

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

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

**REPORT AND ORDER**

**Adopted: September 30, 2020**

**Released: October 1, 2020**

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

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## I. INTRODUCTION

1. In this Report and Order, we adopt rules and procedures that streamline and improve the timeliness and transparency of the process by which the Federal Communications Commission coordinates with the Executive Branch agencies for assessment of any national security, law enforcement, foreign policy, or trade policy issues regarding certain applications filed with the Commission. The rules we adopt today formalize the review process and establish firm time frames for the Executive Branch agencies to complete their review consistent with the President’s April 4, 2020 Executive Order No. 13913 that established the Committee for the Assessment of Foreign Participation in the United States Telecommunications Services Sector (the Committee).<sup>1</sup> The rules will provide greater regulatory certainty for applicants and facilitate foreign investment in, and the provision of new services and infrastructure by, U.S. authorization holders and licensees in a more timely manner, while continuing to ensure that the Commission receives the benefit of the agencies’ views as part of its public interest review of an application.

2. These new rules and procedures will also improve the ability of the Executive Branch agencies to expeditiously and efficiently review the applications and make the review process more transparent. Among other requirements, for most applications referred by the Commission, the Committee has 120 days for initial review, plus an additional 90 days for secondary assessment if the Committee determines that the risk to national security or law enforcement interests cannot be mitigated with standard mitigation measures.

## II. BACKGROUND

3. For over 20 years, the Commission has referred certain applications that have reportable foreign ownership to the Department of Defense, Department of Homeland Security, Department of Justice, Department of State, U.S. Trade Representative, and Department of Commerce’s National Telecommunications & Information Administration (NTIA) (collectively, Executive Branch agencies or agencies) for their review. In adopting rules for foreign carrier entry into the U.S. telecommunications market over two decades ago in its *Foreign Participation Order*, the Commission affirmed that it would consider national security, law enforcement, foreign policy, and trade policy concerns in its public interest review of applications for international section 214 authorizations and submarine cable landing licenses

<sup>1</sup> Executive Order No. 13913, Establishing the Committee for the Assessment of Foreign Participation in the United States Telecommunications Services Sector, 85 FR 19643 (April 8, 2020) (Executive Order) (stating that, “[t]he security, integrity, and availability of United States telecommunications networks are vital to United States national security and law enforcement interests”).

and petitions for declaratory ruling under section 310(b) of the Act.<sup>2</sup> Accordingly, the Commission has coordinated such applications with the relevant Executive Branch agencies for their expertise in identifying and evaluating issues of concern that may arise from the applicants' foreign ownership.<sup>3</sup>

4. Under this practice, when an applicant has a 10% or greater direct or indirect foreign investor, the Commission has referred the following types of applications to the Executive Branch agencies for their input on any national security, law enforcement, foreign policy, and trade policy concerns: (1) international section 214 authority; (2) assignment or transfer of control of domestic or international section 214 authority; (3) submarine cable landing licenses; and (4) assignment or transfer of control of a submarine cable landing license. The Commission also has referred petitions seeking authority to exceed the section 310(b) foreign ownership benchmarks for broadcast and common carrier wireless and common carrier satellite earth station applicants and licensees.<sup>4</sup> The Commission, however, retains discretion to determine which applications it will refer to the agencies for review.

5. The national security and law enforcement agencies (the Department of Defense, Department of Homeland Security and Department of Justice, informally known as Team Telecom), generally initiate review of a referred application by sending the applicant a set of questions seeking further information.<sup>5</sup> The applicant provides answers to these questions and any follow-up questions directly to Team Telecom, without involvement of Commission staff. Team Telecom uses the information gathered through the questions to conduct its review and determine whether it needs to negotiate a mitigation agreement, which can take the form of a letter of assurances or national security

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<sup>2</sup> *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*), recon. denied, 15 FCC Rcd 18158 (2000). In this Report and Order, applications and petitions are collectively referred to as "applications," and applicants and petitioners are collectively referred to as "applicants."

<sup>3</sup> *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*).

<sup>4</sup> 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% 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%. 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) (*2012 Foreign Ownership Forbearance Order*) (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 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.

<sup>5</sup> The set of questions seeks information on the 5% 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. *See* Letter from the Honorable Lawrence E. Strickling, Assistant Secretary for Communications and Information, U.S. Department of Commerce, to Marlene H. Dortch, Secretary, FCC at 3 (May 10, 2016) (NTIA Letter) ("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'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 10% of the equity in the applicant and the percentage of equity owned by each of those entities to the nearest 1%. 47 CFR §§ 1.767(a)(8), 63.04(a)(4), 63.18(h), 63.24(e)(2).

agreement (collectively, mitigation agreements), with the applicant to address potential national security or law enforcement issues. A letter of assurances 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. A national security agreement is a formal agreement between the applicant and the agencies and is signed by all parties.

6. Upon completion of its review, Team Telecom advises the Commission of its recommendation in typically one of two forms: (1) no comment, in which case the agencies file a letter to this effect, and the Commission acts on the application; or (2) no objection to the grant of an application so long as the Commission conditions grant on the applicant's compliance with the terms of the relevant mitigation agreement.<sup>6</sup> In the latter 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 mitigation agreement.<sup>7</sup> Alternatively, the Executive Branch may recommend that the Commission deny an application based on national security or law enforcement grounds. In such cases, the Executive Branch has filed the recommendation on behalf of the full set of agencies to which the Commission referred the application.<sup>8</sup>

7. Pursuant to its authority and obligation under the Communications Act, the Commission accords the appropriate level of deference to the Executive Branch agencies in their areas of expertise but ultimately makes its own independent decision on whether to grant a particular application.<sup>9</sup> The Commission has recently affirmed this long-standing policy;<sup>10</sup> it has also broadened the scope of referrals to include broadcast petitions for section 310(b) foreign ownership rulings.<sup>11</sup> For calendar years 2016-

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<sup>6</sup> For example, on June 8, 2020, 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 letter of assurances. Petition of the Department of Justice, National Security Division to Adopt Conditions to Authorizations and Licenses, File No. ITC-214-20190131-00073 (filed June 8, 2020), <https://go.usa.gov/xfpSm>; *International Authorizations Granted Section 214 Applications* (47 CFR §§ 63.18, 63.24); *Section 310(b) Petitions* (47 CFR § 1.5000), Report No. TEL-02025, Public Notice, 35 FCC Rcd 6478 (IB 2020), <https://go.usa.gov/xfpSV>.

<sup>7</sup> More specifically, a typical grant of authorization states that a failure to comply and/or remain in compliance with any of the commitments and undertakings in the mitigation agreement 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 *International Authorizations Granted Section 214 Applications* (47 CFR §§ 63.18, 63.24); *Section 310(b) Petitions* (47 CFR § 1.5000), Report No. TEL-02031 (IB 2020), <https://go.usa.gov/xfpSp>. 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, 503.

<sup>8</sup> See, e.g., Executive Branch Recommendation to the Federal Communications Commission to Deny China Mobile International (USA) Inc.'s Application for an International Section 214 Authorization, File No. ITC-214-2011090100289 (filed July 2, 2018), <https://go.usa.gov/xfeAz>; Executive Branch Recommendation for a Partial Denial and Partial Grant of the Application for a Submarine Cable Landing License for the Pacific Light Cable Network, File Nos. SCL-LIC-20170421-00012, SCL-AMD-20171227-00025 (June 17, 2020), <https://go.usa.gov/xfphd>.

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

<sup>10</sup> See *China Mobile International (USA) Inc. Application for Global Facilities-Based and Global Resale International Telecommunications Authority Pursuant to Section 214 of the Communications Act of 1934, as Amended*, ITC-214-20110901-00289, Memorandum Opinion and Order, 34 FCC Rcd 3361, 3361, para. 2 (2019) ("[t]he Commission has sought the expertise of the relevant Executive Branch agencies for over 20 years and has accorded deference to their expertise . . . . The Commission ultimately makes an independent decision in light of the information in the record, including any information provided by the applicant in response to any filings by the Executive Branch agencies.").

<sup>11</sup> *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, Report and Order, 31 FCC Rcd 11272, 11282, 11289, paras. 15, 34 (2016), *recon. dismissed*, 32 FCC Rcd 4780 (IB/MB 2017) (2016

(continued....)

2019, the Commission referred an average of 15% of all international section 214 and submarine cable applications to the Executive Branch for review.<sup>12</sup> This referral process can delay the time by which the Commission acts on applications. For calendar years 2016-2019, the average time for clearance of an application reviewed by Team Telecom was 260 days for those applications that were cleared.<sup>13</sup> Regardless of the type of response from the Executive Branch agencies, the Commission strives to act quickly on an application after the Executive Branch agencies complete their review.

8. *NTIA Letter and Executive Branch NPRM.* On May 10, 2016, 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.<sup>14</sup> In particular, the NTIA Letter asked the Commission to require applicants with reportable foreign ownership to provide certain information regarding ownership, network operations, and related matters. NTIA asked that we require all applicants seeking an international section 214 authorization, the transfer of control or assignment of a section 214 authorization, a submarine cable landing license, or assignment or transfer of control of such an authorization of license (regardless of whether they have reportable foreign ownership) to certify that they will comply with applicable national security and law enforcement assistance requirements and respond truthfully and accurately to lawful requests for information and/or legal process.<sup>15</sup> The NTIA Letter stated that such requirements would improve the ability of the Executive Branch to expeditiously and efficiently review referred applications.<sup>16</sup> The letter further stated that the proposed certifications, in many cases, could eliminate the need for national security or law enforcement conditions, and thus facilitate expeditious responses to the Commission on specific applications.<sup>17</sup> On May 12, 2016, the International Bureau released the *NTIA Letter Public Notice* seeking comment on the NTIA Letter.<sup>18</sup>

9. In response to the NTIA Letter and the comments the Commission received on the *NTIA Letter Public Notice*, the Commission, in its *Executive Branch NPRM*, sought comment on proposals to improve the timeliness and transparency of the process for referring certain applications with reportable foreign ownership to the Executive Branch agencies.<sup>19</sup> Specifically, the Commission proposed: (1) to limit the types of applications it refers in the future to the types of applications it currently refers and require only certain types of applicants to provide the information requested by the NTIA Letter,<sup>20</sup> and

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*Foreign Ownership Order*).

<sup>12</sup> This percentage was derived from the number of applications received by the Commission and the number of applications referred to the Executive Branch for calendar years 2016-2019.

<sup>13</sup> This average was derived from the number of days for Team Telecom clearance of applications for calendar years 2016-2019 divided by the number of applications for which Team Telecom completed review during that time period.

<sup>14</sup> NTIA Letter.

<sup>15</sup> *Id.* at 1, 3-5. NTIA asked that petitioners for a section 310(b) foreign ownership ruling provide similar certifications.

<sup>16</sup> *Id.* at 1.

<sup>17</sup> *Id.*

<sup>18</sup> *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*). Twelve comments were filed in response to the public notice. See *Process Reform for Executive Branch Review of Certain FCC Applications and Petitions Involving Foreign Ownership*, IB Docket No. 16-155, Notice of Proposed Rulemaking, 31 FCC Rcd 7456, 7460-61, para. 11 (2016) (*Executive Branch NPRM*).

<sup>19</sup> *Executive Branch NPRM*, 31 FCC Rcd 7456.

<sup>20</sup> *Id.* at 7461-62, para. 13 (“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 (continued....)”).

sought comment on whether there are categories of applications with foreign ownership that the Commission should generally not refer to the Executive Branch agencies for review;<sup>21</sup> (2) to require applicants with reportable foreign ownership to provide information on ownership, network operations, and related matters when filing their applications;<sup>22</sup> (3) to add certification requirements to its rules, and sought comment on whether it should require all applicants (as requested by the agencies), and not only those applicants with reportable foreign ownership, to comply with the certifications;<sup>23</sup> (4) to adopt a 90-day period for the Executive Branch to complete its review of referred applications with a one-time 90-day extension in rare instances;<sup>24</sup> (5) to amend its rules to clarify that applicants must include in their applications voting interests, in addition to equity interests, and a diagram of individuals or entities with a 10% or greater direct or indirect ownership in the applicant;<sup>25</sup> and (6) a minor clean-up edit to the cable landing license rules.<sup>26</sup> The Commission received fifteen comments and eleven reply comments in response to the NPRM.<sup>27</sup>

10. On November 10, 2016, NTIA filed supplemental comments on behalf of the Executive Branch in connection with the *Executive Branch NPRM*.<sup>28</sup> The Executive Branch stated that the proposed 90-day initial review period with a one-time 90-day extension would establish an infeasible and rigid time frame.<sup>29</sup> The Executive Branch recommended that the Commission increase the initial review period to 180 days with a one-time extension period of 120 days if the Commission decides to establish time periods.<sup>30</sup> In addition, the Executive Branch suggested that the Commission's rules include a mechanism that allows the Executive Branch to extend its review in exceptional circumstances to accommodate the complexity of the national security or law enforcement issues that may be raised with applicants.<sup>31</sup>

11. *Executive Order 13913*. On April 4, 2020, the President signed Executive Order 13913, which established the Committee for the Assessment of Foreign Participation in the United States Telecommunications Services Sector, composed of the Secretary of Defense, the Secretary of Homeland Security, the head of any other executive department or agency, or any Assistant to the President, as the President determines appropriate, and the Attorney General, who serves as the Chair (together, the

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such licenses, and petitions for section 310(b) foreign ownership rulings (broadcast, common carrier wireless, and common carrier satellite earth stations). We do not propose to expand the types of applications that we refer to the Executive Branch").

<sup>21</sup> *Id.* at 7474-75, para. 47.

<sup>22</sup> *Id.* at 7462-63, para. 16. To retain flexibility regarding specific questions to be answered by applicants, the Commission proposed to adopt broad categories of questions in its rules but adopt specific questions through the Paperwork Reduction Act process, and then make the questions publicly available on a website. *Id.* at 7464-65, para. 22.

<sup>23</sup> *Id.* at 7462-63, para. 30; *see* Appendix B (47 CFR §§ 1.767, 1.5001, 63.18); *id.* at 7467, 7468-69, paras 30, 33. In 2016, the Commission adopted amendments to sections 1.990-1.994 that included renumbering them to sections 1.5000-1.5004. *See 2016 Foreign Ownership Order*, Appendix B.

<sup>24</sup> *Executive Branch NPRM*, 31 FCC Rcd at 7470-71, para. 36. Consistent with its current referral practice, the Commission proposed to refer only those applications with reportable foreign ownership.

<sup>25</sup> *Id.* at 7475, para. 45.

<sup>26</sup> *Id.* at 7476, para. 51.

<sup>27</sup> *See* Appendix A.

<sup>28</sup> NTIA 2016 Supplement Comments, at 2.

<sup>29</sup> *Id.* at 2-3.

