on public notice.¹⁰⁶ Based on our experience, the Executive Branch needs time to review an application and streamlined processing, particularly a 14-day process, does not provide sufficient time for such a review. The Commission previously has made such a determination in the context of submarine cable landing licenses, where it found that a 14-day review period was insufficient due to the need to coordinate such licenses with the State Department.¹⁰⁷ Moreover, the Executive Branch regularly requests that we remove applications from streamlined processing as it cannot complete its review in that short of a time period. We believe it would be beneficial to the applicant, the Commission, and the Executive Branch agencies to process the applications as non-streamlined from the beginning rather than to initially process the application on a streamlined basis and then remove it from streamlining. This should provide more transparency as to the process for those applications referred to the Executive Branch for review. We seek comment on this proposal and seek suggestions on alternative changes to our processing of applications. We propose to

(Continued from previous page) _____
period during which the Executive Branch must conduct its review"); T-Mobile Comments at 4 ("The lack of transparency and a set timeframe makes it difficult for applicants to plan and execute their business transactions and new license procurements."); Level 3 Comments at 3 (stating that the "uncertainty means applicants must incur greater financing costs by carrying debt for longer periods of time and paying higher interest rates to ensure availability").

¹⁰⁴ See Appendix B (47 CFR §§ 1.6001 *et seq.*).

¹⁰⁵ Sprint Comments at 3.

¹⁰⁶ 47 CFR § 63.12(a). Domestic section 214 transfer of control applications that qualify for streamlining are granted on the 31st day after the application is placed on public notice. 47 CFR § 63.03(a).

¹⁰⁷ *Review of Commission Consideration of Applications under the Cable Landing License Act*, Report and Order, 16 FCC Rcd 22167, 22190, para. 46 (2001) (*Cable Landing License Order*).

remove from streamlining any transactions involving joint domestic and international section 214 authority where foreign ownership of the international 214 authorization alone would be cause for non-streamlined processing. In such cases, we see no reason to streamline one part of the transaction (domestic 214 authority) while another part (international 214 authority) is not streamlined. We seek comment on these proposals and seek suggestions on alternative changes to our processing of applications.

39. *90-Day and 180-Day Time Frames for Executive Branch Review.* We propose a 90-day review period for applications referred to the Executive Branch, with a one-time additional 90-day extension for circumstances where the Executive Branch requires additional review time beyond the initial period.¹⁰⁸ Many of the commenters support a 90-day review period.¹⁰⁹ We expect that many of the referred applications will be processed within the initial comment period because the certification requirement should obviate the need for negotiating LOAs related to compliance with routine law enforcement requirements.¹¹⁰ We will refer applications with reportable foreign ownership to the Executive Branch upon release of the public notice,¹¹¹ and we propose that, at that time, the 90-day clock would begin. Commenters support starting the clock when the application either is referred to the Executive Branch or placed on an accepted for filing public notice.¹¹²

40. In keeping with current practice, we propose to continue to request that the Executive Branch notify us within the comment period established by the public notice if it will require additional time to review the application (*i.e.*, beyond the comment period established by the public notice). Any request to defer Commission action beyond the public notice period pending national security, law enforcement, foreign policy, and trade policy review would be filed in the public record for the application. If the Executive Branch asks us to defer action on an application beyond the public comment period for the application, we propose a timetable for completing its review within 90 days of the release of the accepted-for-filing public notice. Should the Executive Branch complete review prior to the end of the 90-day period, we propose that it should notify the Commission at the time the review is complete. If

¹⁰⁸ The public comment period for non-streamlined submarine cable landing license applications, international section 214 applications, and section 310(b) petitions is 28 days. *See, e.g., Non-Streamlined International Applications/Petitions Accepted for Filing, Section 214 Applications (47 CFR § 63.18); Section 310(b) Petitions*, Report No. TEL-01790NS (May 12, 2016); *Non-Streamlined Submarine Cable Landing License Applications Accepted for Filing*, Report No. SCL-00181NS (April 22, 2016).

¹⁰⁹ *See* Sprint Comments at 2 (stating “the Commission should invite comment on whether it would serve the public interest to establish a 90-day review period for applications that include all of the preliminary information requested by the Executive Branch”); TelePacific Comments at 3 (stating that “the Commission should require the Executive Branch agencies to clear or deny Applications within 90 days of submitting the information and certifications required by the Letter”); T-Mobile Comments at 12 (“T-Mobile believes that 90 days is an appropriate and reasonable period of time for this review.”); CMIUSA Comments at 2 (urging that the Executive Branch review process not last longer than 90 days); CTIA Comments at 4 (the Commission “should propose a reasonable period during which the Executive Branch must conduct its review”); Wiley Rein Comments at 13-14 (recommending “a 90-day clock” for Executive Branch review to make the process more predictable); Level 3 Comments at 5 (advocating for a response from the Executive Branch within 30 or 45 days of public notice, with extensions up to 90 days total).

¹¹⁰ As our experience has shown, a significant portion of mitigation agreements filed in 2014 and 2015 only involved issues that would have been addressed by the certifications. *See supra* para. 32.

¹¹¹ Currently, only applications concerning international section 214 authorizations – either initial applications for authority or applications for assignment or transfer of authority – that qualify for streamlined processing pursuant section 63.12 are referred to the Executive Branch prior to the application being placed on public notice. 47 CFR § 63.12. In those cases, the applications have been referred to the Executive Branch generally a week prior to release of the public notice, and the Executive Branch is requested to notify the Commission prior to the automatic grant of the application if it wishes to review the application.

¹¹² *See, e.g.,* T-Mobile Comments at 12; USTelecom Comments at 2.

the Executive Branch does not notify the Commission within the 90-day period that it is requesting additional time to review the application, we propose to deem that it has not found any national security, law enforcement, foreign policy, or trade policy issues present, and we will move ahead with Commission action on the application. Commenters agree with this approach.¹¹³ We seek comment on this proposal and on any alternative proposals for processing such applications.

41. A 90-day period is consistent with the existing timelines for action on non-streamlined international 214 and cable landing license applications.¹¹⁴ Moreover, a 90-day review period is consistent with review periods used by other agencies as well. For example, CFIUS conducts national security reviews of mergers, acquisitions, and takeovers by, or with, any foreign person that could result in foreign control of a U.S. business (a “covered transaction”) under a similar time frame.¹¹⁵ After an organization submits notice of a transaction to the Committee, CFIUS has up to 90 days to complete its review of the transaction.¹¹⁶

42. We recognize that, in some unusual cases, the Executive Branch may need more than 90 days to investigate and/or resolve any national security, law enforcement, foreign policy, or trade policy issues. Allowing the Executive Branch up to an additional 90 days (*i.e.*, 180 days total from the date of public notice and referral) for review would be consistent with our rules regarding international section 214 and cable landing license applications that provide the Commission an additional 90 days’ review in cases of extraordinary complexity.¹¹⁷

43. Under our proposal, the Executive Branch would complete its review within the 90-day period or notify the Commission no later than the initial 90-day date that it requires additional time for review and, every 30 days thereafter, would notify the Commission on the status of review. We propose that the notification would explain why the Executive Branch requires additional time to complete review,

¹¹³ USTelecom suggests that the Commission propose a “deemed granted provision that would automatically approve applications not decided in accordance with the schedule.” USTelecom Comments at 2-3. CTIA suggests that in the absence of Executive Branch response within a set time frame, the Commission should move forward with processing the application or petition. CTIA Comments at 4. Wiley Rein proposes that if the Executive Branch “fail[s] to raise a specific objection or need for a mitigation agreement within 90 days” of public notice, the Commission should presume there is no objection to grant. Wiley Rein Comments at 14.

¹¹⁴ The Commission acts upon submarine cable and international section 214 applications that are ineligible for streamlining within 90 days of public notice (subject to 90 day extensions in cases of extraordinary complexity). 47 CFR §§ 1.767(i) and 63.12(d).

¹¹⁵ See 31 CFR § 800.207; see *infra* note 116. Where a covered transaction presents national security risks, the Foreign Investment and National Security Act of 2007 (FINSA) provides the statutory authority for CFIUS, or the lead agency acting on behalf of CFIUS, to enter into mitigation agreements with parties to the transaction, or to impose conditions on the transaction to address such risks. Section 721 of Title VII of the Defense Production Act of 1950 (“section 721”), as amended by FINSA, Public Law 110-49, 121 Stat. 246, codified at 50 U.S.C.A. § 4565. This authority enables CFIUS to mitigate any national security risk posed by a transaction rather than recommending to the President that the transaction be prohibited because it could impair U.S. national security. See Regulations Pertaining to Mergers, Acquisitions and Takeovers by Foreign Persons, 73 Fed. Reg. 70702, 70703 (Nov. 21, 2008).

¹¹⁶ CFIUS has 30 days after notification to review a transaction. 31 CFR § 800.502. If CFIUS concludes that further investigation of national security issues is warranted, then such investigation must be conducted within 45 days (which commences no later than the end of the 30-day review period). 31 CFR §§ 800.505, 800.506. In certain circumstances, CFIUS may also refer a transaction to the President for decision. 31 CFR § 800.506. In such case, the President shall announce a decision with respect to a transaction within 15 days of CFIUS’s completion of the investigation. 50 U.S.C.A. § 4565(d)(2). Cumulatively, this adds up to 90 days from the date of transaction notification.

¹¹⁷ 47 CFR §§ 1.767(i) and 63.12(d). See *Foreign Participation Order*, 12 FCC Rcd at 24034, para. 328; *Cable Landing License Order*, 16 FCC Rcd at 22188-89, para. 43.

along with an estimate of the additional time required. We invite comment on factors that would provide a basis for an extension. If the explanation includes classified or other information that should not be made public, the agencies would have the ability to file a short statement in the public record, and provide a more thorough explanation to Commission staff in a non-public record.

