

**STATEMENT OF
COMMISSIONER AJIT PAI**

Re: *Process Reform for Executive Branch Review of Certain FCC Applications and Petitions Involving Foreign Ownership*, 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 . . .").