<sup>30</sup> *Id.*

<sup>31</sup> *Id.*



Committee Members).<sup>32</sup> The Executive Order also provides for Committee Advisors, including the Secretary of State, the Secretary of the Treasury, the Secretary of Commerce, the Director of the Office of Management and Budget, the U.S. Trade Representative, the Director of National Intelligence, the Administrator of General Services, the Assistant to the President for National Security Affairs, the Assistant to the President for Economic Policy, the Director of the Office of Science and Technology Policy, the Chair of the Council of Economic Advisers, and any other Assistant to the President, as the President determines appropriate.<sup>33</sup> The Committee Members and Committee Advisors may designate a senior executive to perform their functions.<sup>34</sup> The Executive Order also directed the Committee Members to enter into a Memorandum of Understanding among themselves and with the Director of National Intelligence by July 3, 2020, describing how they will implement and execute the provisions of the Executive Order.<sup>35</sup>

12. The Executive Order sets out the duties of the Committee Chair, the Committee Members, and the Committee Advisors, as well as the process by which the Committee is to conduct initial reviews and secondary assessments of any application with foreign ownership referred by the Commission.<sup>36</sup> The primary objective of the Committee is to assist the Commission in its public interest review of national security and law enforcement concerns that may be raised by foreign participation in the U.S. telecommunications services sector.<sup>37</sup> The Committee does not expressly review applications for foreign policy and trade policy concerns, although the Committee Advisors represent the agencies with foreign policy and trade policy expertise. The Executive Order directs the Chair to designate one or more Committee Members to serve as the lead (Lead Member) for executing any function of the Committee.<sup>38</sup>

13. The Executive Order sets out the following time frames for the Committee's review of an application for a "license"<sup>39</sup> or transfer of a license referred by the Commission: 120 days for an initial review<sup>40</sup> and a 90-day secondary assessment of an application if the Committee determines that the risk to national security or law enforcement interests cannot be mitigated by standard mitigation measures.<sup>41</sup> The initial time frame begins "on the date the Chair determines that the applicant's responses to any questions and information requests from the Committee are complete."<sup>42</sup>

14. At the conclusion of its review, the Committee may: (1) advise the Commission that the Committee has no recommendation for the Commission on the application and no objection to the Commission granting the license or transfer of the license; (2) recommend that the Commission deny the application due to the risk to the national security or law enforcement interests of the United States; or

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<sup>32</sup> Executive Order, Sec. 3(b), (c).

<sup>33</sup> *Id.* Sec. 3(d).

<sup>34</sup> *Id.* Sec. 3(e).

<sup>35</sup> *Id.* Sec. 11(c).

<sup>36</sup> *Id.* Secs. 4-5.

<sup>37</sup> *Id.* Sec. 3(a).

<sup>38</sup> *Id.* Sec. 4(a).

<sup>39</sup> The Executive Order defines a "license" as any license, certificate of public interest, or other authorization issued or granted by the Federal Communications Commission after referral of an application by the Commission to the Committee or its predecessor group of agencies. Executive Order, Sec. 2(a). It defines an "application" as any application, petition, or other request for a license or authorization, or the transfer of a license or authorization, referred by the Commission to the Committee or its predecessor group of agencies. *Id.* Sec.2(b).

<sup>40</sup> Executive Order, Sec. 5(b)(iii).

<sup>41</sup> *Id.* Sec. 5(c).

<sup>42</sup> *Id.* Sec. 5(b)(iii).

(3) recommend that the Commission condition grant on the applicant's compliance with standard or non-standard mitigation measures.<sup>43</sup> In cases where the Committee Members and Committee Advisors cannot reach consensus on recommendations to deny or condition on non-standard mitigation, they shall submit a recommendation to the President.<sup>44</sup> The Executive Order also provides for Committee review of certain existing authorizations and licenses.<sup>45</sup>

15. On April 27, 2020, the International Bureau issued a public notice that sought comment on the effect of the Executive Order on the Commission's proposals in the *Executive Branch NPRM* and to refresh the record in this docket.<sup>46</sup> We received nine comments and six reply comments in response to the public notice.

### III. DISCUSSION

16. Based on the record developed in this proceeding and in light of the Executive Order, we adopt rules and procedures to facilitate a more streamlined and transparent review process. Commenters state that the pre-Executive Order review process lacked transparency and certainty and support the initiative by the Commission and the Executive Branch agencies to clarify and expedite the review process.<sup>47</sup> They emphasize that predictable timelines for the Executive Branch review process are critical to securing foreign capital in U.S. communications services and infrastructure and maintaining U.S. competition and innovation, especially in light of economic challenges resulting from the global COVID-19 pandemic.<sup>48</sup>

17. *First*, we continue to refer to the Executive Branch agencies those applications for international section 214 authorizations and submarine cable licenses or to assign, transfer control or

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<sup>43</sup> *Id.* Sec. 9(a).

<sup>44</sup> *Id.* Sec. 9(g).

<sup>45</sup> *Id.* Sec. 6.

<sup>46</sup> *International Bureau Refreshes Record in Executive Branch Review Process Proceeding; Adds Executive Order 13913 into Record and Seeks Comment*, IB Docket 16-155, Public Notice, 35 FCC Rcd 4396 (2020) (*April 2020 Public Notice*).

<sup>47</sup> *See, e.g.*, CTA 2020 Comments at 5 ("That clarity and certainty has long been lacking in transaction reviews . . ."); Inmarsat 2020 Reply at 1 ("[T]he Executive Order is a strong first step towards making the Executive Branch's participation in the FCC's review of proposed licensee foreign ownership more efficient, predictable, and transparent than it historically has been."); NAB 2020 Reply at 4 ("[t]he Executive Order's establishment of a new Committee and review process creates an opportunity to further streamline this stage of the process and better effectuate the goals of both the NPRM and the Executive Order."); T-Mobile 2020 Reply at 1 ("T-Mobile USA, Inc. agrees with the vast majority of commenters in this proceeding who support the efforts of the White House and the Federal Communications Commission to establish timelines and a framework for the process. . ."); Windstream 2020 Reply at 2 ("Windstream agrees that it is necessary to have clear timelines for Committee review . . . [p]resently, Team Telecom reviews are open-ended with no public rules or guidelines for the length of such review period, which may last many months or even years.").

<sup>48</sup> *See, e.g.*, EQT 2020 Comments 2-3 ("EQT supports a regulatory environment that enables it to continue to attract and manage capital from global investors for investment in U.S. telecommunications businesses including global corporations . . ."); Inmarsat 2020 Reply at 6 ("Inmarsat agrees with commenters that overbearing bureaucratic processes and lengthy processing timelines could render the U.S. telecommunications market less attractive to capital investment by U.S. and foreign companies . . . could undermine the competition and innovation that historically have been hallmark of the United States' globally leading telecommunications sector."); NAB 2020 Reply at 2 ("[A] transparent, predictable and efficient Executive Branch review process is critical to attracting needed foreign investment in communications entities and infrastructure in the United States. Failing to attract such investment . . . presents significant risks to our communications ecosystem, particularly in light of economic challenges resulting from the global COVID-19 pandemic.").



modify such authorizations and licenses where the applicant has reportable foreign ownership,<sup>49</sup> and all petitions for section 310(b) foreign ownership rulings.<sup>50</sup>

18. *Second*, for those applications that are referred, we require the applicants to provide responses to a set of standardized national security and law enforcement questions directly to the Executive Branch at the time the applicant files its application with the Commission. This will enable the Executive Branch agencies to begin their review earlier in the process than is now the case and may eliminate the need to send a specifically tailored questionnaire (Tailored Questions) to each applicant.

19. *Third*, we require all applicants for international section 214 authorizations and submarine cable landing licenses, applications to assign, transfer control or modify such authorizations and licenses (including those that do not have reportable foreign ownership), and petitioners for section 310(b) foreign ownership rulings to provide certain certifications. These certifications should facilitate faster reviews, make mitigation unnecessary for a number of applications reviewed by the Committee, strengthen compliance, and assist the Commission in its ongoing regulatory obligations.

20. *Fourth*, we adopt the time frames set forth in the Executive Order, a 120-day initial review period followed by a discretionary 90-day secondary assessment.

21. *Finally*, we adopt other revisions to the application process as proposed in the *Executive Branch NPRM*. We establish a new subpart CC in Part 1 of the rules to provide a unified and transparent set of rules governing referral of applications to the Executive Branch agencies.<sup>51</sup>

22. The changes we adopt here will provide greater predictability for industry, the Committee, and the Commission. Knowing which applications will be referred for Executive Branch review, what information is needed by the Executive Branch for its initial review, and when a decision will likely be made enables industry to better plan its use of resources. Our rules will likewise strengthen the Executive Branch agencies' ability to protect national security, assist in law enforcement, and advance foreign policy and trade policy objectives.<sup>52</sup> We find persuasive the Executive Branch's argument that these requirements are necessary for national security and law enforcement, and when combined with the added benefit of assisting the Commission in its ongoing work, evidence the significant benefits of this order.

23. We note that some of the benefits of our rule changes are difficult to quantify in monetary terms, especially those related to the need to ensure the protection of national security and law enforcement. Yet, the benefits from increased speed of review, predictability of handling of applications, and greater assurance of protection of national security, law enforcement, foreign policy and trade interests, should significantly outweigh the small costs imposed on industry and the Executive Branch by these changes. Many of the changes outlined here are merely a codification of the Commission's existing informal consultation process with the Executive Branch. They also represent front-loading certain requirements on applicants when they file an application. For the most part, this is information that most applicants with foreign ownership would have to provide later to the Committee, so any additional costs created by requiring applicants to provide necessary information with their applications is negligible. Accordingly, we find that the benefits of these changes significantly exceed any additional costs.

#### **A. Types of Applications to Be Referred for Executive Branch Review**

24. Under the rules we adopt today, we will continue to refer applications for international section 214 authorizations and submarine cable landing licenses, as well as applications to assign, transfer

<sup>49</sup> These applications are filed pursuant to §§ 1.767, 63.18 and 63.24.

<sup>50</sup> These petitions are filed pursuant to §§ 1.5000 *et seq.*

<sup>51</sup> See Appendix B (47 CFR §§ 1.40001 *et seq.*).

<sup>52</sup> See generally NTIA Letter, NTIA 2016 Comments, NTIA 2016 Reply, NTIA 2020 Comments.

control of or modify those authorizations and licenses, where the applicant has reportable foreign ownership.<sup>53</sup> The rules also provide for the continued referral of petitions for section 310(b) foreign ownership rulings for broadcast, common carrier wireless, and common carrier satellite earth station applicants and licensees.<sup>54</sup> In addition, we will refer, at the Commission's discretion, all associated applications. The Commission retains the discretion to refer additional types of applications if we find that the specific circumstances of an application require the input of the Executive Branch as part of our public interest determination of whether an application presents national security, law enforcement, foreign policy, or trade policy concerns.<sup>55</sup> The Commission likewise retains the discretion to exclude certain types of applications that it may have referred in the past.

25. In that regard, we adopt the Commission's proposal to no longer routinely refer standalone applications to transfer control of domestic section 214 authority.<sup>56</sup> The Commission has referred a few such applications for transfer of control of domestic section 214 authority with reportable foreign ownership that did not have a corresponding international section 214 transfer of control application. To date, however, the Executive Branch has not pursued mitigation for such applications. As the Commission noted in the *Executive Branch NPRM*, the NTIA Letter did not request referral of these types of applications.<sup>57</sup> USTA and SIA express support for not referring applications for domestic-only section 214 transactions.<sup>58</sup> Based on the record before us, we do not find any reason to continue to refer transactions involving only domestic section 214 authority. However, we will continue referring joint domestic and international section 214 transfer of control applications with reportable foreign ownership filed under section 63.04(b) of the Commission's rules.<sup>59</sup> The Commission also retains the discretion to refer a domestic-only section 214 transaction should we find that a particular application may raise national security, law enforcement, foreign policy, and trade policy concerns for which we would benefit from the advice of the Executive Branch.

26. We also adopt the Commission's proposal to refrain from referring satellite earth station applications unless they are associated with a request for a section 310(b) foreign ownership ruling.<sup>60</sup>

<sup>53</sup> These applications are filed pursuant to sections 1.767, 63.18, and 63.24 of our rules. Applicants must report every individual or entity that directly or indirectly owns at least 10% of the equity in the applicant. 47 CFR §§ 1.767(a)(8), 63.18(h), 63.24(e)(2).

<sup>54</sup> These petitions are filed pursuant to §§ 1.5000 *et seq.* Broadcast, common carrier wireless and common carrier satellite earth station applicants and licensees must seek Commission prior approval for aggregate foreign ownership that exceeds the statutory benchmarks in sections 310(b)(3) and (4), as applicable. 47 U.S.C. §§ 310(b)(3), (4); *see* 2012 *Foreign Ownership Forbearance Order*, 27 FCC Rcd at 9832, para. 13 (forbearing from applying section 310(b)(3)'s 20% limit to common carrier wireless licensees where the public-interest standard under section 310(b)(4) is satisfied).

<sup>55</sup> In circumstances where the Commission, in its discretion, refers to the Committee an application not identified in this order, pursuant to the new rules, in those instances, the Commission staff will instruct the applicant to follow specific requirements, such as submitting responses to the standardized national security and law enforcement questions (Standard Questions) to the Committee and making the appropriate certifications. *See* Appendix B, § 1.40001.

<sup>56</sup> *Executive Branch NPRM*, 31 FCC Rcd at 7462, para. 14. Because all domestic interstate common carriers have blanket authority to provide domestic interstate services to any point and to construct or operate any domestic transmission line, the question of referral would only apply to domestic transfer of control applications. 47 CFR § 63.01.

<sup>57</sup> *Executive Branch NPRM*, 31 FCC Rcd at 7462, para. 14.

<sup>58</sup> SIA 2016 Comments at 3; USTA 2016 Comments at 6

<sup>59</sup> 47 CFR § 63.04(b). When an applicant files joint international and domestic section 214 transfer applications, it will submit its responses to the Standard Questions and make the five certifications as part of its international assignment or transfer application.

<sup>60</sup> *Executive Branch NPRM*, 31 FCC Rcd at 7461-62, para. 15.

Echostar/Hughes and SIA support this proposal.<sup>61</sup> The Executive Branch included satellite earth stations in the list of applications requested for referral in the NTIA Letter.<sup>62</sup> However, NTIA did not address this issue in its comments or reply comments. As the Commission noted in the *Executive Branch NPRM*, we have not previously referred applications for satellite earth station licenses to the Executive Branch because most of the stations are authorized on a non-common carrier basis, and thus the foreign ownership provisions of section 310(b) do not apply.<sup>63</sup> We thus have not found a need to collect detailed ownership information in the applications.<sup>64</sup> We do not find any basis in the record to change this practice. In addition, because NTIA did not request that we refer all broadcast and common carrier wireless license applications,<sup>65</sup> and no commenter suggested that we should refer all such applications, we adopt the Commission's proposal to refer broadcast or common carrier wireless applications only if the applicant is required to seek a section 310(b) foreign ownership ruling.<sup>66</sup>

27. Level 3 questions the use of foreign ownership as the “trigger” for referral and recommends identifying “more reliable indicia of risk.”<sup>67</sup> But Level 3 does not identify any such alternative indicia, and the Executive Branch has consistently indicated that substantial foreign ownership is an indicia of risk.<sup>68</sup> Pursuant to the World Trade Organization (WTO) Basic Telecom Agreement, the United States generally has committed to treat foreign service suppliers or investors no less favorably than domestic service suppliers or foreign service suppliers or investors from another WTO member.<sup>69</sup> The Commission addressed this question in the *Foreign Participation Order* and determined that the procedures adopted in that order to review international section 214 applications, submarine cable applications, and section 310(b) foreign ownership petitions are consistent with U.S. national treatment obligations and “[t]o the extent we discriminate among domestic and foreign carriers with regard to cable landing licenses and foreign investment, such differentiation is based on statutory distinctions founded on national security and law enforcement concerns.”<sup>70</sup> The Commission also determined that the procedures it adopted then did not “discriminate impermissibly among foreigners in a manner inconsistent with our [most favored nation] obligations.”<sup>71</sup> While we reach the same conclusion here as to the referral process, we will continue to monitor trends on other potential indicia of risk.