44. We seek comment on the proposed 90-day and 180-day time periods. Are these appropriate? Should they apply to all the applications that are referred to the Executive Branch or should there be different time periods for different types of applications? If different periods should be adopted, what would be the rationale for such a distinction and what would be an appropriate period?

45. *Follow-Up Questions.* As discussed above, the period for Executive Branch review would begin when the application goes on public notice and is referred to the Executive Branch. After receiving an applicant's answers to the threshold questions, there may be situations, as there are under the current process, when the agencies will need to seek additional information or clarification from the applicant to conduct their national security, law enforcement, foreign policy, and trade policy review. As is the current practice, we propose that the agencies engage directly with the applicant regarding any follow-up information requests, and that the applicant send its answers to the follow-up requests directly and solely to the agencies, but that the Commission could request copies of such answers in its discretion. To ensure that the time frames for Executive Branch review can be maintained, we propose that the applicant be required to respond to the agencies' requests for information within seven days. If the applicant does not provide the requested information on time, we propose that the Commission have the discretion to dismiss the application without prejudice. We propose that the Executive Branch would need to notify the Commission when an applicant fails to provide supplemental information within seven days. The applicant would have the option of asking for additional time to respond, but that would stop the 90-day review clock until the applicant provides the requested information. We propose that a request for additional time to provide supplemental information be submitted by the applicant directly to the Executive Branch with a copy submitted to the Commission.

46. We also propose to place similar requirements on the applicant to be responsive to requests by the agencies to negotiate mitigation, a process which we expect to occur within the 90-day review period following referral of an application, as discussed in the paragraphs above. Thus, under this proposed approach, an applicant would have seven days after receiving a draft mitigation agreement to respond to it (either by signing it or offering a counter-proposal). If an applicant desires more than seven days to respond to the draft mitigation agreement, it must submit an extension request directly to the Executive Branch. The 90-day clock would stop for the duration of the extension, just as it would stop for extensions to respond to follow-up questions. Negotiation of the mitigation agreement could involve several rounds of seven-day review periods (or longer if extensions are sought) if multiple drafts and counter-proposals are exchanged. Failure of an applicant to respond within the seven days or any approved extension period would result in dismissal of the application, without prejudice. We seek comment on these proposals. In particular, we request comment on whether seven days is sufficient time to respond to follow-up questions, and what impact allowing a longer period would have on the 90-day period for Executive Branch review.

E. Categories of Referrals

47. Although we propose to continue to refer certain applications to the Executive Branch agencies,¹¹⁸ we seek comment on whether there are categories of applications with foreign ownership that the Commission should generally not refer to the Executive Branch. For example, currently the Commission does not refer a *pro forma* notification because by definition there is no change in the ultimate control of the licensee.¹¹⁹ Several commenters support exclusion of *pro forma* notifications from

¹¹⁸ See *supra* Section III.A.

¹¹⁹ Under section 63.24(f), carriers may submit post-transaction notifications for non-substantial, or *pro forma*, transfers and assignments in which no change in the actual controlling party occurs. 47 CFR § 63.24(f). Thus, for

(continued...)

the referral process.¹²⁰ TelePacific asserts that applications for transactions that involve resellers with no facilities should not be referred to the Executive Branch.¹²¹ If the Commission adopted this position, how would the Commission know that no facilities are being assigned/transferred in the proposed transaction? Are there other categories of applications that the Commission should generally not refer to the Executive Branch, such as when the applicant has an existing LOA or NSA and there has been no change in the foreign ownership since the Executive Branch and applicant negotiated the relevant LOA or NSA? We also seek comment on whether the Commission might review and not refer to the Executive Branch certain categories of applications. How would this process work and which categories of applications might be included? Would internal Commission review for national security and law enforcement concerns serve to expedite the processing of applications?

F. Other Changes to the Application Process

48. We also propose other revisions to the application process to streamline the review process. First, we propose to amend our rules to clarify that applicants for international section 214 authorizations, assignments or transfers of control of domestic or international section 214 authority, and applications for submarine cable landing licenses or to assign or transfer control of such licenses must include in their applications the voting interests, in addition to the equity interests, of individuals or entities with ten percent or greater direct or indirect ownership in the applicant. Second, we propose to require these applicants to include in their applications a diagram of the applicant's ownership, showing the ten percent or greater direct or indirect ownership interests in the applicant. We believe that these two rule revisions will facilitate faster review of applications by Commission staff.

49. The current rules require applicants to provide the name, address, citizenship, and principal businesses of any individual or entity that owns directly or indirectly at least ten percent of the equity of the applicant. These rules originated when equity and voting ownership were usually the same. Today, applicants often have multiple classes of ownership and equity interests that differ from the voting interests. It is important for the Commission to know for potential control purposes who has voting interests in the applicant. The Commission has recognized this in other rules, where it requires an applicant to provide both equity and voting interests in an applicant.¹²² Although most applicants provide the voting information in their international section 214 and submarine cable license applications, others do not. If the filing does not provide information about the voting interests, either by providing separate equity and voting share information or noting that the voting interests track the equity interests, it is the practice of Commission staff to contact applicants and request the information. Having to request this information delays review of the application. We seek comment on this proposal to include applicant's applicable voting interests.

(Continued from previous page) _____

example, where the owner maintains *de facto* control of the carrier, less than 50 percent of the carrier's voting interests changes hands, and no new party gains negative or *de jure* control as a result of the transaction or series of transactions, the transaction would constitute a *pro forma* transfer of control. See *Amendment of Parts 1 and 63 of the Commission's Rules*, IB Docket No. 04-47, Report and Order, 22 FCC Rcd 11398, 11411, para. 36 (2007). Under section 63.24(f), the carrier can notify the Commission of the transaction after the transfer is completed. *Id.*

¹²⁰ USTelecom Comments at 3; T-Mobile Comments at 8 (“there is no public interest rationale for subjecting to [Executive Branch] review applications that do not propose new or changed foreign ownership”); CTIA Comments at 4-5 (arguing that the threshold questions “should not apply to *pro forma* transactions that are subject to prior FCC approval given that such transactions do not result in any substantive transfer of control.”).

¹²¹ TelePacific Comments at 4.

¹²² See, e.g., 47 CFR §§ 1.991(e)(1) (section 310(b) petitions), 1.2112(a)(2) (ownership disclosure requirements for applications).

50. We also believe that inclusion of a diagram showing the ten-percent-or-greater interests in the applicant can help speed the processing of an application.¹²³ Many applicants have complex ownership structures, particularly those with private equity ownership. A diagram can help distill a lengthy description of an ownership structure and make it more easily understood. The Commission has found this especially helpful in the context of foreign ownership petitions and recently included such a requirement in the rules regarding the contents of a request for declaratory ruling under section 310(b) of the Act.¹²⁴ While many applicants already provide ownership diagrams in their applications, Commission staff often request such a diagram from an applicant after the application has been filed. We believe that requiring the application to include the diagram would impose a minimal burden on applicants which would be offset by the Commission staff's ability to process applications more expeditiously. We seek comment on this proposal.

51. Finally, we propose a clean-up edit to the cable landing license rules. In 2014, the Commission removed the effective competitive opportunities test for cable landing licenses.¹²⁵ The Commission at that time failed to amend the reporting requirement for licensees affiliated with a carrier with market power in a cable's destination market to remove the limitation that it apply only to destination markets in World Trade Organization (WTO) Member countries.¹²⁶ We propose to remove that limitation and apply the reporting requirements to licensees affiliated with a carrier with market power in a cable's destination market for all countries, whether or not they are a WTO Member. We seek comment on this proposal.

IV. CONCLUSION

52. The Commission seeks to streamline and to bring more transparency to the Executive Branch referral process while continuing to give consideration to relevant national security, law enforcement, foreign policy, and trade policy concerns. We seek comment on the proposals we make to implement the suggestions submitted by the Executive Branch. We also seek comment on establishing appropriate time frames for Executive Branch review of an application with reportable foreign ownership and other changes to our processing rules. We tentatively conclude that implementation of these proposals would provide for more timely and transparent review while ensuring that relevant national security, law enforcement, foreign policy, and trade policy concerns receive consideration.

V. ADMINISTRATIVE MATTERS

A. Ex Parte Rules

53. This NPRM shall be treated as a "permit-but-disclose" proceeding in accordance with the Commission's *ex parte* rules. 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

¹²³ Consequently, we propose to amend sections 1.767(a)(8), 63.04(a)(4), and 63.18(h) to require the provision of an ownership diagram.

¹²⁴ 47 CFR § 1.991(h)(2).

¹²⁵ *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, 4266-67, paras. 23-25 (2014).

¹²⁶ 47 CFR § 1.767(l).

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.

B. Initial Regulatory Flexibility Analysis

54. Pursuant to the Regulatory Flexibility Act (RFA),¹²⁷ the Commission has prepared an Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on small entities by the policies and actions considered in this NPRM. The text of the IRFA is set forth in Appendix C. 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 NPRM. The Commission will send a copy of the NPRM, including the IRFA, to the Chief Counsel for Advocacy of the Small Business Administration.¹²⁸

C. Paperwork Reduction Act

55. This document contains proposed new and modified information collection requirements. The Commission, as a part of its continuing effort to reduce paperwork burdens, invites the general public and the Office of Management and Budget to comment on the 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 might “further reduce the information collection burden for small business concerns with fewer than 25 employees.”

D. Filing of Comments and Reply Comments

56. 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: <http://apps.fcc.gov/ecfs/>.
- Paper Filers: Parties who choose to file by paper must file an original and one copy of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, filers must submit two additional copies for each additional docket or rulemaking number.

Filings can be sent by hand or messenger delivery, 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.

- All hand-delivered or messenger-delivered paper filings for the Commission's Secretary must be delivered to FCC Headquarters at 445 12th St., SW, Room TW-A325, Washington, DC 20554. The filing hours are 8:00 a.m. to 7:00 p.m. All hand deliveries

¹²⁷ 5 U.S.C. § 603. The RFA, *see* 5 U.S.C. § 601 *et. seq.*, has been amended by the Contract with America Advancement Act of 1996, Pub. L. No.104-121, 110 Stat. 847 (1996) (CWAAA). Title II of the CWAAA is the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA).