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<sup>61</sup> SIA Comments at 2 (“SIA supports continuation of the policy not to refer non-common carrier earth station applications, or common carrier earth station applications that do not require a Section 310(b) foreign ownership ruling, to Team Telecom and accordingly not to impose the information requests or certifications requested by the Executive Branch on such applications.”); EchoStar/Hughes Comments at 1 (“EchoStar strongly supports the FCC’s proposal and urges the Commission to refrain from seeking foreign ownership review for non-common carrier earth stations.”).

<sup>62</sup> NTIA 2016 Letter at 1; *see also Executive Branch NPRM* at 7461-62, paras. 13, 15.

<sup>63</sup> Section 310(b) only applies to broadcast, common carrier, aeronautical en route, and aeronautical fixed radio station licensees. 47 U.S.C. § 310(b).

<sup>64</sup> *See* FCC, Earth Station Licensing & Sample Form 312 Applications (FCC Form 312), <https://go.usa.gov/xGnbR>.

<sup>65</sup> *See NTIA 2016 Letter* at 1 (only addressing international 214 authorizations, section 310 rulings, submarine cable licenses, and satellite earth station authorizations).

<sup>66</sup> *Executive Branch NPRM*, 31 FCC Rcd at 7462, para. 15. When a satellite earth station applicant needs to request a foreign ownership ruling, it will submit responses to the standard questions and make the five certifications as part of its section 310(b) petition.

<sup>67</sup> Level 3 2016 Comments at 11.

<sup>68</sup> *See generally* NTIA letter, NTIA 2016 Comments, NTIA 2016 Reply, NTIA 2020 Comments.

<sup>69</sup> *See generally Foreign Participation Order*, 12 FCC Rcd at 24046-52, paras. 335-375.

<sup>70</sup> *Id.* at 24046, para. 356.

<sup>71</sup> *Id.* paras. 356-57.

28. Level 3 also argues that if the Commission continues to rely on foreign ownership as the trigger, the threshold level of foreign ownership to warrant a referral should be increased to 25% in order to reduce the burden on applicants and narrow the scope of Executive Branch reviews.<sup>72</sup> We reject Level 3's request to use a 25% threshold, instead of a 10% foreign ownership interest, to trigger referral of applications for international section 214 authorizations and submarine cable landing licenses.<sup>73</sup> The 25% threshold that applies under section 310(b)(4) is an aggregate amount of foreign ownership set by statute, whereas the 10% foreign ownership interest threshold we have historically applied derives from the Commission's longstanding practice of requiring applicants to identify all 10%-or-greater owners.<sup>74</sup> Consequently, subject to certain exceptions detailed below, we will continue to refer international section 214 and submarine cable applications with a 10% or greater direct or indirect owner that is not a U.S. citizen or U.S. business entity.

#### **B. Categories of Applications Generally Excluded from Referral**

29. The Commission sought comment on whether, within the types of applications that the Commission currently refers, there are categories of applications that should be excluded from referral.<sup>75</sup> The *Executive Branch NPRM* specifically sought comment on excluding applications when the applicant has an existing mitigation agreement and there has been no material change in the foreign ownership since the Executive Branch and applicant negotiated the relevant mitigation agreement.<sup>76</sup> It also sought comment on excluding applications involving resellers with no facilities.<sup>77</sup> Commenters generally support these exclusions and suggest others.<sup>78</sup> The Executive Branch does not oppose excluding categories of applications, but requests that the Commission notify the Committee of applications that come within the exclusions.<sup>79</sup>

30. We find that it is appropriate to exclude from referral certain applications that present a low or minimal risk to national security, law enforcement, foreign policy, and trade policy concerns. Based on the record, we exclude the following applications from referral to the Executive Branch: (1) *pro forma* notifications and applications;<sup>80</sup> (2) international section 214 applications, submarine cable applications, and section 310(b) petitions where the only reportable foreign ownership is through wholly owned intermediate holding companies and the ultimate ownership and control is held by U.S. citizens or entities; (3) international section 214 applications where the applicant has an existing mitigation agreement, there are no new reportable foreign owners of the applicant since the effective date of the mitigation agreement, and the applicant agrees to continue to comply with the terms of that mitigation agreement; and (4) international section 214 applications where the applicant was cleared by the Executive Branch within the past 18 months without mitigation and there are no new reportable foreign owners of the applicant since that review. We retain discretion, however, to refer these applications to the Executive Branch if the particular circumstance warrants, such as a change in the relations between the

<sup>72</sup> Level 3 2020 Comments at 11-12.

<sup>73</sup> *Id.* (citing *Foreign Participation Order*, 12 FCC Rcd at 23919, para. 63).

<sup>74</sup> Compare 47 U.S.C. § 310(b)(4) with 47 CFR §§ 1.767(a)(8), 63.18(h), 63.24(e)(2).

<sup>75</sup> *Executive Branch NPRM*, 31 FCC Rcd at 7474-75, para. 47.

<sup>76</sup> *Id.*

<sup>77</sup> *Id.*

<sup>78</sup> See SIA 2016 Comments at 2; USTelecom 2016 Comments at 6; TMT Financial Sponsors 2016 Comments at 5; Verizon 2016 Comments at 3; Sprint 2016 Comments at 5; CTIA 2016 Comment at 10; BT Americas 2016 Comments at 7.

<sup>79</sup> NTIA 2020 Supplemental Comments at 3-4

<sup>80</sup> *Pro formas* are filed pursuant to 47 CFR §§ 1.767(g)(7) (submarine cable licenses), 63.24(f) (international section 214 authorizations).

United States and the applicants' home country. In addition, we will notify the Committee of any applications that fall within the exclusions.<sup>81</sup>

31. *First*, we continue our practice of excluding *pro forma* notifications and applications for international section 214 authorizations and submarine cable landing licenses from referral. As the Commission noted in the *Executive Branch NPRM*, we do not currently refer *pro forma* notifications because by definition there is no change in the ultimate control of the licensee.<sup>82</sup> Commenters universally support maintaining this exclusion,<sup>83</sup> and the Executive Branch did not address this issue in its comments.

32. *Second*, we exclude from referral international section 214 applications, submarine cable applications, and section 310(b) petitions where the only reportable foreign ownership interests are held by wholly owned intermediate holding companies and the ultimate ownership and control is held by U.S. citizens or entities. We agree with TMT Financial Sponsors that those applications where the only foreign ownership is through passive, offshore intermediary holding companies and 100% of the ultimate control is held by U.S. citizens or entities present a minimal risk and generally should not be referred to the Executive Branch.<sup>84</sup> The Executive Branch, while not supporting any exclusions, does note that review may not be necessary where ownership and control of a company rests with U.S. citizens but there is foreign ownership associated with the application only because of an intermediary entity incorporated outside the United States.<sup>85</sup> Consequently, we will generally not refer these categories of applications.

33. *Third*, we generally exclude from referral those international section 214 applications where the applicant has an existing mitigation agreement with the Executive Branch, agrees to continue to comply with that agreement, and has had no new reportable foreign ownership since the agreement went into effect. As Hibernia/Quintillion states, “[w]here an applicant is subject to an existing [mitigation agreement], it already has undergone Team Telecom’s review process for national security and law enforcement concerns” and referral of those applications “introduces unnecessary delays and may result in the waste of time and resources by both the applicant and the government.”<sup>86</sup> Although the Executive Branch opposed this exclusion in its 2016 Comments,<sup>87</sup> in its 2020 Supplemental Comments the Executive Branch did not oppose the exclusion but noted that the Executive Order allows the Committee to review at any time any existing license that the Commission had referred to the Executive Branch.<sup>88</sup> We also note that most, if not all, mitigation agreements have provisions that allow the parties to

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<sup>81</sup> While the Commission will not formally refer applications that come within the exclusions, as a courtesy we will notify the Committee when such applications are placed on accepted for filing public notice.

<sup>82</sup> *Executive Branch NPRM*, 31 FCC Rcd at 7474-75, para. 47.

<sup>83</sup> See, e.g., BT Americas 2016 Comments at 7; GSMA 2016 Comments at 3-4; TelePacific 2016 Comments at 4; Verizon 2016 Comments at 3; T-Mobile 2020 Comments at 3; Inmarsat 2020 Reply at 7.

<sup>84</sup> TMT Financial Sponsors 2016 Comments at 5-6 (“applicants that only have passive, offshore intermediary holding companies, but where 100% of the ultimate control of the licensee comes back to the United States (either to a U.S. company or one or more U.S. citizens) should also be [excluded] from the [Executive Branch review] process . . .”).

<sup>85</sup> NTIA 2016 Comments at 25.

<sup>86</sup> Hibernia/Quintillion 2016 Comments at 4. See also BT Americas 2016 Comments at 8-9 (“once this comprehensive review has been completed, it would be a significant waste of time and valuable resources, — of both the Team Telecom agencies and the applicant — to undertake the same review again in subsequent applications where there has been no material change in the foreign ownership”); Verizon 2016 Comments at 3; Sprint 2016 Comments at 5; CTIA 2016 Comments at 10.

<sup>87</sup> NTIA 2016 Comments at 19, 25.

<sup>88</sup> NTIA 2020 Supplemental Comments at 3 (citing Executive Order, Sec. 6).

renegotiate the terms of the agreement.<sup>89</sup> In situations where the applicant and the Committee agree to changes in the mitigation agreement, the applicant can request that the Commission update the condition of the authorization to replace the previous mitigation agreement with the revised agreement. In situations where the Committee seeks to unilaterally revise the mitigation agreement, it can make a recommendation to the Commission and the applicant will have an opportunity to respond to the Committee's recommendation before the Commission takes action.

34. We limit this exclusion to international section 214 applications because those authorizations are for the provision of service and not tied to a specific facility, so obtaining an additional section 214 authorization does not change the service being provided, and the mitigation agreements usually cover future acquisitions.<sup>90</sup> It is also not necessary to provide this exclusion to section 310(b) foreign ownership rulings<sup>91</sup> since under the Commission's rules those rulings already cover the addition of new licenses as well as new subsidiaries, and affiliates. A new ruling is required only if a licensee proposes a change in foreign ownership that would exceed the parameters of its existing ruling and thus would not fit within this exclusion.<sup>92</sup> We do not, however, extend the exclusion to submarine cable licenses subject to an existing mitigation agreement because these licenses are for specific facilities and each submarine cable may present unique national security, law enforcement, foreign policy or trade policy concerns.

35. *Fourth*, we exclude from referral international section 214 applications where the applicant was cleared by the Executive Branch within the past 18 months from the filing of the application without mitigation and there are no new reportable foreign owners in the applicant since that review. Many commenters state that we should not refer applications where the applicant has recently undergone Executive Branch review and there has not been any change in foreign ownership since that review.<sup>93</sup> For example, EQT states that we should expedite review for applicants that have undergone review in the past 12-18 months,<sup>94</sup> while TMT recommends that we not refer an application if the applicant has been subject to review in the past five years.<sup>95</sup> We find it is reasonable and appropriate to exclude from routine referral international section 214 applicants that recently have been reviewed by the Executive Branch. These applications are less likely to raise significant risks because the applicant will have recently received review. This will save time and resources for both the applicant and the Executive

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<sup>89</sup> Where a mitigation agreement has been renegotiated and a new agreement is reached, the Committee could recommend to the Commission that it modify the applicable condition in the grant of authorization to require compliance with the terms of the newly renegotiated agreement.

<sup>90</sup> See, e.g., Letter of Agreement from Kurt Van Wagenen, President, OHCP Northeastern Fiber Buyer, Inc., et al., to Mr. John C. Demers, Assistant Attorney General for National Security, Department of Justice, dated July 9, 2018, Section IV. 5 ("This Agreement shall apply in full force and effect to any entity or asset, whether acquired before or after the [mitigation agreement's] execution, over which NFB or Flight Group, including their successors or assigns, have the power or authority to exercise de facto or de jure control.") filed in ITC-T/C-20180319-00060.

<sup>91</sup> The Executive Branch did not file comments in 2016 when the common carrier foreign ownership rules (Foreign Ownership Report and Order, FCC 13-50 (2013)) were extended to broadcast licensees. See *2016 Foreign Ownership Order*, 11 FCC Rcd 11272.

<sup>92</sup> See 47 CFR § 1.5004 (Routine terms and conditions); see also *2016 Foreign Ownership Order*, 31 FCC Rcd at 11272, 11275, 11282, 11287-88, paras. 4, 15, 31, 32 (licensees that have rulings for foreign investment, including any covered affiliates or subsidiaries, may apply those rulings to after-acquired licenses, regardless of the service or the geographic area, except that entities that have obtained a broadcast ruling may not use that ruling to cover an after-acquired common carrier—and vice versa).

<sup>93</sup> See, e.g., BT Americas 2016 Comments at 7; CCA 2016 Comments at 8; CTIA 2016 Comments at 3; Sprint 2016 Reply at 8; Joint International Providers 2020 Comments at 5; NAB 2020 Reply at 8.

<sup>94</sup> EQT 2020 Comments at 7-8.

<sup>95</sup> TMT Financial Sponsors 2016 Comments at 6.



Branch. We recognize that the longer the period since the last review the greater the likelihood for potential national security and law enforcement issues to arise. We believe that 18 months provides a reasonable time frame. We conclude that five years is too long as the threat environment and the policies and concerns of the Executive Branch are more likely to have evolved. As we discussed above, we will provide the Committee notice when such an application is placed on public notice. To the extent that the Committee may want to review an application that we do not refer under this exclusion, as the Executive Branch noted,<sup>96</sup> the Executive Order allows the Committee to review at any time an existing “license” that the Commission had referred to the Executive Branch in the past,<sup>97</sup> not just those in which the review resulted in a mitigation agreement.<sup>98</sup>

36. The applicant will need to make a specific showing in its application that it qualifies for one of these exclusions.<sup>99</sup> If upon review of the application, Commission staff determines that the application should be referred to the Executive Branch, either because the applicant has not sufficiently demonstrated that the application comes within one of these exclusions or that the application otherwise presents issues that warrant Executive Branch review, the International Bureau will notify the applicant of the referral to the Committee. Commission staff will then refer the application to the Executive Branch by Public Notice.

37. At this time, we decline to adopt other exclusions to the referral process. In the *Executive Branch NPRM*, the Commission requested comments on whether to refer applications for transactions that involve resellers with no facilities and asked how the Commission could know that no facilities are being assigned/transferred in the proposed transaction.<sup>100</sup> Although some commenters support such an exclusion,<sup>101</sup> the Executive Branch asserts that applications from non-facilities based resellers “require review by the Executive Branch, because the companies possess records that may be requested in the course of national security or criminal investigations.”<sup>102</sup> We accept that the Executive Branch may have legitimate concerns that resellers could raise national security or law enforcement issues. For example, their records might assist the Executive Branch in discovering instances of activities with national security and law enforcement implications. Therefore, we will continue to refer international section 214 applications from non-facilities-based resellers to the Executive Branch.

38. We also decline to exclude from referral an application that has undergone review by the Committee on Foreign Investment in the United States (CFIUS), as suggested by Hogan Lovells.<sup>103</sup> Executive Branch review of an application referred by the Commission includes issues that are not addressed by CFIUS. We refer an application for feedback on any national security, law enforcement,

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<sup>96</sup> NTIA 2020 Supplemental Comments at 3.

<sup>97</sup> See Executive Order, Sec. 6. The Executive Order defines a “license” as “any license, certificate of public interest, or other authorization issued or granted by the [FCC] after referral of an application by the FCC. . .” *Id.* Sec. 2.

<sup>98</sup> We also note that the Committee may always file comments in response to a public notice of an application even if the Commission does not refer the application for Executive Branch review.

<sup>99</sup> Before the effective date of 47 CFR § 1.40001(a)(2), applicants may provide any information in their applications that may help inform the Commission’s discretionary decision about whether to refer an application.-See Letter from Mike Saperstein, Vice President, Strategic Initiatives & Partnerships, USTelecom, to Marlene H. Dortch, FCC (Sept 23, 2020).

<sup>100</sup> *Executive Branch NPRM*, 31 FCC Rcd at 7474-75, para. 47.

<sup>101</sup> See, e.g., TMT Financial Sponsors 2016 Comments at 5; Wiley Rein 2016 Comments at 9-10; CTIA 2016 Comments at 10; TLA 2020 Comments at 2.

<sup>102</sup> NTIA 2016 Reply at 13-14; see also NTIA 2016 Comments 19.

<sup>103</sup> Hogan Lovells 2016 Comments at 1, 6-7, 12 (“The FCC should deem it in the ‘public interest’ to withhold referral to Team Telecom of any transaction that undergoes CFIUS review.”).

foreign policy, and trade policy issues, while CFIUS review focuses on national security risks.<sup>104</sup> Consequently, we will continue to refer an application irrespective of whether the applicant certifies that the underlying transaction has undergone CFIUS review.<sup>105</sup> We expect that in most instances CFIUS review and Executive Branch review of a transaction will occur simultaneously. To the extent that CFIUS has completed its review prior to the application being filed with the Commission, we expect that the Executive Branch could complete its review expeditiously, possibly without the need to request deferral of Commission action on the application, if the application raises no issues other than those considered by CFIUS.

39. Finally, we decline to exclude from referral applications from applicants with permanent residence status, as suggested by TLA and T-Mobile.<sup>106</sup> Neither commenter provides any basis for excluding these applications. We also note that permanent residents are not U.S. citizens, but remain citizens of other countries.

### C. Categories of Information and Standard Questions

40. We adopt the Commission's proposal in the *Executive Branch NPRM*, with certain modifications, to require (1) international section 214 authorization and submarine cable landing license applicants with reportable foreign ownership, and (2) petitioners for a foreign ownership ruling under section 310(b) whose applications are not excluded from routine referral, to provide specific information regarding ownership, network operations, and other matters when filing their applications.<sup>107</sup> In this proceeding, we adopt the categories of information that will be required from applicants, but do not adopt the specific questions. We direct the International Bureau to draft, update as appropriate, and make available on a publicly available website, a standardized set of national security and law enforcement questions (Standard Questions) that elicit the information needed by the Committee within those categories of information that we establish today. Once the Standard Questions are available, we will require applicants to file their responses to the Standard Questions with the Committee prior to or at the same time they file their applications with the Commission.<sup>108</sup> The Executive Branch supports this proposal and agrees that it will expedite the review process.<sup>109</sup> Applicants also will be required to certify in their FCC application that they have submitted to the Committee responses to the Standard Questions. Finally, in circumstances where the Commission determines to refer, in its discretion, other applications or filings, the rules provide that Commission staff will instruct the applicant which requirements it is required to fulfill, including requiring the applicant to submit to the Committee responses to the Standard Questions and to make the necessary certification to the Commission.

41. We believe, and the Executive Branch agrees,<sup>110</sup> that having the applicant provide its responses to Standard Questions to the Committee when it files the applications will lead to a swifter and

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<sup>104</sup> See 31 CFR § 800.101(a) ("Section 721 of title VII of the Defense Production Act of 1950, as amended (50 U.S.C. 4565), authorizes [CFIUS] to review any covered transaction . . . and to mitigate any risk to the national security of the United States that arises as a result of such transactions.").

<sup>105</sup> CFIUS does not publicly disclose what transactions it is reviewing, and the Commission is not part of CFIUS. Accordingly, we would not know if a transaction has undergone CFIUS review unless the applicant tells us.

<sup>106</sup> TLA 2020 Comments at 2; T-Mobile 2020 Reply at 3.

<sup>107</sup> *Executive Branch NPRM* at 7463, para. 16. As discussed above, an applicant with reportable foreign ownership filing an application that falls within one of the categories of applications to be excluded from referral to the Executive Branch will not be required to file this information with its application, although it will need to demonstrate how it falls within the exclusion as well as make the required certifications.

<sup>108</sup> Applicants must also provide the Committee with copies of their FCC applications, with all attachments that were filed with application.

<sup>109</sup> NTIA 2020 Supplemental Comments at 4.

<sup>110</sup> *Id.*

more streamlined review, benefiting both applicants and the Committee. The Executive Branch agrees that with more fulsome information upfront, the Committee may not need to send an applicant Tailored Questions in many circumstances or, in those instances where Tailored Questions are necessary, the Committee can significantly limit the scope of its additional inquiries (in turn reducing the amount of time needed for the applicant to prepare responses).<sup>111</sup> Under either scenario, the Committee would be able to start the 120-day initial review period sooner.<sup>112</sup>

### 1. Categories of Information

42. We adopt and codify in our rules the five categories of information for which applicants must provide detailed and comprehensive information to help ensure that the relevant Executive Branch agencies can promptly commence their review.<sup>113</sup> In the *Executive Branch NPRM*, the Commission sought comment on the Executive Branch's request that we require applicants with reportable foreign ownership to provide as part of their applications detailed and comprehensive information in the following categories: (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.<sup>114</sup> NTIA states that this information is necessary for the Executive Branch's assessment of whether an application raises national security or law enforcement concerns.<sup>115</sup>

43. Commenters generally support the five categories but suggest that they be narrowly tailored to fall within the scope of Executive Branch review.<sup>116</sup> For example, BT Americas states that "relationships with foreign entities" and "business and operational information" appear relevant to a national security review and are often included in the questionnaires that the Executive Branch agencies currently send to applicants.<sup>117</sup> Certain commenters, however, express concerns that certain categories

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<sup>111</sup> *Id.*

<sup>112</sup> The 120-day initial review period starts on the date the Chair determines that the applicant's responses to any questions and information requests from the Committee, including responses to the Tailored Questions where applicable, are complete. Executive Order, Sec. 5(b)(iii).

<sup>113</sup> Joint International Providers' 2020 Comments at 5 ("[T]he Commission and the Committee should work together to establish standard questions for the Committee's initial review. Doing so will enhance transparency and regulatory certainty, and applicants will be able to anticipate, prepare materials, and submit answers for such questions to accelerate the Committee's review process."); NAB 2020 Comments at 3 ("If applicants know the questions they will be asked during the review process, they can complete a significant amount of due diligence in advance of filing their [FCC] applications, rather than learning what information is expected after their applications have been filed and referred to the Committee for review."); NAB 2020 Reply at 4 ("NAB renews its call, echoed by other commenters, for the Commission to work with the Committee to make standardized, industry specific triage questions available for an applicant to answer and submit with their application.").

<sup>114</sup> *Executive Branch NPRM*, 31 FCC Rcd at 7463, para. 18 (citing NTIA Letter at 3).

<sup>115</sup> Concerns regarding national security and law enforcement include preventing abuses of U.S. communications systems, protecting the confidentiality, ensuring the integrity and availability of U.S communications, protecting the national infrastructure, preventing fraudulent or other criminal activity, and preserving the ability to instigate legal process for communications data. *Id.* at 7464, para. 20 (citing NTIA Letter at 4).

<sup>116</sup> See e.g., TMT/Financial Sponsors' 2016 Comments at 7 (supports establishment of a standardized list of information related to network management, security, operations, and similar measures to streamline Team Telecom review); Level 3 2016 Comments at 16 (standardizing the questionnaire would streamline Team Telecom review process); BT Americas 2016 Comments at 9 (providing appropriate upfront information ensures that it is available for Team Telecom review immediately and that there is no processing delay. However, such information or certification should not be used to expand the scope of Team Telecom's review); T-Mobile 2020 Comments at 6 ("[The] goal is to ensure that applicants have sufficient information about what will be expected of them in the review process.").

<sup>117</sup> BT Americas 2016 Comments at 13-14.

and questions exceed the scope of information needed for Executive Branch review, are within areas of Commission jurisdiction, or otherwise are duplicative of information required by the Commission's application process.<sup>118</sup>

44. We find that the categories described are important to the Executive Branch's review of applications with reportable foreign ownership. We find persuasive the Executive Branch's contention that questions regarding "financial condition and circumstances" are relevant to ascertaining potential national security and law enforcement concerns and that an applicant's history of "compliance with applicable laws and regulations" is indicative of whether the applicant can be trusted to comply with any negotiated mitigation term.<sup>119</sup> The Executive Branch states in its 2016 comments that information about an applicant's revenue is collected to assess an applicant's business associations and potential links to entities likely to present national security concerns, *e.g.*, foreign intelligence agencies or terrorist networks.<sup>120</sup> The Executive Branch reiterates in its 2020 comments the importance of such information in determining national security and law enforcement risks and states that any limitations by the Commission are not warranted.<sup>121</sup> Additionally, although certain categories of information fall within the Commission's jurisdiction, *e.g.*, ownership information, the Commission's and the Executive Branch agencies' review of the information is relevant for distinct but essential purposes and therefore not duplicative for purposes of this proceeding. Accordingly, we incorporate in the rules the categories of information to be answered by applicants.

## 2. Standard Questions

45. To expedite the Executive Branch review process, we will develop a set of Standard Questions that seek detailed and comprehensive information consistent with the categories of information described above and that will be accessible on a publicly available website. Commenters support this approach.<sup>122</sup> Accordingly, we direct the International Bureau, within 90 days, to develop, solicit comment on, and make publicly available on a website the Standard Questions consistent with our determinations in this Report and Order. We also direct the International Bureau to maintain and update the questions as needed. The Bureau will provide notice and comment prior to making future changes to the questions. This approach addresses concerns raised by several 2016 commenters that the Commission allow for public comment on the proposed questions.<sup>123</sup> This additional opportunity for comment will permit the International Bureau to better evaluate commenters' concerns and proposals regarding the contents of the Standard Questions.<sup>124</sup>

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<sup>118</sup> See CTIA 2020 Reply at 4-5; US Telecom 2020 Reply (expressing concern about NTIA's request that the Commission include additional questions in its application forms); Hibernia/Quintillion 2016 Comments at 6 (financial status and information regarding affiliate regulatory enforcement actions are outside the scope of Executive Branch review); INCOMPAS Comments 2016 Comments at 6 ("No reasonable justification for requiring parties to provide information in their initial filings that go beyond the scope of Team Telecom purview"); BT Americas 2016 Comments at 10 ("The FCC, not Team Telecom, has the authority to review the financial and character qualifications of applicants"); TMT/Financial Sponsors 2016 Comments at 7 (The Financial Sponsors urge the Commission not to expand the scope of information required for processing applications by Team Telecom beyond those issues that are clearly applicable to national security and law enforcement issues); T-Mobile 2016 Comments at 8 (requested information should be narrowly tailored to match the scope of Team Telecom review, are clear and reasonable, and do not exceed the requirements of current U.S. law).

<sup>119</sup> NTIA 2016 Comments at 3-4.

<sup>120</sup> NTIA 2016 Reply at 4.

<sup>121</sup> NTIA 2020 Comments at 6.

<sup>122</sup> See, *e.g.*, NAB 2020 Comments at 3-4; T-Mobile 2020 Comments at 6; Windstream 2020 Reply at 4.

<sup>123</sup> CTIA 2016 Comments at 4; INCOMPAS 2016 Comments at 7-8; GSMA 2016 Reply at 5.

<sup>124</sup> Windstream 2020 Reply at 4 ("The Commission may also want to consider providing a description of the types of national security concerns that the Committee will focus on. While the Executive Order was a step in the right  
(continued....)

46. The *Executive Branch NPRM* included the sample questions provided by NTIA in 2016,<sup>125</sup> and NTIA provided more detailed sample questions in its 2020 comments.<sup>126</sup> NAB proposes limiting the sample questions about corporate and senior officers solely to executive officers, better defining the terms “remote access” and “managed services” when asking who has access, and narrowing the scope of foreign participation questions to those with 5% or greater interests, or remote access.<sup>127</sup> We agree that applicants would benefit from greater clarity on how to define key terms such as “corporate officers” and “senior-level” officers as well as “remote access” and “managed services.” We disagree, however, with NAB’s contention that “because the Committee’s review is focused on foreign participation, the Commission should . . . [only] seek information regarding *foreign* investors that have equity interests of five percent or greater in the company, or those that have remote access.”<sup>128</sup> As we have noted, the Executive Agencies’ review extends beyond just foreign policy considerations; the review process also involves national security and law enforcement issues as well, which could be implicated regardless of whether the equity interest holder is a domestic or foreign entity. We would expect the questions to be otherwise sufficiently tailored to ensure that the Committee receives information germane to its review process. We direct the International Bureau to take into account the comments we have received so far, such as these from NAB, when developing and seeking comment upon the proposed Standard Questions.

47. In its most recent comments, NTIA suggests that the Commission add to its application forms additional questions regarding the applicant’s investors with 5% or more equity, and senior-level officials,<sup>129</sup> which are included in the sample triage questions.<sup>130</sup> We decline to add these questions to the Commission’s application forms as they are inconsistent with the Commission’s ownership disclosure requirements,<sup>131</sup> but we note that they are part of the sample triage questions that the Commission will use as a basis for the Standard Questions.

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direction, it is silent on some of the more nuanced aspects of these review processes. The Commission should take the opportunity to fill in some of those blanks to foster a more transparent, and therefore fairer, regulatory process for applicants.”)

<sup>125</sup> *Executive Branch NPRM*, 31 FCC Rcd at 7494, Appendix D. See Letter from Kathy D. Smith, Chief Counsel, NTIA, to Marlene H. Dortch, Secretary, FCC (June 2, 2016) (attaching illustrative questionnaire).

<sup>126</sup> NTIA 2020 Comments (attaching sample triage questions).

<sup>127</sup> NAB 2020 Reply at 7.

<sup>128</sup> *Id.* (italics in original).

<sup>129</sup> NTIA 2020 Comments at 8-10 (“Finally, the Agencies note that there are additional questions the FCC should include in the application forms that will allow the Commission and the Committee to identify specific concerns at the outset and improve the efficiency of the Committee’s review process.”)

<sup>130</sup> *Id.* at 9-10 (These questions include whether the applicant, investors with 5% or more equity, or senior-level corporate officers have felony convictions, previously applied for or are associated with a Commission license subject to Executive Branch or Committee review, been subject to “criminal, administrative, or civil penalties” for violating regulations of the US government or foreign agency, bankruptcy, on the Specially Designated Nationals and Blocked Persons list or equivalents, and “whether any third-party vendors, associated companies or investors will have remote access to the applicant’s network, systems or records to provide managed services.”)

<sup>131</sup> The Commission’s rules regarding international section 214 authorizations, domestic and international section 214 transfer of control and assignment applications, submarine cable landing licenses, and submarine cable landing license transactions, require the disclosure of, among other things, the name and citizenship of any person or entity that directly or indirectly owns at least 10% 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). The ownership disclosure requirements for section 310(b) foreign ownership petitions are set out in sections 1.5000-1.5004 of the Commission’s rules. 47 CFR §§ 1.5000-1.5004.