¹²⁸ *See* 5 U.S.C. § 603(a).

must be held together with rubber bands or fasteners. Any envelopes and boxes must be disposed of before entering the building.

- Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743.
- U.S. Postal Service first-class, Express, and Priority mail must be addressed to 445 12th Street, SW, Washington DC 20554.

57. 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).

58. All parties may provide one copy of each pleading electronically or by paper to each of the following:

- (1) Troy Tanner, Deputy Chief, International Bureau, 445 12th Street, S.W., Washington, D.C. 20554; e-mail Troy.Tanner@fcc.gov.
- (2) David Krech, Associate Chief, Telecommunications and Analysis Division, International Bureau, 445 12th Street, S.W., Washington, D.C. 20554; e-mail David.Krech@fcc.gov.

VI. ORDERING CLAUSES

59. IT IS ORDERED that, pursuant to sections 4(i), 4(j), 214, 303, 309, 310 and 413 of the Communications Act as amended, 47 U.S.C. §§ 154(i), 154(j), 214, 303, 309, 310 and 413, and the Cable Landing License Act of 1921, 47 U.S.C. §§ 34-39, and Executive Order No. 10530, Section 5(a) reprinted as amended in 3 U.S.C. § 301, this Notice of Proposed Rulemaking is ADOPTED.

60. 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**List of Commenters to the NTIA Letter Public Notice**

CBS Corporation, 21st Century Fox, Inc., Univision Communications, Inc. and the National Association of Broadcasters (Broadcaster Representatives)

China Mobile International (USA), Inc. (CMIUSA)

CTIA

EchoStar Satellite Services, LLC and Hughes Network Systems, LLC (EchoStar/Hughes)

Level 3 Communications, LLC (Level 3)

Pillsbury, Winthrop, Shaw, Pittman, LLP (Pillsbury)

Satellite Industry Association (SIA)

Sprint Corporation (Sprint)

T-Mobile USA, Inc. (T-Mobile)

United States Telecom Association (USTelecom)

U.S. TelePacific Corp. (TelePacific)

Wiley Rein, LLP on behalf of certain Telecommunications Companies (Wiley Rein)

APPENDIX B**Proposed Rules**

Parts 0, 1, and 63 of the Commission rules are amended as follows:

PART 0—COMMISSION ORGANIZATION**1. The authority citation for part 0 continues to read as follows:**

Authority: Sec. 5, 48 Stat. 1068, as amended; 47 U.S.C. 155, 225, unless otherwise noted.

2. Amend paragraph 0.442(d)(3) to read as follows:

(3) A party who furnished records to the Commission in confidence will not be afforded prior notice when the disclosure is made to the Comptroller General of the United States, in the Government Accountability Office. Such a party will instead be notified of disclosure of the records to the Comptroller General either individually or by public notice. No prior notice will be afforded where records have been furnished to the Commission in confidence and shared with the Executive Branch pursuant to Section 1.6001.

PART 1 – PRACTICE AND PROCEDURE

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

Authority: 15 U.S.C. 79, *et seq.*; 47 U.S.C. 34-39, 151, 154(i), 154(j), 155, 157, 160, 201, 225, 227, 303, 309, 332, 1403, 1404, 1451, 1452, and 1455.

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

(8) For each applicant:

(i) The place of organization and the information and certifications required in §§ 63.18(h), (o), (p) and (q).

4. Amend paragraph 1.767(a)(11)(i) to read as follows:

(11)(i) If applying for authority to assign or transfer control of an interest in a cable system, the applicant shall complete paragraphs (a)(1) through (a)(3) of this section for both the transferor/assignor and the transferee/assignee. Only the transferee/assignee needs to complete paragraphs (a)(8) through (a)(9) of this section. The applicant shall provide the ownership diagram required under paragraph (a)(8)(i) of this section and include both the pre-transaction and post-transaction ownership of the licensee. At the beginning of the application, the applicant should also include a narrative of the means by which the transfer or assignment will take place. The application shall also specify, on a segment specific basis, the percentage of voting and ownership interests being transferred or assigned in the cable system, including in a U.S. cable landing station. The Commission reserves the right to request additional information as to the particulars of the transaction to aid it in making its public interest determination.

5. Amend section 1.767(j) to read as follows:

(j) On the date of filing with the Commission, the applicant shall also send a complete copy of the application, or any major amendments or other material filings regarding the application, to: U.S. Coordinator, EB/CIP, U.S. Department of State, 2201 C Street, NW., Washington, DC 20520-5818;

Office of Chief Counsel/NTIA, U.S. Department of Commerce, 14th St. and Constitution Ave., NW., Washington, DC 20230; and Defense Information Systems Agency, ATTN: GC/DO1, 6910 Cooper Avenue, Fort Meade, MD 20755-7088, and shall certify such service on a service list attached to the application or other filing.

6. Amend section 1.767 to add paragraph (k)(5) to read as follows:

(k) *Eligibility for streamlining.* Each applicant must demonstrate eligibility for streamlining by:

(5) Certifying that all ten percent or greater direct or indirect equity and/or voting interests in the applicant are U.S. citizens or entities organized in the United States.

7. Amend section 1.767(l) to read as follows:

(l) *Reporting Requirements Applicable to Licensees Affiliated with a Carrier with Market Power in a Cable's Destination Market.* Any licensee that is, or is affiliated with, a carrier with market power in any of the cable's destination countries must comply with the following requirements:

8. Amend section 1.991 to add paragraphs (l) and (m) to read as follows:

(l) Each petitioner subject to a referral to the Executive Branch pursuant to section 1.6001 must file the national security and law enforcement information. The information will include: (1) corporate structure and shareholder information; (2) relationships with foreign entities; (3) financial condition and circumstances; (4) compliance with applicable laws and regulations; and (5) business and operational information, including services to be provided and network infrastructure. The instructions for submitting the information to be filed are available on the FCC website. The required information shall be submitted separately from the petition and shall be filed via an FCC website.

(m) Each petitioner shall make the following certifications:

(1) to comply with all applicable Communications Assistance to Law Enforcement Act (CALEA) requirements and related rules and regulations, including any and all FCC orders and opinions governing the application of CALEA and assistance to law enforcement (*see, e.g.*, the Commission's orders in conjunction with ET Docket No. 04-295, Communications Assistance for Law Enforcement Act and Broadband Access and Services and the Commission's rules and regulations in Part 1, subpart Z—Communications Assistance for Law Enforcement Act);

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

(3) to designate a point of contact located in the United States and who is a U.S. citizen or lawful permanent resident, for the service of the requests and/or valid legal process described in paragraph 1.991(m)(2) and the receipt of other communications from the U.S. government;

(4) that all information submitted, whether at the time of submission of the petition or subsequently in response to either Commission or Executive Branch agency request, is substantially accurate and complete in all significant respects to the best of petitioner's knowledge at the time of the submission. While the petition is pending, as defined in section 1.65(a), the petitioner agrees to promptly inform the Commission and, if the petitioner

originally submitted the information in response to the request of another Executive Branch agency, that agency, if the information in the application is no longer substantially accurate and complete in all significant respects; and

(5) that the petitioner understands that if the applicant fails to fulfill any of the conditions to the grant of its petition and/or the information provided to the United States Government is materially false, fictitious, or fraudulent, the petitioner may be subject to all remedies available to the United States Government, including but not limited to revocation or termination of the applicant's Commission authorization, and criminal and civil penalties, including penalties under 18 U.S.C. § 1001.

9. Add subpart U to part 1 to read as follows:

Subpart U – Review of Applications, Petitions, and Other Filings With Foreign Ownership By Executive Branch Agencies on National Security, Law Enforcement, Foreign Policy, and Trade Policy Concerns

Sec.

1.6001 Executive Branch Review of Applications, Petitions, and Other Filings With Foreign Ownership

1.6002 Referral of Applications, Petitions, and Other Filings With Foreign Ownership to the Executive Branch Agencies for Review

1.6003 Time Frames for Executive Branch Review of Applications, Petitions, and Other Filings With Foreign Ownership

§ 1.6001 Executive Branch Review of Applications, Petitions, and Other Filings With Foreign Ownership

(a) The Commission, in its discretion, may refer applications, petitions, and other filings with foreign ownership to the Executive Branch for review for national security, law enforcement, foreign policy, and trade policy concerns.

(b) The Commission will consider any recommendations from the Executive Branch regarding whether a pending matter affects national security, law enforcement, foreign policy and/or trade policy as part of its public interest analysis. The Commission will make an independent decision and will evaluate concerns raised by the Executive Branch in light of all the issues raised in the context of a particular application, petition, or other filing.

§ 1.6002 Referral of Applications, Petitions, and Other Filings With Foreign Ownership to the Executive Branch Agencies

(a) The Commission shall refer any applications, petitions, or other filings for which it determines to seek Executive Branch review at the time such application, petition, or other filing is placed on an accepted for filing public notice.

(b) If the Executive Branch does not otherwise notify the Commission by filing in the record for the application, petition, or other filing within the comment period established by the public notice, the Commission will deem that the Executive Branch does not have any national security, law enforcement, foreign policy, and trade policy concerns with the application, petition, or other filing

and will act on the application, petition, or other filing as appropriate based on its determination of the public interest.

§ 1.6003 Time Frames for Executive Branch Review of Applications, Petitions, and Other Filings With Foreign Ownership

If the Executive Branch notifies the Commission that it needs additional time for its review of the application, petition, or other filing referred in accordance with section 1.6002(b):

(a) The Executive Branch shall notify the Commission by filing in the record for the application, petition, or other filing no later than 90 days from the date of public notice for the application, petition, or other filing whether it: (1) has national security, law enforcement, foreign policy, and trade policy concerns with the application, petition or other filing; (2) has no concerns; (3) has no concerns provided that the grant of the application, petition or other filing is conditioned; or (4) needs additional time to review the application, petition, or other filing.

(b) In cases of extraordinary complexity, when the Executive Branch notifies the Commission that it needs more than the 90-day period for review of the application, petition, or other filing under section 1.6003(a), the Executive Branch may request a one-time 90-day extension to review the application, petition, or other filing, provided that it: (1) explains why it was unable to complete its review within the initial 90-day review period and (2) provides the Commission with updates on the status of its review every 30 days (at the 120-day and 150-day dates after release of the public notice). The Executive Branch must notify the Commission by filing in the record for the application, petition, or other filing no later than 180 days from the date of public notice for the application, petition or other filing whether it: (1) has national security, law enforcement, foreign policy, and trade policy concerns with the application, petition, or other filing; (2) has no concerns; or (3) has no concerns if the grant of the application, petition, or other filing is conditioned.

(c)(1) The Executive Branch shall file its notifications as to the status of its review in the public record for the application, petition, or other filing.

(2) In circumstances where the notification of the Executive Branch contains nonpublic information, the Executive Branch shall file a public version of the notification in the public record for the application, petition, or other filing and shall file the nonpublic information with the Commission pursuant to section 0.457.

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

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

Authority: Sections 1, 4(i), 4(j), 10, 11, 201-205, 214, 218, 403 and 651 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i), 154(j), 160, 201-205, 214, 218, 403, and 571, unless otherwise noted.

11. Amend section 63.04 (a)(4) to read as follows:

(a)(4)(i) The name, address, citizenship and principal business of any person 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.

(ii) 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)(4)(i) of this section. Each such individual or entity shall be depicted in the ownership diagram and all controlling interests labeled as such.

12. Amend section 63.12 to re-designate section 63.12(c)(3) to section 63.12(c)(4) and add a new paragraph (c)(3) to read as follows:

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

13. Amend paragraph (h) of section 63.18 to read as follows:

(h)(1) The 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.

(2) 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 (h)(1) of this section. Each such individual or entity shall be depicted in the ownership diagram and all controlling interests labeled as such.

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

14. Amend section 63.18 to re-designate paragraphs (p), (q) and (r) as paragraphs (r), (s), and (t), and add new paragraphs (p) and (q) to read as follows:

(p) With respect to 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 in the applicant, file national security and law enforcement information regarding the applicant. The information may include: (1) corporate structure and shareholder information; (2) relationships with foreign entities; (3) financial condition and circumstances; (4) compliance with applicable laws and regulations; and (5) business and operational information, including services to be provided and network infrastructure. The instructions for submitting the information to be filed are available on the FCC website. The required information shall be submitted separately from the application and shall be filed via an FCC website.

(q) Each applicant shall make the following certifications:

(1) to comply with all applicable Communications Assistance to Law Enforcement Act (CALEA) requirements and related rules and regulations, including any and all FCC orders and opinions governing the application of CALEA and assistance to law enforcement (*see, e.g.*, the Commission's orders in conjunction with ET Docket No. 04-295, Communications Assistance for Law Enforcement Act and Broadband Access and Services, and the Commission's rules and regulations in Part 1, subpart Z—Communications Assistance for Law Enforcement Act);

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

(3) to designate a point of contact located in the United States and who is a U.S. citizen or lawful permanent resident, for the service of the requests and/or valid legal process described in paragraph 63.18(q)(2) and the receipt of other communications from the U.S. government;

(4) that all information submitted, whether at the time of submission of the application or subsequently in response to either Commission or Executive Branch agency request, is substantially accurate and complete in all significant respects to the best of applicant's knowledge at the time of the submission. While the application is pending, as defined in section 1.65(a), the applicant agrees to promptly inform the Commission and, if the applicant originally submitted the information in response to the request of another Executive Branch agency, that agency, if the information in the application is no longer substantially accurate and complete in all significant respects; and

(5) that the applicant understands that if the applicant fails to fulfill any of the conditions to the grant of its application and/or the information provided to the United States Government is materially false, fictitious, or fraudulent, the applicant may be subject to all remedies available to the United States Government, including but not limited to revocation or termination of the applicant's Commission authorization, and criminal and civil penalties, including penalties under 18 U.S.C. § 1001.

15. Amend paragraph 63.24(e)(2) to read as follows:

(2) The application shall include the information requested in paragraphs (a) through (d) of § 63.18 for both the transferor/assignor and the transferee/assignee. The information requested in paragraphs (h) through (p) of § 63.18 is required only for the transferee/assignee. The ownership diagram required under § 63.18(h)(2) shall include both the pre-transaction and post-transaction ownership of the authorization holder. At the beginning of the application, the applicant shall include a narrative of the means by which the proposed transfer or assignment will take place.

16. Amend paragraph 63.24(f)(2)(i) to read as follows:

(i) The information requested in paragraphs (a) through (d) and (h) of § 63.18 for the transferee/assignee. The ownership diagram required under § 63.18(h)(2) shall include both the pre-transaction and post-transaction ownership of the authorization holder;

APPENDIX C

Initial Regulatory Flexibility Act Analysis

1. As required by the Regulatory Flexibility Act (RFA),¹ the Commission has prepared this Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on small entities by the policies and rules proposed in this Notice of Proposed Rule Making (NPRM). We request written public comments on this IRFA. Commenters must identify their comments as responses to the IRFA and must file the comments by the deadlines provided in Section V.D. of this NPRM. The Commission will send a copy of the NPRM, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration.² In addition, the NPRM and IRFA (or summaries thereof) will be published in the Federal Register.³

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

2. This NPRM seeks comment on the proposed changes to our rules and procedures related to the review of certain applications and petitions for declaratory ruling involving foreign ownership by the Executive Branch agencies. The Commission's objective is to improve the timeliness and transparency of the Executive Branch review process. Industry has expressed concern about the uncertainty and lengthy review times that make it difficult to put a business plan in place. In response, the Executive Branch agencies filed a letter requesting the Commission make changes to its processes that would help facilitate a more streamlined review. The proposed rules seek to remedy the uncertainty and time frame for review.

3. The NPRM proposes several changes to our rules. Specifically, it proposes to:

- 1) Standardize the threshold questions that the national security and law enforcement agencies routinely ask applicants with foreign ownership and require applicants to provide the information as part of the application process. The NPRM proposes to collect information on: corporate structure and shareholder information; relationship with foreign entities; financial condition and circumstances; compliance with applicable laws and regulations; and business and operational information, including services to be provided and network infrastructure. The specific questions would be adopted through the Paperwork Reduction Act (PRA) process and would be publicly available on a website as a downloadable document so it is readily available to an applicant prior to filing its application. This proposal would help provide transparency and expedite the review process.
- 2) Include in the rules a requirement that applicants certify that they will comply with routine mitigation measures. The proposed certification requirement reflects current laws and obligations applicable to applicants, but ensures that the applicants focus on those laws and obligations at the beginning of the application process. This would also help reduce the number of individualized Letters of Assurances that the Executive Branch agencies would need to negotiate, thus expediting response to the Commission.
- 3) Include applicable time frames for the Executive Branch agencies to complete its review of FCC applications. A 90-day and 180-day clock is proposed upon referral of an application to the agencies. Under the proposed rules, the Executive Branch would complete its review within the 90-day period or notify the Commission no later than the initial 90-day date that it requires additional time for review and, every 30 days thereafter, would notify the Commission on the status of review. The notification would explain why the Executive Branch requires additional time to complete review, along with an estimate of the additional time required. This proposal will help improve the timeliness

¹ See 5 U.S.C. § 603. The RFA, *see* 5 U.S.C. § 601 *et seq.*, has been amended by the Contract With America Advancement Act of 1996, Pub. L. No. 104-121, Title II, 110 Stat. 847 (1996) (CWAAA).

² See 5 U.S.C. § 603(a).

³ *Id.*

of review and allow agencies time to review for national security, law enforcement, foreign policy, or trade policy concerns.

B. Legal Basis

4. The proposed action is authorized under Sections 4(i), 4(j), 214, 303, 309, 310 and 413 of the Communications Act as amended, 47 U.S.C. §§ 154(i), 154(j), 214, 303, 309, 310 and 413, and the Cable Landing License Act of 1921, 47 U.S.C. §§ 34-39, and Executive Order No. 10530, Section 5(a) reprinted as amended in 3 U.S.C. § 301.

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

5. 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 rules adopted herein.⁴ The RFA generally defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction."⁵ In addition, the term "small business" has the same meaning as the term "small business concern" under the Small Business Act.⁶ 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).⁷ Below, we describe and estimate the number of small entity applicants that may be affected by the adopted rules.

6. **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 wired communications networks. 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. By exception, establishments providing satellite television distribution services using facilities and infrastructure that they operate are included in this industry."⁸ The SBA has developed a small business size standard for Wired Telecommunications Carriers, which consists of all such companies having 1,500 or fewer employees.⁹ Census data for 2007 shows that there were 3,188 firms that operated that year. Of this total, 3,144 operated with fewer than 1,000 employees.¹⁰ Thus, under this size standard, the majority of firms in this industry can be considered small.

⁴ 5 U.S.C. § 604(a)(3).

⁵ 5 U.S.C. § 601(6).

⁶ 5 U.S.C. § 601(3) (incorporating by reference the definition of "small business concern" in 15 U.S.C. § 632). Pursuant to the RFA, 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." 5 U.S.C. § 601(3).

⁷ Small Business Act, 15 U.S.C. § 632 (1996).

⁸ See U.S. Census Bureau, *2012 NAICS Definition*, <http://www.census.gov/cgi-bin/sssd/naics/naicsrch?code=515120&search=2012> (NAICS Search) (last visited June xx, 2016).

⁹ See 13 CFR § 120.201, NAICS Code 517110.