### 3. Submission of Responses to Standard Questions

48. We require applicants to file their responses to the Standard Questions directly with the Committee—prior to or at the same time they file their applications with the Commission—to expedite the review process. Commenters generally support this proposal.<sup>132</sup> NAB, for example, recommends that applicants be allowed to submit responses to standardized questions “at the same time they file their FCC applications . . . .”<sup>133</sup> CTIA, on the other hand, suggests an applicant should be allowed to file its responses at some point after the application is filed, while also recognizing that the Executive Branch review period would start only when the responses have been provided.<sup>134</sup> CTIA states that preparing responses to the questions is typically very time consuming and could delay filing the application and Commission review of the application.<sup>135</sup>

49. We find, and the Executive Branch agrees, that applicants should provide the answers to the Standard Questions to the Committee prior to or at the same time as they file their application with the Commission as this will allow the Executive Branch review process to commence sooner than is currently possible and avoid unnecessary delays.<sup>136</sup> If an application fits within one of the categorical exclusions, then the applicant will not be required to submit responses to the Standard Questions when it files its application.<sup>137</sup> However, if upon review of the application, Commission staff determines that the application should be referred to the Executive Branch, then the applicant will need to submit responses to the Standard Questions and a copy of the application to the Committee. The Executive Branch supports this approach noting that it will enable the Committee to review the responses to the Standard Questions promptly and more quickly send any Tailored Questions to the applicant.<sup>138</sup> We anticipate that by requiring the applicant to provide responses to the Standard Questions to the Committee with its application the Committee will be able to determine that it has complete information and can begin the 120-day review period sooner.

### 4. Committee Review of Responses to Standard Questions

50. In the *Executive Branch NPRM*, the Commission contemplated that Commission staff would review the responses to the Standard Questions for completeness as part of the review of an application for acceptability for filing, but leave the substantive review to the Executive Branch.<sup>139</sup> Once the Commission determined that the application was complete, including the responses to the Standard Questions, the Commission would refer the application, which would start the clock on the Executive Branch review.<sup>140</sup> However, under the Executive Order it is the Chair of the Committee that determines when an applicant has provided complete responses to any questions and the 120-day review period

<sup>132</sup> NAB 2020 Reply at 3-4; BT Americas Comments at 13; Hibernia/Quintillion 2016 Comments at 6; Level 3 2016 Comments at 14; Telco’s Comments at 14; T-Mobile 2020 Comments at 6; TMT 2016 Comments at 9; USTA 2016 Comments at 7.

<sup>133</sup> NAB 2020 Reply at 3.

<sup>134</sup> CTIA 2016 Comments at 8-9.

<sup>135</sup> *Id.*

<sup>136</sup> NTIA 2020 Supplemental Comments at 4.

<sup>137</sup> Even in instances where the applicant is not required to submit responses to the Standard Questions, it will still have to provide the required certifications about compliance with national security and law enforcement and to maintain correct and accurate information regarding the applicant, as discussed below. *See infra* Section III.D.

<sup>138</sup> NTIA 2020 Supplemental Comments at 4.

<sup>139</sup> *Executive Branch NPRM*, 31 FCC Rcd at 7465, para 25. The Commission had anticipated that, in receiving and reviewing the responses, it would start the clock on Executive Branch review on the date the application is placed on public notice. *Id.* at 7470, 7472, paras. 36, 39.

<sup>140</sup> *Id.* at 7470-72, paras. 36, 37, 39.



starts.<sup>141</sup> Further, industry commenters oppose Commission review of the responses as, among other things, they contain personally identifiable information and business sensitive information.<sup>142</sup> Therefore, we find that there is no benefit to the Commission reviewing the responses prior to the Committee review.

51. NTIA stated in its 2016 comments that the Commission should receive and review applicant answers to the questions in the first instance.<sup>143</sup> Commenters oppose FCC review contending that such review will place a strain on Commission resources or increase the possibility that personally identifiable information or business sensitive information may be inadvertently revealed if it is shared with more agencies.<sup>144</sup> T-Mobile, for example, states that “the information required for the Committee’s review should be submitted directly to the Committee and not as part of the FCC application. Much of the information the Committee seeks is quite sensitive and not relevant to the Commission’s review. As such, it should be submitted only to the Committee.”<sup>145</sup> NAB proposes that “broadcast petitioners be permitted to exclude [from FCC review information required by the Executive Branch that would otherwise not be required to be made available to the Commission or subject to Commission staff review] from their section 310(b)(4) petitions and provide it directly to the Executive Branch.”<sup>146</sup> We note that the Executive Order addresses confidential treatment of the responses provided to the Committee.<sup>147</sup>

52. Upon consideration of the record, including the new Executive Order, we conclude that there is no benefit in having Commission staff review the responses to the Standard Questions either before or at the same time they are submitted to the Executive Branch. The Executive Branch will conduct a *de novo* review of the responses regardless of whether Commission staff were to review them first. Initial Commission staff review, therefore, would be redundant to Executive Branch review, would not be an efficient use of limited agency/government resources, and may delay the overall review process. Additionally, Commission applications are routinely publicly available, and while the Commission regularly handles and protects confidential information, eliminating Commission review of the responses to the Standard Questions addresses commenters’ concerns regarding the treatment of personally identifiable information, business sensitive information, and any other confidential information included in the responses. Accordingly, we require applicants to file their responses to the Standard Questions directly with the Committee.

53. Nonetheless, we make it clear that in particular cases where Commission staff needs access to an applicant’s responses, the Executive Branch could share that information on a case-by-case basis subject to applicable rules and the relevant provisions of the Executive Order, as necessary to

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<sup>141</sup> Executive Order, Sec. 5(b)(iii).

<sup>142</sup> See T-Mobile 2020 Reply at 6-7; NAB 2020 Comments at 7.

<sup>143</sup> NTIA 2016 Comments at 4.

<sup>144</sup> See e.g., BT Americas 2016 Comments at 13; CTIA 2016 Comments at 8-9; Hibernia/Quintillion 2016 Comments at 5-6; INCOMPAS 2016 Comments at 3 (“Requiring parties to submit information to Team Telecom through the Commission in all circumstances would add a layer of vulnerability to the process—and impose additional security obligations on the Commission—with no meaningful countervailing benefit”); Level 3 2016 Comments at 12; Sprint 2016 Comments at 2-3; T-Mobile 2016 Comments at 11; Telco 2016 Comments at 14; T-Mobile 2016 Comments at 11 (stating that the “Commission is already resource constrained and should not be burdened with an essentially clerical task of determining whether the upfront information is complete”); TMT Financial Sponsor 2016 Comments at 8; USTA 2016 Comments at 8; Verizon 2016 Comments at 3.

<sup>145</sup> T-Mobile 2020 Reply at 6-7.

<sup>146</sup> NAB 2020 Comments at 7.

<sup>147</sup> Executive Order, Sec. 8 (“Information submitted to the Committee pursuant to this subsection and analysis concerning such information shall not be disclosed beyond Committee Member entities and Committee Advisor entities, except as appropriate and consistent with procedures governing the handling of classified or otherwise privileged or protected information . . .”).

inform the Commission of any subsequent recommendations made by the Executive Branch to the Commission.<sup>148</sup>

#### **D. Certification Requirements**

54. We require all international section 214 and submarine cable applicants (and applicants requesting to assign, transfer control, or modify such authorizations and licenses), with or without foreign ownership, as well as all non-broadcast section 310(b) petitioners, to attest to five certifications, as proposed in the *Executive Branch NPRM* with some minor changes.<sup>149</sup>

55. Specifically, we will require applicants and/or petitioners (other than broadcast section 310(b) petitioners) to certify that they will: (1) comply with CALEA<sup>150</sup> and related Commission rules and orders to the extent applicable; (2) make communications to, from, or within the United States, as well as records thereof, available to U.S. law enforcement officials; (3) designate a U.S. citizen or permanent U.S. resident as a point of contact for the execution of lawful requests and as an agent for legal service of process; (4) affirm that all information submitted to the Commission and the Committee as part of the application process is complete and accurate, and promptly inform the Commission and the Executive Branch agencies of any (a) substantial and significant changes in such information, while an application is pending, as defined in section 1.65 of the Commission's rules, and (b) applicant or contact information changes after the application is no longer pending promptly and in any event within thirty (30) days; and (5) affirm their understanding that failure to fulfill any of the conditions of the grant of their applications can result in license revocation or termination and criminal and civil penalties.

56. For reasons discussed below, we require broadcast petitioners seeking a section 310(b) foreign ownership ruling to certify to only three of the certifications. The certifications concerning the provision of telecommunication services related to compliance with CALEA and making communications available within the United States do not apply to broadcast service. We, therefore, will not require broadcast petitioners to make these two certifications. In transactions involving both domestic and international section 214 authority, the certifications will be made only in the international section 214 application. Similarly, the certifications will only be required as part of the petition for a section 310(b) foreign ownership ruling and will not be required in any associated applications such as an application for a broadcast or common carrier wireless license.

57. We find that any burden that these certifications impose on applicants is minimal and outweighed by the public interest benefits of expediting the Committee's review of referred applications for national security and law enforcement concerns, assisting the Commission in its ongoing compliance efforts, and ensuring that the Commission and Executive Branch agencies have up-to-date and accurate information concerning the Commission's authorization holders and/or licensees.

#### **1. Certifications Applicable to International Section 214 and Submarine Cable Applicants, With or Without Foreign Ownership, and Section 310(b) Petitioners (Other than Broadcast Petitioners)**

58. We require all international section 214 and submarine cable applicants (and applicants requesting to assign, transfer control, or modify such authorizations and licenses), with or without foreign ownership, as well as all non-broadcast section 310(b) petitioners, to make certain certifications as part of their applications to expedite Executive Branch review of those applications referred by the Commission.<sup>151</sup> As indicated by the Executive Branch, this requirement "may obviate the need for any

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<sup>148</sup> *Id.*

<sup>149</sup> These filings are made pursuant to §§ 63.18 and 63.24 (international section 214 authorizations), § 1.767 (submarine cable landing licenses), and §§ 1.5000-50004 (petitions for a foreign ownership ruling).

<sup>150</sup> 47 U.S.C. § 1001 *et seq.*

<sup>151</sup> Applications that fall within the categories of applications generally excluded from referral will be required to make the certifications.

mitigation for a significant number of such applications, and thereby advance the shared goal of making the Executive Branch review process as expeditious and efficient as possible.”<sup>152</sup> The Executive Branch agencies recently reiterated support for the certification requirements, stating that “[r]equiring all applicants to certify . . . at the time of the application is in the public interest, within the Commission’s regulatory authority, and will help expedite a Committee review process that is often delayed, because it takes time for applicants to make the necessary arrangements for these routine requirements in mitigation agreements.”<sup>153</sup>

59. Frequently, the filing of an Executive Branch recommendation to the Commission is extended by time spent by the agencies to negotiate assurances from applicants to comply with the existing law enforcement assistance requirements and draft individualized mitigation agreements. On balance, we find that the certifications will result in a more streamlined Executive Branch review process, with a two-fold benefit. First, many applicants who certify may potentially not have to enter negotiations that are part of routine mitigation. Second, Executive Branch resources that would have been allocated to routine mitigation can be re-directed to more complex applications, thereby expediting the overall review process.<sup>154</sup> In general, we agree with the Executive Branch that the burden on an applicant will be minimal, and we find that any burden is outweighed by the benefits gained from eliminating the need to negotiate the same assurances on an applicant by applicant basis.<sup>155</sup>

60. We disagree that the certifications are no longer necessary based on the Executive Order not explicitly making reference to them.<sup>156</sup> The Executive Branch agencies have explained how certifications would help to expedite the review process.<sup>157</sup> We similarly disagree with commenters who argue that requiring applicants to certify to compliance with CALEA and other legal process requirements would be duplicative or might create legal confusion or uncertainty.<sup>158</sup> The certifications will ensure applicants understand their obligations and the penalties at the time of filing the application, and that the Committee can more quickly evaluate national security and law enforcement issues with that assurance in hand. Further, all five certifications will assist both the Commission and the Committee in its ongoing statutory and regulatory duties and responsibilities under the Executive Order.

61. We require international section 214 and submarine cable applicants to attest to the five certifications regardless of foreign ownership. We find that the public interest will be served by requiring these certifications and thus reject proposals to limit the certifications to only those applications with foreign ownership.<sup>159</sup> The Executive Branch has expressed the need for the certifications to be required

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<sup>152</sup> NTIA Letter at 4.

<sup>153</sup> NTIA 2020 Comments at 7-8.

<sup>154</sup> NTIA Letter at 5 (“Historically, application reviews frequently require time to negotiate assurances from applicants to comply with applicable law enforcement assistance requirements, and to draft and negotiate individualized letters of assurance upon which the Executive Branch has relied to address national security and law enforcement concerns. The attached proposed certification would simplify and expedite the review process.”).

<sup>155</sup> NTIA 2016 Comments at 12.

<sup>156</sup> T-Mobile 2020 Comments at 10-11.

<sup>157</sup> NTIA 2020 Comments at 7-8.

<sup>158</sup> See Verizon 2016 Comments at 5-6 (“The Commission should therefore not establish any certification requirement in its licensing regime that creates new or separate obligations that would either duplicate or expand pre-existing and separate legal requirements.”); T-Mobile 2020 Reply at 11 (“As T-Mobile noted in its earlier comments, such certifications are not necessary because existing providers are already subject to compliance with U.S. laws.”).

<sup>159</sup> See e.g., T-Mobile 2020 Comments at 11 (T-Mobile proposes that “if the Commission nevertheless decides to impose certification requirements, such certifications should be required only of those applicants with new or changed foreign ownership that would trigger referral to the Committee” and that the certifications should be

(continued....)

of all applicants, including applicants without reportable foreign ownership. The Executive Branch stated that the certifications should apply to applications even without foreign ownership when, for example, law enforcement agencies may need “to request emergency assistance (e.g., with respect to kidnappings, terrorist threats, or other exigent circumstances) from companies.”<sup>160</sup> In this regard, we disagree with CTIA that the Executive Branch agencies have not explained why such certifications would be beneficial.<sup>161</sup> In addition to addressing the Executive Branch concerns, the certifications will assist the Commission in its ongoing responsibilities concerning its authorization holders and/or licensees, both those with and without reportable foreign ownership. With this certification requirement, the Commission is assured that applicants seeking a Commission authorization or license to provide service on U.S. critical infrastructure will comply with current law and understand that failure to do so may result in revocation and/or termination. The certification requirement also helps ensure that the applicant will keep its application current and up to date while it is under review by the Commission and the Committee. Overall, the certification requirement is reasonable and will result in a minimal burden on applicants. We find that it is appropriate and reasonable for the Commission to require applicants, with or without foreign ownership, to certify their ability and willingness to comply with the conditions and obligations set forth in the certifications.

**a. CALEA Compliance**

62. We require all covered applicants, except for broadcast petitioners for a section 310(b) foreign ownership ruling, to certify that they will comply with all applicable provisions of CALEA and related rules and regulations, including Commission orders and opinions governing the application of CALEA and assistance to law enforcement.<sup>162</sup> CALEA and the Commission’s implementing rules require telecommunications carriers and manufacturers of telecommunications equipment to design their equipment, facilities, and services to ensure that they have the necessary surveillance capabilities to comply with legal requests for information.<sup>163</sup> The rules are intended to preserve the ability of law enforcement agencies to conduct electronic surveillance while protecting the privacy of information outside the scope of an investigation.