¹⁰ U.S. Census Bureau, American Fact Finder, *Employment Size of Firms for the United States 2007*, http://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ECN_2007_US_51SSSZ5&prodType=table (U.S. Size of Firms Census Table) (last visited June 20, 2016).

7. **Competitive Local Exchange Carriers (Competitive LECs), Competitive Access Providers (CAPs), Shared-Tenant Service Providers, and Other Local Service Providers.** Neither the Commission nor the SBA has developed a small business size standard specifically for these service providers. The appropriate NAICS Code category is Wired Telecommunications Carriers, as defined in paragraph 6 of this IRFA. Under that size standard, such a business is small if it has 1,500 or fewer employees.¹¹ U.S. Census data for 2007 indicate that 3,188 firms operated during that year. Of that number, 3,144 operated with fewer than 1,000 employees.¹² Based on this data, the Commission concludes that the majority of Competitive LECs, CAPs, Shared-Tenant Service Providers, and Other Local Service Providers are small entities. According to the Commission's Industry Analysis Division of the Wireline Competition Bureau data, 1,442 carriers reported that they were engaged in the provision of either competitive local exchange services or competitive access provider services.¹³ Of these 1,442 carriers, an estimated 1,256 have 1,500 or fewer employees. In addition, 17 carriers have reported that they are Shared-Tenant Service Providers, and all 17 are estimated to have 1,500 or fewer employees.¹⁴ In addition, 72 carriers have reported that they are Other Local Service Providers.¹⁵ Of this total, 70 have 1,500 or fewer employees.¹⁶ Consequently, the Commission estimates that most providers of competitive local exchange service, competitive access providers, Shared-Tenant Service Providers, and Other Local Service Providers are small entities that may be affected by rules adopted pursuant to the proposals in this NPRM.

8. **Interexchange Carriers (IXCs).** Neither the Commission nor the SBA has developed a definition for Interexchange Carriers. The closest NAICS Code category is Wired Telecommunications Carriers as defined in paragraph 6 of this IRFA. The applicable size standard under SBA rules is that such a business is small if it has 1,500 or fewer employees.¹⁷ According to Commission's Industry Analysis Division of the Wireline Competition Bureau data, 359 companies reported that their primary telecommunications service activity was the provision of interexchange services.¹⁸ Of this total, an estimated 317 have 1,500 or fewer employees and 42 have more than 1,500 employees.¹⁹ Consequently, the Commission estimates that the majority of interexchange service providers are small entities that may be affected by rules adopted pursuant to the NPRM.

9. **Prepaid Calling Card Providers.** Neither the Commission nor the SBA has developed a small business size standard specifically for prepaid calling card providers. The appropriate NAICS Code category for prepaid calling card providers is Telecommunications Resellers. This 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. Mobile virtual networks operators (MVNOs) are included in this industry.²⁰ Under the applicable SBA size standard, such a business is small if it has 1,500 or fewer employees.²¹ U.S. Census data for 2007 show that 1,523 firms provided resale services during that year.

¹¹ 13 CFR § 121.201, NAICS code 517110.

¹² U.S. Size of Firms Census Table.

¹³ See *FCC Trends in Telephone Service 2010*, at tbl. 5.3.

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ 13 CFR § 121.201, NAICS code 517110.

¹⁸ See *FCC Trends in Telephone Service 2010*, at tbl. 5.3.

¹⁹ *Id.*

²⁰ NAICS Search (Search for code 717911 "Telecommunications Resellers").

²¹ 13 CFR § 121.201, NAICS code 517911.

Of that number, 1,522 operated with fewer than 1,000 employees.²² Thus, under this category and the associated small business size standard, the majority of these prepaid calling card providers can be considered small entities. According to Commission's Industry Analysis Division of the Wireline Competition Bureau data, 193 carriers have reported that they are engaged in the provision of prepaid calling cards.²³ All 193 carriers have 1,500 or fewer employees.²⁴ Consequently, the Commission estimates that the majority of prepaid calling card providers are small entities that may be affected by rules adopted pursuant to the NPRM.

10. **Local Resellers.** The SBA has developed a small business size standard for the category of Telecommunications Resellers. Under that size standard, such a business is small if it has 1,500 or fewer employees.²⁵ Census data for 2007 show that 1,523 firms provided resale services during that year. Of that number, 1,522 operated with fewer than 1,000 employees.²⁶ Under this category and the associated small business size standard, the majority of these local resellers can be considered small entities. According to Commission's Industry Analysis Division of the Wireline Competition Bureau data, 213 carriers have reported that they are engaged in the provision of local resale services.²⁷ Of this total, an estimated 211 have 1,500 or fewer employees.²⁸ Consequently, the Commission estimates that the majority of local resellers are small entities that may be affected by rules adopted pursuant to the proposals in this NPRM.

11. **Toll Resellers.** The Commission has not developed a definition for Toll Resellers. The closest NAICS Code Category is Telecommunications Resellers, and the SBA has developed a small business size standard for the category of Telecommunications Resellers. Under that size standard, such a business is small if it has 1,500 or fewer employees.²⁹ Census data for 2007 show that 1,523 firms provided resale services during that year. Of that number, 1,522 operated with fewer than 1,000 employees.³⁰ Thus, under this category and the associated small business size standard, the majority of these resellers can be considered small entities. According to Commission's Industry Analysis Division of the Wireline Competition Bureau data, 881 carriers have reported that they are engaged in the provision of toll resale services.³¹ Of this total, an estimated 857 have 1,500 or fewer employees.³² Consequently, the Commission estimates that the majority of toll resellers are small entities that may be affected by our proposals in the NPRM.

12. **Other Toll Carriers.** Neither the Commission nor the SBA has developed a size standard 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. The closest applicable NAICS Code category is for Wired Telecommunications Carriers, as defined in paragraph 6 of this IRFA. Under that

²² U.S. Size of Firms Census Table.

²³ See *FCC Trends in Telephone Service 2010*, at tbl. 5.3.

²⁴ *Id.*

²⁵ 13 CFR § 121.201, NAICS code 517911.

²⁶ *Id.*

²⁷ See *FCC Trends in Telephone Service 2010*, at tbl. 5.3.

²⁸ *Id.*

²⁹ 13 CFR § 121.201, NAICS code 517911.

³⁰ *Id.*

³¹ *FCC Trends in Telephone Service 2010*, at tbl. 5.3.

³² *Id.*

size standard, such a business is small if it has 1,500 or fewer employees.³³ Census data for 2007 shows that there were 3,188 firms that operated that year. Of this total, 3,144 operated with fewer than 1,000 employees.³⁴ Thus, under this category and the associated small business size standard, the majority of Other Toll Carriers can be considered small. According to Commission's Industry Analysis Division of the Wireline Competition Bureau data, 284 companies reported that their primary telecommunications service activity was the provision of other toll carriage.³⁵ Of these, an estimated 279 have 1,500 or fewer employees.³⁶ Consequently, the Commission estimates that most Other Toll Carriers are small entities that may be affected by the rules adopted pursuant to the NRPM.

13. **Wireless Telecommunications Carriers (except Satellite).** This industry comprises establishments engaged in operating and maintaining switching and transmission facilities to provide communications via the airwaves, such as cellular services, paging services, wireless internet access, and wireless video services.³⁷ The appropriate size standard under SBA rules is that such a business is small if it has 1,500 or fewer employees. For this industry, Census Data for 2007 show that there were 1,383 firms that operated for the entire year. Of this total, 1,368 firms had fewer than 1,000 employees. Thus under this category and the associated size standard, the Commission estimates that the majority of wireless telecommunications carriers (except satellite) are small entities. Similarly, according to internally developed Commission's Industry Analysis Division of the Wireline Competition Bureau data, 413 carriers reported that they were engaged in the provision of wireless telephony, including cellular service, Personal Communications Service (PCS), and Specialized Mobile Radio (SMR) services.³⁸ Of this total, an estimated 261 have 1,500 or fewer employees.³⁹ Consequently, the Commission estimates that approximately half of these firms can be considered small. Thus, using available data, we estimate that the majority of wireless firms can be considered small and may be affected by rules adopted pursuant to this NPRM.

14. **All Other Telecommunications.** "All Other Telecommunications" is defined as follows: This U.S. industry is comprised of establishments that are primarily engaged in providing specialized telecommunications services, such as satellite tracking, communications telemetry, and radar station operation. 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. Establishments providing Internet services or voice over Internet protocol (VoIP) services via client-supplied telecommunications connections are also included in this industry.⁴⁰ The SBA has developed a small business size standard for "All Other Telecommunications," which consists of all such firms with gross annual receipts of \$32.5 million or less.⁴¹ For this category, census data for 2007 show that there were 2,383 firms that operated for the entire year. Of these firms, a total of 2,346 had gross annual receipts of less than \$25 million.⁴² Thus, a majority of "All Other Telecommunications" firms potentially affected by the proposals in the NPRM can be considered small.

³³ 13 CFR § 121.201, NAICS code 517110.

³⁴ *Id.*

³⁵ *FCC Trends in Telephone Service 2010*, at tbl. 5.3.

³⁶ *Id.*

³⁷ See NAICS Search (Search for code 517210 "Wireless Telecommunications Carriers (except Satellite)").

³⁸ *FCC Trends in Telephone Service 2010*, at tbl. 5.3.

³⁹ *Id.*

⁴⁰ NAICS Search (Search for code 517919 "All Other Telecommunications").

⁴¹ 13 CFR 121.201; NAICs Code 517919.

⁴² U.S. Size of Firms Census Table.