63. We find that this certification will significantly expedite the processing of those applications with reportable foreign ownership referred to the Executive Branch agencies. The Executive Branch agencies often seek such assurance of compliance from applicants as routine mitigation measures, despite these applicants already being subject to CALEA and related rules and regulations. NTIA contends that the certification would help ensure that applicants consider and address these law enforcement needs prior to submitting their applications.<sup>164</sup> We agree. Having applicants certify that they

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“narrowly tailored to address issues directly relevant to the Committee’s review and should not exceed the bounds of existing U.S. legal requirements.”).

<sup>160</sup> NTIA 2016 Reply at 7.

<sup>161</sup> CTIA 2016 Comments at 6.

<sup>162</sup> 47 U.S.C. § 1001 *et seq.* By requiring applicants to certify that they will comply with all applicable provisions of CALEA and related rules and regulations, the Commission does not intend to expand the scope of telecommunications carriers subject to CALEA compliance as set forth in 47 U.S.C. § 1001(8), including any Commission designations pursuant to 47 U.S.C. § 1001(8)(B)(ii). *See* Letter from Kent Bressie, Counsel for the North American Submarine Cable Association, to Marlene H. Dortch, FCC (Sept. 24, 2020).

<sup>163</sup> 47 U.S.C. § 1001 *et seq.*

<sup>164</sup> NTIA 2016 Comments at 8 (“As one illustration of the benefit of such advance preparation, there may be situations in which emergency requests are served by law enforcement agencies on companies with . . . Commission licenses (e.g., with respect to kidnappings or other exigent circumstances) but the company is not equipped to respond in a timely fashion and as required by law. We assess that the certification requirement will help reduce the number of such instances.”).

will comply with CALEA requirements will alert applicants to the need to address law enforcement needs prior to submitting their applications, thereby significantly reducing the need for the Committee to negotiate standard mitigation measures with each referred applicant on this issue. Moreover, this certification benefits the public interest by ensuring the applicant is fully aware of its CALEA obligations and the Commission's rules prior to submitting its application.

64. Requiring telecommunications applicants to make this certification imposes no significant burden as such applicants are already subject to CALEA obligations regardless of any certification. While some commenters contend that this certification is redundant and unnecessary, as telecommunications companies are already subject to CALEA,<sup>165</sup> we find that requiring certification of compliance with this first condition would serve as an important reminder to applicants of their CALEA obligations at minimal to no expense. We direct the International Bureau to develop or revise any form(s) and/or instruction, as necessary.

**b. Availability of Communications and Records**

65. We require all covered applicants, except for broadcast petitioners for a section 310(b) foreign ownership ruling, to certify 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.<sup>166</sup> We find that this certification requirement will ensure that, to the extent any of an applicant's operations are based principally outside of the United States, such applicant would not be able to use that network configuration to avoid complying with legal requirements that would apply to a U.S.-based provider providing the same services. This certification would require that applicants make communications and records related to services covered by their license or authorization available in response to lawful U.S. request or legal process,<sup>167</sup> regardless of whether communications are carried, or records are maintained, locally in the United States or elsewhere.<sup>168</sup> We direct the International Bureau to develop or revise any form(s) and/or instruction, as necessary.

66. Several commenters express concerns that this certification would create a data localization requirement.<sup>169</sup> We disagree. T-Mobile correctly observes that "[t]he Executive Branch has made clear that U.S. policy favors the free flow of information, which is antithetical to forced

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<sup>165</sup> See BT Americas 2016 Comments at 15; CTIA 2016 Comments at 7; Level 3 2016 Comments at 16-17; TMT 2016 Comments at 10-11; USTA 2016 Comments at 9; Verizon 2016 Comments at 5.

<sup>166</sup> NTIA Letter at Attachment A (U.S. law includes "but not limited to: (1) the Wiretap Act, 18 U.S.C. § 2510 *et seq.*; (2) the Stored Communications Act, 18 U.S.C. § 2701 *et seq.*; (3) the Pen Register and Trap and Trace Statute, 18 U.S.C. § 3121 *et seq.*; and (4) other court orders, subpoenas or other legal process. Such process includes but is not limited to request to obtain: (1) information listed in 18 U.S.C. § 2703(c)(2) for users for applicant's U.S. services; (2) call-identifying information as defined in 47 U.S.C. § 1001(2) relating to communications to, from, or within the United States; and (3) interception of wire, electronic, or oral communications as defined in 18 U.S.C. § 2510 to, from, or within the United States").

<sup>167</sup> NTIA 2020 Comments at 8 ("The Certification would require all companies to store or make accessible in the United States, or in a country whose laws permit disclosure to U.S. authorities, in response to lawful U.S. requests or process, U.S. communications and records for services that require an FCC License or Authorization. This Certification is consistent with the Committee's efforts in assessing applications to determine whether any recommendation it makes to the FCC requires a mitigation agreement to address national security and law enforcement risks.").

<sup>168</sup> *Id.* ("These certifications would not amount to a de facto data localization requirement as none of these requirements would preclude an applicant from storing communications or records thereof outside of the United States as long as that information could be made available to satisfy a lawful U.S. request and/or legal process.").

<sup>169</sup> See, e.g., T-Mobile 2020 Reply at 11; BT Americas 2016 Comments at 2.

localization.”<sup>170</sup> As to stored communications and records, the Clarifying Lawful Overseas Use of Data Act (CLOUD Act) requires U.S. service providers to comply with law enforcement orders issued under the Stored Communications Act regardless of whether a communication, record, or other information is located within or outside of the United States.<sup>171</sup> And because the certification does not require a point of presence in the United States but only the ability to make communications and records available so that they may be subject to lawful request or valid legal process under U.S. law, we agree with NTIA that this certification would not force localization or repatriation of data.<sup>172</sup>

67. Others suggest this certification could go beyond existing laws by reducing the ability of certain FCC-regulated companies to use lawful encryption or other security technologies in their networks and services.<sup>173</sup> We again disagree. Under CALEA, “[a] telecommunications carrier shall not be responsible for decrypting, or ensuring the government’s ability to decrypt, any communication encrypted by a subscriber or customer, unless the encryption was provided by the carrier and the carrier possesses the information necessary to decrypt the communication.”<sup>174</sup> Our intent in adopting this certification is that, as to encryption and other security technologies, the certification requires no more other than what is already required under U.S. law.

**c. Point of Contact**

68. We require all covered applicants to designate a U.S. citizen or lawful permanent U.S. resident as (1) a point of contact for lawful requests and (2) an agent for legal service of process.<sup>175</sup> We find that, on balance, the public interest benefits of requiring the point of contact to be a U.S. citizen or a lawful permanent U.S. resident outweigh any additional burden that may be imposed on an applicant. Our CALEA rules already require telecommunications carriers to have a point of contact available seven days a week, 24 hours a day.<sup>176</sup> For common carriers and both interconnected and non-interconnected VoIP providers, section 1.47(h) of the Commission’s rules requires common carriers to designate a Washington, D.C. agent for service of process.<sup>177</sup> Requiring applicants to designate a U.S. citizen or lawful permanent U.S. resident as the point of contact for service of process is not unreasonable and serves the public interest, given that the reason for contacting the person may concern national security or law enforcement issues. The Executive Branch maintains that such a requirement will help “ensure that applicants have considered and addressed these national security and law enforcement needs prior to submitting license applications,” which will in turn ensure that, for example, applicants are equipped to provide timely assistance in emergency situations.<sup>178</sup> Finally, and similar to the first two certifications, this certification should minimize the need for routine mitigation and thus free up Executive Branch

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<sup>170</sup> T-Mobile 2020 Reply at 11.

<sup>171</sup> 18 U.S.C. § 2523; NTIA 2020 Comments at 8; *see also* U.S. Department of Justice, CLOUD Act, Frequently Asked Questions at 11, <https://go.usa.gov/xGnbK> (“The CLOUD Act also clarified the U.S. Stored Communications Act to enable the framework envisioned by the CLOUD Act, that each nation would use its own law to access data. The CLOUD Act clarified that U.S. law requires that providers subject to U.S. jurisdiction disclose data that is responsive to valid U.S. legal process, regardless of where the company stores the data.”).

<sup>172</sup> NTIA 2020 Comments at 8.

<sup>173</sup> CTIA 2016 Comments at 11; INCOMPAS 2016 Comments at 13.

<sup>174</sup> 47 U.S.C. § 1002(b)(3).

<sup>175</sup> The applicant may designate one person for both roles or a different person for each role.

<sup>176</sup> 47 CFR § 1.20003(b)(4)(ii).

<sup>177</sup> *See* 47 U.S.C. § 413; 47 CFR § 1.47(h); *see* 2016 Telecommunications Reporting Worksheet Instructions (FCC Form 499-A) at 17, [http://www.usac.org/\\_res/documents/cont/pdf/forms/2016/2016-FCC-Form-499A-Form-Instructions.pdf](http://www.usac.org/_res/documents/cont/pdf/forms/2016/2016-FCC-Form-499A-Form-Instructions.pdf).

<sup>178</sup> NTIA 2016 Reply at 8.



resources to focus on other pending applications. We adopt this certification and modify section 1.47 of the Commission's rules to ensure consistency of the rules applicable to U.S. international common carriers under sections 1.47 and 63.18 of the Commission's rules with respect to the identification of a D.C. agent who is a U.S. citizen or permanent legal resident.

69. We note that many submarine cable systems are licensed to consortiums of multiple licensees. In those situations, we require the consortium to identify one U.S. citizen or lawful permanent U.S. resident as a point of contact for lawful requests and an agent for legal service of process for each licensee of the consortium cable.<sup>179</sup> Though some commenters contend this certification is duplicative of other Commission rules or that it adds a new burden (*i.e.*, that the point of contact must be a U.S. citizen or permanent U.S. resident),<sup>180</sup> these commenters did not provide information on the scope or size of the burden.<sup>181</sup> The Executive Branch acknowledges that "existing authorities may not require . . . that applicants designate points of contact in the United States for execution of legal process," but notes that applicants have "regularly agreed" to this "standard" mitigation measure.<sup>182</sup> We direct the International Bureau and the Media Bureau to develop or revise any form(s) and instructions, as necessary, to ensure that an applicant identifies a U.S. citizen or permanent U.S. resident as an agent for service of process.

**d. Accuracy and Completeness**

70. We require all covered applicants to certify that they will maintain the accuracy and completeness of all information while the application is pending, as required by section 1.65 of the Commission's rules. Thereafter, the authorization holders and licensees must update the Commission and the Committee as to any changes to the authorization holder(s) or the licensee's contact information. While the application is pending, the certification requires applicants to affirm that all information submitted to the Commission and the Executive Branch is complete and accurate, including applicant and contact information, and that the applicant agrees to inform the Commission and the Committee of any substantial and significant changes as required under section 1.65 of the Commission rules.<sup>183</sup> After the application is no longer pending for purposes of section 1.65 of the rules, the certification requires authorization holders and licensees to notify the Commission and the Committee of any changes in contact information, promptly and in any event within thirty (30) days. We note that the fourth certification we adopt today varies slightly from what was proposed in the *Executive Branch NPRM* as the certification now specifies that an applicant is required to keep its authorization holder and licensee

<sup>179</sup> Each licensee of a consortium cable may designate one person for both roles or a different person for each role.

<sup>180</sup> BT Americas assert that since carriers are already subject to legal requirements regarding CALEA compliance and the identification of a point of contact for legal process, there is no need to adopt duplicative certification requirements. BT Americas 2016 Comment at 15. BT Americas et al. state that both CALEA and the FCC's Form 499A carrier registration require carriers to identify a point of contact for legal process. BT Americas 2016 Comment at 15. CTIA states that the proposed certification, requiring applicants to designate a point of contact for the execution of lawful requests is already satisfied by existing statutory obligations, but seeks to impose new burdens on companies by requiring the point of contact to be a U.S. citizen or lawful permanent resident. CTIA 2016 Comment at 12; CTIA 2016 Reply at 7.

<sup>181</sup> CTIA 2016 Comments at 12 ("[T]he proposed certification requiring applicants to designate a point of contact for the execution of lawful requests and/or legal process is already satisfied by existing statutory obligations. Telecommunications carriers establish points of contact under the Commission's CALEA requirements, as well as in their Form 299 registration. The proposed certification, however, seeks to impose new burdens on companies by requiring the point of contact to be a U.S. citizen or lawful permanent resident.") and 2016 Reply at 7 ("[T]he Executive Branch also proposes new certifications that would require all applicants to . . . designate point of contact that are U.S. citizens or lawful permanent U.S. residents. As comments describe, however, these obligations raise significant concerns and add new requirements and burdens on applications, which are not outweighed by any benefits.").

<sup>182</sup> NTIA 2016 Comments at 11.

<sup>183</sup> See 47 CFR §§ 1.65; 63.21; 63.22.

contact information current with the Commission and the Committee even after the application is no longer pending under section 1.65.

71. This certification will assist the Commission in its ongoing compliance efforts and will ensure that the Commission and Executive Branch agencies have the same updated accurate contact information concerning the Commission's authorization holders and/or licensees. Since 2015, the International Bureau has terminated 14 international section 214 authorizations because the carriers failed to respond to inquiries from both the Executive Branch and the Commission, and many times, telephone numbers were not accurate and emails and Commission letters were returned as undeliverable.<sup>184</sup> The Executive Branch and the International Bureau attempted to contact these carriers but were unable to reach them and the International Bureau terminated their authorizations for failing to comply with the terms of the mitigation agreement entered into with the Executive Branch agencies, compliance with which was an express condition for holding the section 214 international authorization.

72. In response to the *Executive Branch NPRM*, a commenter questioned the feasibility of the certification with respect to future filings.<sup>185</sup> Contrary to this concern, this certification is for the Commission and the Committee to be able to immediately contact Commission authorization holders and/or licensees given our statutory and regulatory duties and especially in light of the new shared responsibilities in the Executive Order. Thus, we require our authorization holders and/or licensees to inform us of any contact information changes after the application is no longer pending for purposes of section 1.65 of the rules, promptly and in any event within thirty (30) days. This certification mostly affirms current obligations and, while we do place an additional burden, we adopt a reasonable time frame to notify the Commission and the Executive Branch.<sup>186</sup> This includes notifying the Commission, for example, of changes in the authorization holder or licensee's name, a change in the name of a submarine cable system or of a change in the counsel for the authorization holder or licensee. Because the Executive Order establishes a coordinated formal process, this additional requirement ensures that both the Commission and the Committee have the same reliable contact information regarding Commission authorization holders and licensees. As with the other certifications, we find that this certification will benefit those applicants subject to Executive Branch review by reducing the time spent negotiating routine, but individualized mitigation agreements. We direct the International Bureau and Media Bureau to develop or revise any form(s) and/or instructions, as necessary.