15. **Satellite Telecommunications and All Other Telecommunications.** The rules proposed in this Further NPRM would affect some providers of satellite telecommunications services, if adopted. Satellite telecommunications service providers include satellite and earth station operators. Since 2007, the SBA has recognized two census categories for satellite telecommunications firms: “Satellite Telecommunications” and “Other Telecommunications.” Under the “Satellite Telecommunications” category, a business is considered small if it had \$32.5 million or less in annual receipts.⁴³ Under the “Other Telecommunications” category, a business is considered small if it had \$32.5 million or less in annual receipts.⁴⁴

16. The first category of Satellite Telecommunications “comprises establishments primarily engaged in providing point-to-point telecommunications services to other establishments in the telecommunications and broadcasting industries by forwarding and receiving communications signals via a system of satellites or reselling satellite telecommunications.”⁴⁵ For this category, Census Bureau data for 2007 show that there were a total of 512 satellite communications firms that operated for the entire year.⁴⁶ Of this total, 482 firms had annual receipts of under \$25 million.⁴⁷

17. The second category of Other Telecommunications is comprised of entities “primarily engaged in providing specialized telecommunications services, such as satellite tracking, communications telemetry, and radar station operation. 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. Establishments providing Internet services or voice over Internet protocol (VoIP) services via client-supplied telecommunications connections are also included in this industry.”⁴⁸ For this category, Census Bureau data for 2007 show that there were a total of 2,383 firms that operated for the entire year.⁴⁹ Of this total, 2,346 firms had annual receipts of under \$25 million.⁵⁰ We anticipate that some of these “Other Telecommunications firms,” which are small entities, are earth station applicants/licenseses that might be affected if our proposed rule changes are adopted.

18. **Radio Broadcasting.** The SBA defines a radio broadcasting entity that has \$38.5 million or less in annual receipts as a small business.⁵¹ Business concerns included in this industry are those “primarily engaged in broadcasting aural programs by radio to the public.”⁵² Census data for 2007 indicate that 2,926 such firms were in operation for the duration of that entire year. Of these, 2,877 had annual receipts of less than \$25.0 million per year and 49 had annual receipts of \$25.0 million or more per year.⁵³ Based on this data and the associated size standard, the Commission concludes that the majority of such firms are small.

⁴³ See 13 CFR § 121.201, NAICS code 517410.

⁴⁴ See 13 CFR § 121.201, NAICS code 517919.

⁴⁵ NAICS Search (Search for code 517410 “Satellite Telecommunications”).

⁴⁶ See U.S. Size of Firms Census Table.

⁴⁷ *Id.*

⁴⁸ NAICS Search (Search for code 517919 “All Other Telecommunications”).

⁴⁹ See 13 CFR § 121.201, NAICS code 517919.

⁵⁰ U.S. Size of Firms Census Table.

⁵¹ See 13 CFR § 121.201, 2012 NAICS code 515112.

⁵² U.S. Census Bureau 2002 NAICS Codes, Titles, and Definitions, Television Broadcasting, <http://www.census.gov/prod/ec02/parts/ec0251i09ab.pdf> (visited Aug 22, 2014).

⁵³ U.S. Size of Firms Census Table.

19. Further, according to Commission staff review of the BIA/Kelsey, LLC's Media Access Pro Television Database on November 25, 2014, about 11,337 (or about 99.9 percent) of 11,348 commercial radio stations in the United States have revenues of \$38.5 million or less. The Commission has estimated the number of licensed noncommercial radio stations to be 4,085.⁵⁴ We do not have revenue data or revenue estimates for these stations. These stations rely primarily on grants and contributions for their operations, so we will assume that all of these entities qualify as small businesses. We note that in assessing whether a business entity qualifies as small under the above definition, business control affiliations⁵⁵ must be included. Our estimate, therefore, likely overstates the number of small entities that might be affected by any changes to filing requirements for FCC Form 323 or Form 323-E, because the revenue figures on which this estimate is based do not include or aggregate revenues from affiliated companies.

20. In this context, the application of the statutory definition to radio stations is of concern. An element of the definition of "small business" is that the entity not be dominant in its field of operation. We are unable at this time and in this context to define or quantify the criteria that would establish whether a specific radio station is dominant in its field of operation. Accordingly, the foregoing estimate of small businesses to which the rules may apply does not exclude any radio station from the definition of a small business on this basis and is therefore over-inclusive to that extent. An additional element of the definition of "small business" is that the entity must be independently owned and operated. We note that it is difficult at times to assess these criteria in the context of media entities, and our estimates of small businesses to which they apply may be over-inclusive to this extent.

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

21. The NPRM proposes a number of rule changes that would affect reporting, recordkeeping and other compliance requirements for applicants who file international section 214 authorizations, submarine cable landing licenses or applications to assign or transfer control of such authorizations, and section 310 rulings (common carrier wireless, common carrier satellite earth stations, or broadcast) (applicants). The threshold questions request information already routinely asked by the Executive Branch agencies after filing the application but the proposed rules will require applicants with reportable foreign ownership to submit answers to the threshold questions at the time of filing their FCC application. Information requested will be on: corporate structure and shareholder information; relationship with foreign entities; financial condition and circumstances; compliance with applicable laws and regulations; and business and operational information, including services to be provided and network infrastructure. Applicants would have a time frame by when they need to respond to any follow-up questions relevant to the application. Applicants would also be required to certify that they will comply with the Communications Assistance to Law Enforcement (CALEA); will make communications to, from, or within 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; certify that applicants would designate a point of contact in the U.S. that is a U.S. citizen or lawful permanent resident; certify that all information at time of submission is accurate and notify when information submitted is no longer accurate; and if an applicant fails to fulfill obligations contained in certifications they will be subject to all remedies available to the United States Government.

⁵⁴ See FCC News Release, *Broadcast Station Totals as of September 30, 2014*, October 16, 2014, https://apps.fcc.gov/edocs_public/attachmatch/DOC-329966A1.pdf (*Broadcast Station Totals*).

⁵⁵ "[Businesses] are affiliates of each other when one [business] controls or has the power to control the other, or a third party or parties controls or has the power to control both." 13 CFR § 121.103(a)(1).

E. Steps Taken to Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered

22. 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 rules 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.”⁵⁶

23. In this NPRM, the proposed changes for Executive Branch’s review of FCC applications involving foreign ownership would help improve the timeliness and transparency of the review process, thus lessening the burden of the licensing process on all applicants, including small entities. The threshold questions would be publicly available, thus providing transparency and helping expedite Executive Branch’s review. The proposed certifications would help reduce the need for routine mitigation, which should facilitate a faster response by the Executive Branch on its review and advance the shared goal of making the Executive Branch review process as efficient as possible. Time frames for review of FCC applications referred to the Executive Branch have also been proposed, which will help prevent unnecessary delays and make the process more efficient and transparent, which ultimately benefits all applicants, including small entities.

24. The NPRM seeks comment from all interested parties. The Commission is aware that some of the proposals under consideration may impact small entities. Small entities are encouraged to bring to the Commission’s attention any specific concerns they may have with the proposals outlined in the NPRM.

25. The Commission expects to consider the economic impact on small entities, as identified in comments filed in response to the NPRM, in reaching its final conclusions and taking action in this proceeding.

F. Federal Rules that May Duplicate, Overlap, or Conflict With the Proposed Rules

26. The proposed rules require applicants to certify that they will comply with federal statutes related to assistance to law enforcement. Some of the federal statutes that may duplicate with the proposed rules are:

1. Communications Assistance to Law Enforcement Act, 47 U.S.C. §§ 1001-10;
2. Wiretap Act, 18 U.S.C. § 2510 *et seq.*;
3. Stored Communications Act, 18 U.S.C. § 2701 *et seq.*; and
4. Pen Register and Trap and Trace Statute, 18 U.S.C. § 3121 *et seq.*

⁵⁶ 5 U.S.C. § 603(c)(1)-(c)(4).

APPENDIX D
SAMPLE QUESTIONS REGARDING NATIONAL SECURITY AND
LAW ENFORCEMENT PROVIDED BY NTIA

This questionnaire offers guidance on the type and extent of information that may be requested when submitting applications for licenses under sections 214 and 310 of the Communications Act, as well as applications for submarine cable landing and satellite earth station licenses. These questions would generally cover, to the extent applicable to the particular application, detailed information regarding the business organization and services, network infrastructure, relationships with foreign entities or persons, historical regulatory and penal actions, and capabilities to comply with applicable legal requirements, and would be shared with relevant Executive Branch departments and agencies to assist in the review of public interest factors. These questions are intended to be illustrative and will be subject to further refinement.

CONTENTS OF FCC LICENSE APPLICATION (WITH FOREIGN OWNERSHIP)

I. ALL LICENSE APPLICATIONS SHALL DESCRIBE OR PROVIDE, AS APPLICABLE:

1. Basic information, including:

- a. Full business name;
- b. Any other names used, if applicable;
- c. Address of principal place of business;
- d. Place of incorporation;
- e. Point of contact information;
- f. Website(s);
- g. Description of intended services to be provided under this license;
- h. Description of services being provided under any currently held FCC licenses, if applicable; and
- i. Explanation of the Applicant's intended overall business model for licensed and unlicensed services in the United States for the next five years.

2. Corporate information, including:

- a. The name, address and nationality (including dual citizenship) or place of incorporation of: the immediate parent(s), the ultimate parent(s), and each intermediate parent with 5% or greater ownership.
- b. If applicable, for all 5% or greater individual owners, senior company officers or directors, or employee personnel that control or monitor the network infrastructure under the Applicant's control, who are either non-U.S. citizens or dual citizens, provide the following:
 - i. Full name, including any alternative spellings or any aliases ever used;
 - ii. Date and place of birth;
 - iii. Passport identifying number;
 - iv. US alien number (if applicable);
 - v. All residence and business addresses and phone numbers;
 - vi. Whether the individual has ever been investigated, arraigned, arrested, indicted or convicted of: (1) any of violation of federal U.S. law; (2) any

violation of local, state or federal 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 state public utility commissions; and/or (3) deceptive sales practices, violations of the Consumer Fraud Act and regulations, and/or other fraud or abuse practices whether pursuant to local, state or federal law; and

- vii. And whether such individual will have access to systems or records from an overseas location.

3. Financial Information (if applicable), including:

- a. The name of any and all financial institutions providing support or other assistance, and
- b. Audited financial statements from the preceding accounting year, or suitable equivalent.

4. Relationships with any foreign entities, or any U.S. subsidiaries or affiliates of foreign entities (if applicable), including:

- a. The identity of the foreign entity, U.S. subsidiaries, or affiliates of foreign entities;
- b. A description of the relationship with these entities, including joint ventures, consortiums, sources of revenue accounting for over 10% of annual revenue, and other significant business relationships;
- c. Whether any of these entities are foreign government-controlled, including the identity of the foreign government exercising control; and
- d. Whether such foreign entity, or U.S. subsidiaries or affiliates thereof, has any known control over the applicant and/or access to any U.S. facility, data, or customer information under the control of the applicant.

5. Regulatory/penal actions (if applicable), including:

- a. Listing of all FCC licenses, including cancelled and/or terminated licenses, and all licenses held by affiliates;
- b. Identification of any prior or ongoing FCC enforcement actions against any and all affiliated entities, including any entities which share one or more owners with the applicant, and if concluded, the result of such actions;
- c. Any other prior or ongoing regulatory enforcement actions against any and all affiliated entities, including any entities which share one or more owners with the applicant, and if concluded, the result of such actions; and
- d. Any other violations of local, state or federal laws by any and all affiliated entities, including any entities which share one or more owners with the applicant.

6. Assistance to Law Enforcement, including:

- a. Present and/or future intended capabilities to comply with CALEA, if applicable;
- b. Present or future anticipated relationships with any trusted third party providers, if applicable;
- c. The identity of any resident U.S. citizen point of contact for law enforcement assistance; and

- d. Whether records may be accessed and/or made available in the U.S. within three business days of receipt of lawful U.S. process.

7. Network Infrastructure (if applicable), including:

- a. A description and location of any and all facilities, whether owned or leased, where any applicant-owned or leased equipment is located; include all carrier transport facilities, telecommunication switching platforms, routers, media gateways, servers, network operations centers, Points of Presence (POPs), and data centers;
- b. A description of how any network infrastructure will be used to deliver current or intended services, including identification of the carrier transport facilities (T1, DS3, Optical Carrier) that will enable customer data flow into and out of owned and/or leased equipment;
- c. A network topology map providing the geographic footprint, including all POPs. To the extent operations are accessed and/or controlled from any overseas locations, please provide the address of such locations and a description of the operations accessed and/or controlled from there;
- d. The identity of any underlying carriers used to furnish services to customers and/or resell any services; and
- e. Storage location(s) of original business records, including
 - i. records of customer data;
 - ii. storage location(s) of copies of such records;
 - iii. the location from where such records are, or will be, accessed; and
 - iv. a description of the types and nature of records to be stored.
- f. A description of network security policies and procedures.

II. In addition to the questions in item (I), Transfers of Control of 214 Applications and Petitions for Declaratory Ruling will also describe or provide the following:

1. Services to be provided, including:

- a. Description of services currently offered and estimated number of current subscribers;
- b. Description of whether services will be offered as resale or facilities-based or both;
- c. Description of the current and intended customer base, including whether residential, enterprise, carrier, whether sold directly to an end-user, and whether applicant is currently or intends to sell to local, state or federal government entities;
- d. Listing of any current or intended federal, state or local government customers/contracts, if applicable; and
- e. Current or intended underlying, interconnecting and/or peering carrier relationships.

2. Business operations, including:

- a. The total number of current employees;
- b. The total number of employees located within the United States;
- c. The total number of employees located outside the United States and a description of any access by these employees to U.S. facilities and/or data;
- d. Description of personnel screening procedures used by the applicant when hiring employees;
- e. The total number of subscribers;

III. In addition to the questions in item (I), Submarine Cable Landing licenses will also describe or provide the following:

1. A description and location of all cable-related facilities, whether owned or leased, where any applicant-owned or leased equipment is located;
2. A network topology map indicating the geographic footprint. To the extent operations are accessed and/or controlled from any overseas locations, please provide the address of such locations and a description of the operations accessed and/or controlled from there;
3. A description of the expected initial and designed capacity of the cable system, including number of fiber pair, number of wavelengths per pair, and transmission speed per wavelength;
4. If the cable system is to be owned by a consortium, a description of the ownership percentages and capacity rights by owner. To the extent that distinct fiber pair in the cable system will be owned and/or operated by specific members of the consortium, a description of the ownership and operation of each fiber pair in the cable system;
5. A description of the cable system maintenance procedures, including identification of the geographic location of the facility with maintenance authority.
6. All access control/security policies that are in place for the submarine cable network operations;
7. All current and anticipated equipment vendors and managed services providers; and
8. A list of known customers and carriers using, or intending to use, the submarine cable.

IV. In addition to the questions in item (I), Satellite Earth Station licenses will also describe or provide the following:

1. A description and location of all satellite-related facilities, whether owned or leased, where any applicant-owned or leased equipment is located;
2. A network topology map indicating the geographic footprint. To the extent operations are accessed and/or controlled from any overseas locations, please provide the address of such locations and a description of the operations accessed and/or controlled from there;
3. All access control/security policies that are in place for the satellite network operations; and

A list of known customers and carriers using, or intending to use, the satellite's communications.

**STATEMENT OF
CHAIRMAN TOM WHEELER**

Re: Process Reform for Executive Branch Review of Certain FCC Applications and Petitions Involving Foreign Ownership, Notice of Proposed Rulemaking, IB Docket No. 16-155.

One of my first acts as Chairman was to launch a comprehensive review of the agency's operations, with a goal of streamlining processes and modernizing outdated rules. This review generated more than 154 recommendations to improve the way we do business, which have sparked reforms that have dramatically reduced backlogs and accelerated processes across the agency. One of the 154 areas identified for reform was the Commission's coordination with Executive Branch agencies when reviewing applications that involved foreign ownership. Thanks to effective collaboration with other agencies, the Commission is acting today to streamline this process, too.

When making a determination as to whether or not an application meets the public interest standard, applicants that are foreign-owned can raise unique issues. In such cases, the Commission has long sought input from the expert Executive Branch agencies on whether the proposed foreign investment raises national security, law enforcement, foreign policy, or trade policy concerns.

This process is necessary, but it's also flawed. We have received complaints from applicants that it's too hard to find information about the status of applications and that the review process takes too long. I agree.

Completing review of an application referred for Executive Branch review takes, on average, 250 days. Now consider that 250 days ago Kevin McCarthy was expected to become the next speaker of the House; Ben Carson was surging toward the top of the primary polls; and an Alabama Crimson Tide loss had people saying the Nick Saban dynasty was over.

We need to do better than 250 days. That's why, for the last two years, the Commission has been working with the Executive Branch and industry on ways to improve the process. We have identified obvious flaws that could be improved. For example, the national security and law enforcement agencies currently ask applicants a broad set of initial questions *after* the application is filed to help identify any national security and law enforcement concerns. Our review indicates that the analysis could move much faster if the relevant information is provided at the start of the process.

Last month, NTIA submitted a letter to the Commission outlining ideas from the Executive Branch agencies on how to improve coordination. We then issued a Public Notice seeking comment on the letter, and today we launch a rulemaking to implement many of NTIA's recommendations, and some additional ones of our own.

In particular, today's NPRM proposes to make certain questions publicly available on our website and require that applicants, with reportable foreign ownership, file answers to questions on ownership, network operations, and related matters *at the time of filing the application* to increase transparency and speed up the process. We propose having applicants certify to certain mitigation provisions *at the time of filing the application*, which also will expedite review. For instance, if such a certification process had been in place last year, this would have eliminated the need for over 50% of the mitigation agreements negotiated that year.

Going beyond NTIA's recommendations and consistent with responses to our Public Notice, this item proposes to establish a 90-day time frame for Executive Branch review with an additional one-time 90-day extension for circumstances where the Executive Branch requires additional time, provided the Executive Branch demonstrates that issues of complexity warrant an extension and provides a status

update every 30 days. Adopting reasonable time frames for completion of Executive Branch referrals will add certainty to the process.

Should the proposals be adopted, the process will be more predictable and transparent, which will work better for the Commission, for the Executive Branch, for the applicants, and, most important, ensure that new infrastructure and services offerings are made available faster to consumers.

Thank you to the International Bureau for their work on this item. I appreciate especially the interest Commissioner O’Rielly has taken in streamlining this process, and I look forward to working with him, the other Commissioners and with the relevant agencies to advance the goal of a faster, more transparent process.

**STATEMENT OF
COMMISSIONER MIGNON L. CLYBURN**

Re: Process Reform for Executive Branch Review of Certain FCC Applications and Petitions Involving Foreign Ownership, Notice of Proposed Rulemaking, IB Docket No. 16-155

Twenty years ago, the FCC established a process to refer certain applications involving foreign ownership to relevant Executive Branch agencies for review. In doing so, the Commission sought those agencies' input on any national security, law enforcement, foreign policy, or trade policy concerns that might relate to applicants with foreign ownership.

This referral process, which now affects many more applicants, may in some cases take a significant amount of time as the relevant agencies, known as "Team Telecom," conduct their necessary reviews. It is my understanding that some companies may actually forgo investment by foreign parties or fail to enter the U.S. market because they perceive the review process as uncertain and prolonged.

Like most, I believe there is always room for improvement in any undertaking, and as part of the Chairman's Process Reform initiative, Commission staff has been working diligently with the Executive Branch agencies for over two years to strike the proper balance. This *NPRM*, the product of their commendable work, outlines significant proposals aimed at injecting increased efficiency and transparency into this necessary and required review process.

Notably, the *NPRM* proposes to have Commission staff conduct the initial review of applicants' responses to the threshold questions for completeness before forwarding to Team Telecom for substantive review. This idea, aimed at streamlining what is too often a months-long back-and-forth information gathering process that applicants engage in directly with Team Telecom, is a sure step in the right direction.