#### e. Consequences

73. Finally, we adopt a certification requirement to provide assurance that the applicant is aware of potential consequences if it knowingly submits materially false, fictitious, or fraudulent information or otherwise fails to fulfill the conditions and obligations set forth in its certifications and the grant of its application, license, or authorization. The importance of this certification is clear as this

<sup>184</sup> Termination of Space Net LLC International Section 214 Authorization, Order, 34 FCC Rcd 1063, 1064 (IB 2019) ("On August 13, 2018, the Bureau's Telecommunications and Analysis Division sent a letter to Space Net at the last addresses of record, requesting that Space Net respond to the Executive Branch Agencies' allegations and possible violations of the Commission's rules by September 12, 2018. The mailings to Space Net were all undeliverable and returned to the Commission."); Redes Modernas de la Frontera SA de CV Termination of International Section 214 Authorization, docket number, Order, 31 FCC Rcd 12709, 12710 (IB 2016) ("On July 5, 2016, the International Bureau sent Redes a letter to the last addresses of record requesting that Redes respond to the April 13, 2016 Executive Branch Letter by August 3, 2016. Redes did not respond.").

<sup>185</sup> Wiley Rein 2016 Comments at 18, n. 28 ("any certification with respect to all future filings is not reasonable or workable").

<sup>186</sup> The certification NTIA proposed in its May 2016 letter is as follows: "Applicant certifies that all information submitted, whether at the time of submission of the application/petition or subsequently in response to either FCC or Executive Branch agency request, is accurate and complete to the best of Applicant's knowledge." The NTIA-proposed language lacks the trailing phrase "*at the time of submission*" set out in the proposed rules. NTIA Letter at 6, Attach. A.

certification links applicants' non-compliance with the other certifications to the possibility of a license or authorization being revoked or terminated. An applicant that makes willful false, fictitious, or fraudulent statements on Commission applications and/or petitions, fails to comply with the specific conditions of an authorization or license, or otherwise violates Commission rules or U.S. laws is already subject to potential revocation and fines.<sup>187</sup> No commenter specifically addressed this certification.

74. We have revised the wording of this certification proposed in the *Executive Branch NPRM* to clarify that failure to comply with the other certifications as well as conditions on grant of the application may lead to the consequences set out in the certification. Although this certification may seem repetitive, we believe that it will both strengthen and clarify the need for compliance because it alerts an applicant that a failure to meet the legal requirements that applicant has knowingly affirmed through this certification would provide the Commission with a firm basis upon which to terminate the authorization or license, as needed.<sup>188</sup> We direct the International Bureau and Media Bureau to develop or revise any form(s) and/or instructions, as necessary.

## **2. Certifications Applicable to Broadcast Section 310 Petitioners**

75. The first two certifications set forth above concern the provision of telecommunications service and not broadcast service. Accordingly, broadcast petitioners seeking a section 310(b) foreign ownership ruling will only be required to certify to the certifications related to point of contact, accuracy and completeness, and consequences. As the Broadcaster Representatives note, "broadcasters do not own or control telecommunications networks, do not provide services to any sectors of critical U.S. infrastructure, do not have telecommunications intercept capabilities, and do not have compliance obligations under the Communications Assistance for Law Enforcement Act."<sup>189</sup> The Executive Branch acknowledges that certain certifications, such as CALEA compliance, are inapplicable to broadcasters.<sup>190</sup> We agree that the first two certifications concern the provision of telecommunications and are inapplicable to broadcast service. Therefore, we require a broadcast petitioner seeking a section 310(b) foreign ownership ruling to attest only to certifications c, d, and e above. We direct the Media Bureau, in coordination with the International Bureau, to develop or revise any form(s) and/or instruction, as necessary, to ensure that a petitioner for a foreign ownership ruling under section 310(b) for broadcast services is required to make only the certifications that apply to the services it provides.

### **E. Time Frames for Executive Branch Review**

76. Consistent with the Executive Order, we adopt a 120-day initial review period for applications with reportable foreign ownership that the Commission refers to the Executive Branch, with a possible 90-day extension for a secondary assessment in those instances where "national security or law enforcement interests cannot be mitigated by standard mitigation measures."<sup>191</sup> Although the Commission proposed a 90-day time frame with the possibility of one 90-day extension in the *Executive*

<sup>187</sup> 47 U.S.C. § 312(a)(1); 47 U.S.C. § 502.

<sup>188</sup> *Executive Branch NPRM*, 31 FCC Rcd at 7467-68, para 31, citing NTIA Letter at 5.

<sup>189</sup> Broadcasters Representatives 2016 Comments at 3-4. See also Letter from Erin L. Dozier, Senior Vice President and Deputy General Counsel, Legal and Regulatory Affairs, National Association of Broadcasters, to Marlene H. Dortch, Secretary, FCC, dated Nov. 7, 2016, at 1-2.

<sup>190</sup> NTIA 2016 Comments at 10 ("We assess that while it is possible that not every element of the certification requirement will apply to every applicant, the certification form or directions could allow applicants to state which portions of any of the three the certifications do not apply and why. For example, with respect to the comment submitted by the Broadcaster Representatives, an applicant could certify that CALEA imposes no obligations on those holding only a broadcasting license.").

<sup>191</sup> Executive Order, Sec. 5. Both the 120-day initial review period and the 90-day secondary assessment are subject to extension by the Committee. *Id.*

*Branch NPRM*,<sup>192</sup> we find it is in the public interest to modify the time frames to ensure consistency with the process established by the Executive Order.<sup>193</sup> These modified Commission time frames apply to review of applications by the Committee for national security and law enforcement issues pursuant to the Executive Order and review of applications for foreign policy and trade policy considerations, which is not expressly covered by the Executive Order. Because the Executive Order provides that the Chair of the Committee determines when the 120-day initial review period starts, we adopt rules to encourage the Committee to send the Tailored Questions to an applicant promptly. Doing so will ensure that the Committee receives the information it needs to start the review period as quickly as possible. Through these rules, most Executive Branch reviews should be completed within 127 days,<sup>194</sup> and the most complex cases within 238 days, according to the provisions of the Executive Order.<sup>195</sup> The modified Commission time frames will benefit the Commission and applicants alike, by promoting transparency regarding an application's status and facilitating expectations for resolution of pending cases.<sup>196</sup> The establishment of Commission time frames may also be of use to the Executive Branch by providing a basis for prioritizing its work.

#### 1. 120-Day and 90-Day Time Frames for Executive Branch Review

77. We adopt rules establishing a 120-day initial review period with a possible 90-day period for a secondary assessment, consistent with the Executive Order. Commenters generally agree that the time frames are an improvement over the current informal process and will promote transparency and predictability of Executive Branch review.<sup>197</sup> NTIA states that the procedures set forth in the Executive Order “will allow the Committee to complete a thorough review in a timely fashion of even the most complex applications.”<sup>198</sup> Although we expect the Executive Branch to notify the Commission of all decisions, as a safeguard, if the Executive Branch does not communicate to the Commission at the end of the 120-day initial review period or at the end of the 90-day secondary assessment, the Commission has discretion to take action on the application after assessing compliance with Commission rules and any issues raised by the application.<sup>199</sup> Finally, in order to maintain consistency of all Executive Branch

<sup>192</sup> *Executive Branch NPRM*, 31 FCC Rcd at 7470-74, paras. 36, 39-44.

<sup>193</sup> Various commenters opposed or proposed alternatives to the time frames originally set forth in the *Executive Branch NPRM*. See, e.g., NTIA 2016 Comments at 14; NTIA 2016 Reply at 9; BT Americas 2016 Comments at 10; TelePacific 2016 Reply at 5. We do not find it necessary to address those comments as those time frames are no longer applicable as discussed herein.

<sup>194</sup> The Executive Order sets out a 120-day initial review period, and it allows up to 7 additional days for NTIA to notify the Commission of the Committee's recommendation. Executive Order, Sec. 9(h).

<sup>195</sup> In certain extraordinary situations the review may go past 238 days (120-day initial review + 90-day secondary assessment + 21-day Committee Advisor notification and review + 7-day for NTIA to notify the Commission). See Executive Order, Sec. 9(e)-(g).

<sup>196</sup> *Executive Branch NPRM*, 31 FCC Rcd at 7470-71, para. 36. The Commission has adopted rules to facilitate expectations regarding the timing of the resolution of an application. For example, section 63.03(c)(2) of the Commission's rules states with regard to domestic section 214 transfer of control applications that “except in extraordinary circumstances, final action on the application should be expected no later than 180 days from public notice that the application has been accepted for filing.” 47 CFR § 63.03(c)(2).

<sup>197</sup> See CTA 2020 Comments at 4; INCOMPAS 2020 Comments at 2; Joint International Providers 2020 Comments at 3; NAB 2020 Comments at 3; CTIA 2020 Reply at 3; Windstream 2020 Reply at 2. By contrast, T-Mobile states that it continues to support the Commission's 2016 90/90-day proposal. T-Mobile 2020 Comments at 8; T-Mobile 2020 Reply at 4.

<sup>198</sup> NTIA 2020 Comments at 3.

<sup>199</sup> Pursuant to the Executive Order, NTIA has seven days to notify the Commission of the Committee's recommendation, so we may not hear from the Executive Branch until day 127 or day 238. Still as noted below, we will require that the Executive Branch provide status notifications every 30 days during secondary assessments. See Section III.E.3.

reviews, we also require Executive Branch review of referred applications for foreign policy or trade policy concerns, discussed below, to follow the time frames established by the Executive Order.

78. To account for any inconsistency between the time frames proposed in the *Executive Branch NPRM* and those set forth in the Executive Order, we adopt new rules that track the process outlined in the Executive Order. In this regard, we expect the Executive Branch agencies to complete their national security and law enforcement review of applications and file their recommendation (if any) within the initial 120-day time frame and secondary 90-day time frame established by the Executive Order. We recognize that additional weeks of review could be necessary after the 90-day secondary assessment period ends if Committee Members and Committee Advisors are unable to reach consensus and the review escalates to the President.<sup>200</sup> We expect those cases to be rare. We also recognize that after the Committee renders its final recommendation, NTIA has seven additional days by which to notify the Commission of that recommendation. Our time frames for Executive Branch review will accommodate these provisions of the Executive Order.

79. We do not require expedited review for certain applications as suggested by some commenters. EQT and the Joint International Providers argue that applicants from countries that are allies of the United States should be considered to have little to no national security risk.<sup>201</sup> EQT proposes a system akin to the Visa Waiver Program where “[t]he Commission, in consultation with the Executive Branch, should consider a similar approach that expedites review of foreign ownership from certain allied countries that pose no material threat to U.S. national security. . . .”<sup>202</sup> T-Mobile suggests that foreign ownership from countries on the CFIUS Excepted Foreign State List also presents low national security risks.<sup>203</sup> We decline to deviate from the time frames established by the Executive Order. We also note that Executive Branch review involves more than national security concerns. Although these countries would not necessarily pose a national security risk, it does not follow that the applicants themselves would not pose such a risk. To the extent that these applications do present lower risks, we expect that the Executive Branch would be able to complete its review during the 120-day initial review period.

80. We agree with the commenters that the Commission should be able to act on an application at the conclusion of the 120-day initial review period if the Executive Branch has not provided its final recommendation or advised the Commission that a secondary assessment is warranted,<sup>204</sup> as this approach provides certainty and transparency to the application review process.

## 2. Referral of an Application to the Executive Branch and Start of the Committee’s 120-day Initial Review Period

81. We adopt the Commission’s proposal in the *Executive Branch NPRM* to refer an application to the Executive Branch when the application is placed on an accepted for filing public notice, and to process the application on a non-streamlined basis given the likelihood that Executive Branch review will exceed the established time frames for streamlined processing.<sup>205</sup> Our determination of

<sup>200</sup> We also recognize that secondary assessments are warranted when the Committee finds that risks to national security or law enforcement cannot be mitigated by standard mitigation measures, and that should the Committee recommend use of non-standard mitigation or denial, the Committee Advisors have up to 21 days after the 90-day secondary assessment period ends to consider that recommendation. Executive Order, Secs. 5(b)(i)(C), 9(f).

<sup>201</sup> EQT 2020 Comments at 5, Joint International Providers 2020 Comments at 5.

<sup>202</sup> EQT 2020 Comments at 5.

<sup>203</sup> T-Mobile 2020 Reply at 5.

<sup>204</sup> Inmarsat 2020 Comments at 2; Inmarsat 2020 Reply at 8; Windstream 2020 Reply at 2; T-Mobile 2020 Reply at 3; INCOMPAS 2020 Comments at 2.

<sup>205</sup> *Executive Branch NPRM*, 31 FCC Rcd at 7471-72, para. 37-38. If the application falls within one of the categories of applications excluded from referral, it may be eligible for streamlined processing. In the case of joint international and domestic section 214 transfer of control applications filed pursuant to section 63.04(b) of the (continued....)



whether an application is acceptable for filing will include an assessment of whether the applicant has certified that it has submitted its responses to the Standard Questions to the Committee, the application complies with the Commission's rules, and the applicant has made the other required certifications. We also require the applicant to send a copy of its FCC application(s), including the file number(s), to the Committee within three business days of filing it.<sup>206</sup> This ensures that the Executive Branch has timely access to the application and can promptly begin the review process, prior to our referral. The Commission's public notice of the application will note that the application has been referred to the Executive Branch for input on any national security, law enforcement, foreign policy, or trade policy concerns related to the foreign ownership in the applicant, and the public notice will serve as the referral.<sup>207</sup> If the Executive Branch wants the Commission to defer action on the application pending Executive Branch review of the application for any of these concerns, it must file a letter in the record of the proceeding by the comment date established in the public notice, and request that the Commission defer action pending the Executive Branch review. If the Commission does not receive a deferral request by the comment date, we will assume that the Executive Branch does not seek deferral of that application and the Commission will act on the application in its discretion after assessing compliance with Commission rules and any issues raised by the application. We expect the process of referring applications via public notice and requiring deferral requests to be filed in the relevant FCC record will improve the transparency of the Executive Branch review.

82. Under the Executive Order, the Committee's 120-day review clock starts when the Chair determines that an applicant's responses are complete.<sup>208</sup> To ensure that the 120-day initial review clock begins as quickly as possible, we adopt rules intended to shorten the time between our referral of an application and the date on which the Committee sends any Tailored Questions to the applicant. First, as we have explained,<sup>209</sup> we will require an applicant to submit its responses to the Standard Questions directly to the Committee prior to or at the same time as it files its application with the Commission and to submit a copy of its application to the Committee within three business days of filing it.<sup>210</sup> The Executive Branch supports this and agrees that it should expedite the Committee review.<sup>211</sup> Second, while it is our expectation that the Committee will send any Tailored Questions to the applicant within 30 days of the referral of the application, the Commission will start the 120-day review period on its own 30 days after the date of referral in the event the Committee does not send the Tailored Questions to the applicant by then. We believe that 30 days from the referral date is a reasonable amount of time for the Committee to prepare and send any Tailored Questions, particularly because it will have the applicant's responses to the Standard Questions even before the referral, so in practicality it will have more than 30 days. If, however, the Committee provides the Tailored Questions to the applicant within 30 days of referral, or within any extension granted by the Commission, we are not limiting by rule the time the Chair has to

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Commission's rules, 47 CFR §63.04(b), the Wireline Competition Bureau will also accept the domestic portion of the application for non-streamlined filing. This will eliminate the need to remove an application from streamlined processing in response to a deferral request.

<sup>206</sup> The application may not be given a file number or docket number until the fee payment has been processed.

<sup>207</sup> Commission staff may send a courtesy copy of the public notice to the Executive Branch agencies, *e.g.*, Department of Defense, Department of Homeland Security, Department of Justice, State Department, USTR, NTIA, but the public notice itself is the official referral of the application.

<sup>208</sup> Executive Order, Sec. 5(b)(iii).

<sup>209</sup> See Section III.C.3.