No doubt, there may be other viable alternatives to this proposal – such as applicants certifying the completeness of their applications to the Commission – so I asked that we seek comment on such alternatives as well as on the parameters of FCC staff review.

The threshold questions will elicit confidential, proprietary and personally identifiable information from applicants, which is why we asked to seek comment on whether the Commission should presume certain information confidential as well as on the types of information to which that presumption should apply. I also requested that we seek comment on the obligations of the various Executive Branch agencies when it comes to protecting confidential information, and what impact, if any, those obligations would have on this proposal.

The sensitive nature of the responses to the threshold questions also require that we ensure they are transmitted through a secure portal. This is why we sought to invite comment on what steps the Commission should take to ensure that the responses received are secure and securely transmitted.

The *NPRM* also proposes to impose timeframes for review of applications referred to Team Telecom. Specifically, submission of completed applications to Team Telecom would commence a 90-day shot clock for action on the application, with a one-time option for a 90-day extension. This proposal, which addresses the number one issue raised by commenters, would provide applicants a clear timeline for the processing of their applications and build transparency into the process.

I look forward to reviewing the record that develops in this proceeding and am mindful that our goal here is to streamline Executive Branch review of applications, not expand it or unduly increase associated burdens. Developing the right regulatory balance to increase certainty, efficiency and transparency in the Team Telecom review process requires the input and cooperation of all involved – agencies and industry alike.

Thank you to Diane Cornell, the International Bureau, and the Executive Branch agencies for the many hours of work that has enabled us to reach this point.

**STATEMENT OF
COMMISSIONER JESSICA ROSENWORCEL**

Re: Process Reform for Executive Branch Review of Certain FCC Applications and Petitions Involving Foreign Ownership, Notice of Proposed Rulemaking, IB Docket No. 16-155.

It is clear that the communications industry is facing an increasingly complex future—with services converging and competition no longer fenced in by traditional geographic borders. At the same time, the process we use at the Commission to assess foreign ownership interests has grown more opaque. This is not right—and not fair to the growing number of applicants requiring input regarding foreign investment in communications.

Today we begin to fix this wrong with a rulemaking designed to streamline our procedures for companies with foreign financing. We propose narrowing the range of applications referred to the Executive Branch as well as a shot-clock for its review. We also itemize the information required when filing an application at the Commission and the security procedures governing that information. These are smart steps and they build on our efforts last year to provide more clear-cut guidance regarding investment in our nation's broadcast stations. Moreover, I believe they can be put in place without compromising national security objectives.

I look forward to the record that develops and thank our friends at the National Telecommunications and Information Administration for kick-starting this conversation with their May 10, 2016 letter. Thanks also goes to my colleague Commissioner O'Rielly for pressing the importance of this reform.

**STATEMENT OF
COMMISSIONER AJIT PAI**

Re: Process Reform for Executive Branch Review of Certain FCC Applications and Petitions Involving Foreign Ownership, Notice of Proposed Rulemaking, IB Docket No. 16-155.

Sigmund Freud once said that a “doctor should be opaque to his patients, and like a mirror, should show them nothing but what is shown to him.”¹ But good psychiatry isn’t necessarily good government. And the opacity of the Executive Branch’s Team Telecom review process proves that point.

To be sure, Team Telecom serves important national security, foreign policy, and trade policy interests. But the current review process is broken. It takes too long and lacks predictability. My office has heard from many companies that complain of being held in a state of regulatory limbo, unsure of when a decision will come or what is responsible for the delay.² This uncertainty has real-world consequences. It delays and deters investment in the United States and the introduction of new services to the American people.³

I am therefore pleased that the Commission is issuing this Notice of Proposed Rulemaking (NPRM) seeking comment on ways to streamline the Team Telecom review process in order to better serve the public interest.

Most notably, our proposal to establish an initial 90-day shot clock for Team Telecom review should substantially expedite the FCC’s processing of applications. Matters that currently remain pending for over a year could be resolved in just three months. And while our proposal would allow Executive Branch agencies to request extensions of the shot clock, thanks to a suggestion made by Commissioner O’Rielly, the NPRM now proposes a hard 90-day cap on the duration of those extensions. We also make clear that such requests must be adequately explained by the Executive Branch, as well as our expectation that such extensions will be exceptions, rather than the rule.

That said, I do have concerns about some elements of the reform plan that the Executive Branch submitted to the FCC. I worry that certain suggestions could increase applicants’ obligations beyond current legal requirements or could be counterproductive to our streamlining efforts.

First, the Executive Branch asks all applicants to certify to the Commission that they will “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 lawful request or valid legal process under U.S. law.”⁴ In its proposed form, this certification may stray beyond existing law by extending federal jurisdiction over communications that are not normally subject to U.S. government process. In addition, it raises the specter of data localization and repatriation requirements, which could contravene our long-standing policy of favoring the free flow of information. Moreover, it could open a Pandora’s Box by inviting foreign nations to issue similar requests for information held by U.S.-based companies, or otherwise make it harder for those companies to do business abroad.

¹ Sigmund Freud, *Recommendations to Physicians Practicing Psycho-Analysis*, in 12 THE STANDARD EDITION OF THE COMPLETE PSYCHOLOGICAL WORKS OF SIGMUND FREUD 109, 118 (James Stachey ed. & trans., Hagarth Press 1958) (1912).

² See Level 3 Comments at 3–4; Sprint Comments at 3–4; TelePacific Comments at 2–3; T-Mobile Comments at 4.

³ See Sprint Comments at 3–4; T-Mobile Comments at 6.

⁴ NPRM at para. 31.

Second, the Executive Branch asks the Commission to apply its proposed certification requirements to applicants not currently subject to Team Telecom review. This proposal seems to directly contradict the purpose of this streamlining initiative. It will increase, not decrease, the regulatory burdens placed on companies and the amount of paperwork they are required to fill out. In a proceeding designed to expedite the Team Telecom review process, I'm reluctant to impose additional requirements on applications that previously have had nothing to do with Team Telecom review in the first place.

Third, I'm uncertain whether responses to questions posed for purposes of Team Telecom review should first be submitted to the Commission or instead to the Executive Branch. Unfortunately, I do not currently have confidence that the Commission can protect the sensitive commercial information that will be included in companies' answers. For instance, last year, on a party-line vote, the Commission weakened the standard for publicly disclosing sensitive corporate information covered by FOIA Exemption 4.⁵ At the time, the target of the Commission's ire was video programmers. But I warned then that the Commission's decision would inflict a "large amount of collateral damage along the way."⁶ That concern echoes today as stakeholders subject to the Team Telecom process seem to doubt the FCC's ability or perhaps willingness to safeguard confidential commercial information.⁷

At the end of the day, however, this NPRM kicks off an important and worthwhile conversation. I'm hopeful that we'll adopt rules that will expedite the Team Telecom review process without imposing unnecessary regulatory burdens. I would like to thank my colleagues for agreeing to incorporate my suggestions and the staff of the International Bureau for their hard work in producing this NPRM so quickly after the Executive Branch transmitted its views. (Team Telecom would do well to emulate your rapid pace.) In the coming months, I look forward to studying the record and working cooperatively with my colleagues and staff to conclude this proceeding soon.

⁵ See *Applications of Charter Communications, Inc., Time Warner Cable Inc., and Advance/Newhouse Partnership for Consent to Assign or Transfer Control of Licenses and Authorizations*, MB Docket No. 15-149, Order, 30 FCC Rcd 10360, 13401-02 (2015) (Statement of Commissioner Ajit Pai, Approving in Part and Dissenting in Part).

⁶ *Id.* at 10397.

⁷ See Pillsbury Winthrop Comments at 2 ("Without [additional confidentiality guarantees], the increased efficiency in the process that the [NTIA] Letter seeks is unlikely to be realized because applicants may refrain from providing sensitive information upfront, which would lead to the same back and forth with Team Telecom that the Letter proposes to reduce."); Wiley Rein Comments at 17 ("To provide assurance to applicants regarding the confidentiality of [sensitive] information, the FCC should adopt a mechanism for applicants automatically to receive confidential treatment of the information . . .").

**STATEMENT OF
COMMISSIONER MICHAEL O'RIELLY**

Re: Process Reform for Executive Branch Review of Certain FCC Applications and Petitions Involving Foreign Ownership, Notice of Proposed Rulemaking, IB Docket No. 16-155.

I'm pleased to support this proposal to set a definitive process that would bring more certainty and transparency to the review of applications involving foreign ownership, all without harming national security. Too often today, these applications are lost in the black hole of the "Team Telecom" review process, delaying or preventing U.S. companies from accessing new capital and opportunities or, even worse, leaving their applications in the ether for years, as Commissioner Pai stated. As Commissioner Clyburn indicated, the current process is so bad that some parties avoid it altogether as a matter of course, by foreclosing any consideration of foreign investment. The reforms recommended in this item would go a long way toward clearing out any unnecessary roadblocks between American businesses and new investors.

The item proposes firm timelines for review, which the Commission has the full authority to do, that would be a vast improvement over the current open-ended structure. Parties deserve answers to their petitions within a reasonable timeframe, and 90 days with a possible one-time 90-day extension should provide ample time to identify the rare cases in which there is a true national security concern. Likewise, the proposal that each reviewing agency provide a point person and their contact information would greatly enhance accountability and transparency. It's very difficult to address concerns when applicants don't even know which agency is lodging them, let alone who in that place can facilitate a resolution.

There are some important issues to be worked out, such as the extent to which the Commission should be aggregating or storing any sensitive information that may be filed, and if so how best to maintain appropriate security and confidentiality. I expect we will receive substantial, useful feedback on these issues and others in the weeks to come, and look forward to bringing this proceeding to a successful conclusion in the very near future. A special thanks to the Chairman, the Bureau, and especially Mr. Tanner for their work leading to this item.