<sup>210</sup> NTIA observed that the availability of the standardized questions on the Commission's website alone "will in many cases expedite the Committee's review of referred applications." NTIA 2020 Comments at 7. We believe that going a step further—requiring that applicants provide responses to the standardized questions directly to the Committee—will ensure expedited reviews.

<sup>211</sup> NTIA Supplemental Comments at 4.



certify that the applicant responses are deemed complete. We believe that these requirements will expedite the commencement of the Committee's review and are not inconsistent with the Executive Order.

83. If the Committee intends to review an application(s) for national security and law enforcement concerns during the comment period for the application(s), the Committee must electronically file in all applicable Commission file numbers and dockets associated with the application(s) a request that the Commission defer action until the Committee completes its review. In that deferral request, the Committee must notify the Commission that it: (1) has already sent Tailored Questions to the applicant and state when the questionnaire was sent; (2) will provide the Tailored Questions to the applicant by a specified date not to exceed 30 days from the Commission's referral; or (3) has determined that no Tailored Questions are needed. We note that the Committee will have the responses to the Standard Questions before the application is referred. If the Committee indicates that no Tailored Questions are necessary, the 120-day review clock will begin on the date of that notification. If the Committee intends to send Tailored Questions but does not send them within 30 days of referral, it may request additional time to send the questions. The Commission may, in its discretion, choose to allow the Committee additional time for development of the Tailored Questions or instead start its 120-day review clock.

84. Although our rule does not go as far as some commenters request,<sup>212</sup> we believe it strikes a balance between the process that the Committee must follow under the Executive Order and our goal of bringing clarity and predictability to coordination with the Executive Branch. Therefore, the Commission will have the discretion to start its 120-day initial review clock if the Tailored Questions are not provided to an applicant within 30 days of our referral (or within a specified extension period), and the Committee's initial review must be completed within that time frame.

### **3. Required Committee Notifications to the Commission on the Status of Its Review**

85. We require the Committee to provide for each referred Commission application notice of the status of its review at various points in the review via electronic filings in all applicable Commission file numbers and dockets associated with the application(s). Specifically, we require the Committee, or NTIA as appropriate, to file in the record notifications that: (1) the Committee will be reviewing an application and requests that the Commission defer action on the application until the Committee completes its review; (2) the Committee has sent Tailored Questions to the applicant;<sup>213</sup> (3) the Committee recommends dismissal of the application without prejudice because the applicant has failed to respond to requests for information; (4) the Chair has determined that "the applicant's responses to any questions and information requests from the Committee are complete,"<sup>214</sup> and the initial 120-day review has begun; (5) the 120-day initial review has been extended and for how long;<sup>215</sup> (6) the Committee has

<sup>212</sup> For example, NAB suggested that the 120-day review clock should commence upon the Committee's receipt of the responses to the standardized questions. NAB 2020 Reply at 3. Inmarsat suggested that if applicants were to submit substantially complete questionnaires to the Committee at the same time that they file FCC applications, "the Committee should commit to start the 120-day shot clock" within a short period, such as five days, after receipt. Inmarsat 2020 Reply at 9. Windstream advocated making the 120-day initial review include, not follow, the time that the Committee needs to review an applicant's responses for completeness. Windstream 2020 Reply at 2.

<sup>213</sup> The notification that the Committee has sent Tailored Questions to the applicant could be included as part of its deferral request.

<sup>214</sup> Executive Order, Sec. 5(b)(iii).

<sup>215</sup> The initial review period may be extended if the applicant has not been responsive to information requests. Executive Order, Sec. 5(d). The filing of major amendments during the pendency of a referred application will not restart the 120-day review clock. Rather, we expect that the Committee will factor its review of an amendment, including the possibility of follow-up questions for the applicant(s), into its 120-day review (or 90-day secondary assessment, should an amendment be filed during the secondary assessment). The Committee could extend either  
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determined that it will conduct a secondary assessment and an explanation as to why that is warranted;<sup>216</sup> (7) the 90-day secondary assessment has been extended and for how long<sup>217</sup> and a status update of the secondary assessment, at 30-day intervals;<sup>218</sup> and (8) the Committee has arrived at a final recommendation.<sup>219</sup> We will provide public notice of the date of the Committee's acceptance of an applicant's responses as complete and the start of the 120-day initial review period, that the review period has been extended, that a secondary assessment will be required, and that a secondary assessment has been extended. These notices will allow the applicant and the Commission to track the progress of the Committee's review and thus will provide more transparency to the process.

86. Although certain of these notification requirements go beyond what is set out in the Executive Order,<sup>220</sup> we believe that any extra burden placed on the Committee is minimal and outweighed by the benefits of the added transparency from these notifications. In the *Executive Branch NPRM*, the Commission proposed to require the Executive Branch to notify the Commission if it required additional time after the initial review period and to explain why the Executive Branch required the additional time.<sup>221</sup> Commenters agree with this requirement,<sup>222</sup> and we adopt it here. Because we expect secondary assessments to be rare, the requirement that the Executive Branch provide justification for the secondary assessment should not place a significant burden on the Committee. Similarly, the Commission proposed to require the Executive Branch to provide status updates during the additional 90-day review period.<sup>223</sup> Commenters supported such a requirement.<sup>224</sup> We also note that once a secondary assessment begins, the only other notification the Executive Order requires the Committee to provide to the Commission is when the Committee has arrived at a final recommendation. We find it will be in the public interest to maintain

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the initial review or secondary assessment in the course of obtaining additional information from an applicant in connection with the amendment (e.g., ownership information if the amendment pertains to a newly added applicant owner). Depending on the nature and timing of the amendment, the Commission may also consider Committee requests for prolonged extensions of either the initial review or secondary assessment. The Commission will continue to place major amendments on public notice, and applicants may be required to submit new responses to the Standard Questions to the Committee, and potentially to new Tailored Questions. We understand the Committee's need to have ample time to review major changes to an application, particularly if the amendment is filed near the end of a review period. See NTIA 2020 Supplemental Comments at 12-13.

<sup>216</sup> We recognize that the Committee's response may need to be filed on a confidential basis with the Commission.

<sup>217</sup> Executive Order, Sec. 5(d). Although the Executive Order allows extensions of the secondary assessment, it does not require the Chair to notify the Commission when they occur.

<sup>218</sup> These updates could extend beyond the Committee's 90-day review period if the escalated review provisions of the Executive Order are triggered. See Executive Order, Secs. 9(f)-(g). We do not expect the Committee to disclose internal deliberative decisions or steps as part of these status updates.

<sup>219</sup> The Executive Order states that when initial review or secondary assessment results in a final recommendation, NTIA will notify the Commission of the Committee's recommendation within seven days of the Chair's notification to NTIA of that recommendation. Executive Order, Sec. 9(h).

<sup>220</sup> The Executive Order requires notification to the Commission when (1) the Chair has found that the applicant's responses are complete and that initial review has begun; (2) the 120-day initial review has been extended; (3) the Committee recommends dismissal of the application; (4) the Committee has determined that it will conduct a secondary assessment; and, (5) the Committee has arrived at a final recommendation. Executive Order, Secs. 5(c), (d), 9(h).

<sup>221</sup> *Executive Branch NPRM*, 31 FCC Rcd at 7473-74, para. 43.

<sup>222</sup> Joint International Providers 2020 Comments at 3; T-Mobile 2020 Comments at 10; NAB 2020 Reply at 10; Inmarsat 2020 Reply at 8.

<sup>223</sup> *Executive Branch NPRM*, 31 FCC Rcd at 7473, para. 43.

<sup>224</sup> CTIA 2016 Comments at 5; Wiley Rein 2016 Comments at 5; T-Mobile 2016 Comments at 6.

transparency during the secondary assessment period or afterward if the review of the application is escalated to the Committee Advisors or the President.

#### 4. Time Frames for Executive Branch Review of Foreign Policy and Trade Policy Issues

87. We refer applications to the Executive Branch for review of foreign policy and trade policy concerns as well as national security and law enforcement concerns.<sup>225</sup> The Executive Order addresses review of applications for national security and law enforcement issues. It does not expressly cover reviews based on foreign policy or trade policy concerns, although the Committee Advisors include foreign policy and trade policy agencies.<sup>226</sup> We find that there should be consistent requirements for Executive Branch review of an application regardless of whether the review includes national security and law enforcement concerns or foreign policy or trade policy concerns, or some combination of these concerns. Consequently, we will require all Executive Branch reviews of referred Commission applications to follow the same time frames (*i.e.*, 120 days for initial review and 90 days for secondary assessment when warranted). In the absence of any national security or law enforcement concerns, we will apply to Executive Branch reviews of foreign and trade policy issues essentially the same process requirements as national security and law enforcement reviews. However, in cases where there are conflicting national security, law enforcement, foreign policy, and trade policy concerns, our objective remains that the Executive Branch agencies reach consensus on a recommendation. NTIA advises that the Executive Order provides an opportunity to resolve such conflicts by escalating the matter to the President.<sup>227</sup>

88. We will notify the Executive Branch agencies with foreign and trade policy expertise and the public of our referral of an application with reportable foreign ownership to the Executive Branch through our public notices.<sup>228</sup> Once an application is placed on public notice, an Executive Branch agency may file a request asking the Commission to defer action on an application while the particular agency reviews the application for foreign policy and trade policy concerns. The agency should file such a request via electronic filing in all applicable Commission file numbers and dockets associated with the application during the applicable comment period. Because the Executive Order does not expressly cover foreign and trade policy reviews, a review based solely on foreign policy or trade policy concerns may not be subject to the Executive Order's provision that the 120-day review begins when the Chair determines that the applicant's responses to any questions and information requests from the Committee are complete. Therefore, in such standalone instances, the 120-day review period will commence on the day the Executive Branch agency or agencies file a deferral request based solely on foreign policy or trade policy concerns. The agencies will need to notify us no later than the end of the 120-day time frame if they have determined that they will conduct a secondary assessment and the reason(s) why that is warranted. The agencies are subject to the same notification requirements we discuss above.<sup>229</sup> If the Executive Branch does not communicate to the Commission by the end of the 120-day initial review period or by the end of

<sup>225</sup> See *Foreign Participation Order*, 12 FCC Rcd at 23919-921, paras. 61-66 (discussing the relevance of national security, law enforcement, foreign policy, and trade policy concerns and other federal agencies' specific expertise in such matters).

<sup>226</sup> In the *April 2020 Public Notice*, the International Bureau sought comment on the effect of the Executive Order on the proposals in the *Executive Branch NPRM*. See *April 2020 Public Notice*. No commenters addressed whether, in the absence of any national security and law enforcement concerns, foreign and trade policy reviews should be treated the same as or differently than national security and law enforcement reviews in light of the Executive Order.

<sup>227</sup> NTIA 2020 Comments at 3.

<sup>228</sup> Commission staff may send a courtesy copy of the public notice to the Executive Branch agencies, *e.g.*, State Department, USTR, NTIA, but the public notice itself is the official referral of the application.

<sup>229</sup> See Section III.E.3.

the 90-day secondary assessment, the Commission may act on the application without waiting for further input from the Executive Branch.

## 5. Single Point of Contact at the Executive Branch

89. To ensure that applicants can communicate effectively with the Executive Branch, we adopt the Commission's proposal in the *Executive Branch NPRM* that the Executive Branch identify a single point of contact or a point agency for referral of applications and any inquiries the Commission and applicants have during the course of the Executive Branch review process.<sup>230</sup> Commenters support the Executive Branch identifying a single point of contact for information to provide transparency during application review.<sup>231</sup> Consistent with its responsibility under the NTIA Act,<sup>232</sup> NTIA states that the Executive Order designates "the Attorney General as Chair of the Committee with the exclusive authority to act, and to designate other Committee members to act, on behalf of the Committee, including communicating with the Commission, applicants, and licensees."<sup>233</sup> As such, the National Security Division, through its Foreign Investment Review Section (FIRS), will represent the Attorney General on the Committee,<sup>234</sup> and will be the point of contact for the Commission and applicants. We direct the International Bureau to include the contact information for FIRS or any future point of contact on its website along with any other information concerning how applicants can best communicate with that point of contact concerning pending applications. As discussed in the previous section, there may be occasions when an application does not raise any law enforcement or national security concerns but does present foreign or trade policy concerns that other Executive Branch agencies, such as the Department of State or USTR, may want to review. In order to have a single contact available for these situations, we direct the International Bureau to include contact information for NTIA concerning these matters on our website.

## F. Committee Review of Existing Licenses

90. Section 6 of the Executive Order provides that the Committee may at any time "review existing licenses to identify any additional or new risks to national security or law enforcement interests of the United States."<sup>235</sup> The Executive Order narrowly defines "license" as an "authorization granted by the Federal Communications Commission (FCC) after referral of an application by the FCC. . . ."<sup>236</sup> Pursuant to the Executive Order, Committee review of an authorization or license will result in one of the following actions: (1) a recommendation that the Commission modify an existing authorization or license to include new mitigation conditions; (2) a recommendation that the Commission revoke the authorization

<sup>230</sup> *Executive Branch NPRM*, 31 FCC Rcd at 7471, para. 37.

<sup>231</sup> BT Americas 2016 Comments at 16 ("Requiring the Team Telecom agencies to provide contact information can allow applicants to develop a two-way dialogue with the agencies, possibly enabling the applicant to gain insight into, and address any particular Team Telecom concerns."); Sprint 2016 Comments at 8 (favoring "a single point of contact for all inquiries related to FCC applications" and a "point agency" for each application."). Hibernia/Quintillion supported separate contacts for each Executive Branch agency involved in review of an application. Hibernia/Quintillion 2016 Comments at 9.

<sup>232</sup> 47 U.S.C. § 902(b)(2)(J) (stating that the functions of NTIA include "[t]he responsibility to ensure that the views of the executive branch on telecommunications matters are effectively presented to the Commission").

<sup>233</sup> NTIA 2020 Comments at 4 (citing Executive Order, Sec. 3(c) (the Attorney General shall serve as the Chair); Sec. 4(b) (the Chair shall have exclusive authority to communicate with the Commission and with applicants or licensees on behalf of the Committee)).

<sup>234</sup> *See Attorney General Will Chair Committee to Review Foreign Participation in the U.S. Telecommunications Sector*, Press Release (April 7, 2020), <https://go.usa.gov/xf77s>.

<sup>235</sup> Executive Order, Sec. 6.

<sup>236</sup> Executive Order, Sec. 2(a). *See also* CTIA 2020 Reply at 6 (noting that the Committee will review only those licenses previously subject to a national security/law enforcement review).

or license; or (3) a Committee decision to make no recommendation to the Commission with respect to the authorization.<sup>237</sup> The Executive Order does not contain a provision expressly requiring the Committee to notify the Commission when it decides to investigate an existing authorization or license, and if it ultimately decides to make no recommendation to the Commission after reviewing the existing authorization or license. Under the terms of the Executive Order, the only notification the Commission would receive concerning an investigation of an existing license is when the Committee communicates its final recommendation regarding new mitigation conditions or revocation of the existing license.

91. The *Executive Branch NPRM* did not raise the question of Executive Branch review of existing licenses. As part of the April 2020 Public Notice, the International Bureau entered the Executive Order into the record of this proceeding and expressly asked for comment on its effect on the specific proposals and issues in this proceeding.<sup>238</sup> Several of the April 2020 Public Notice commenters express concern that the review of existing licenses and possibility of revocation without warning could inhibit foreign investment.<sup>239</sup> Commenters assert that licensees must be afforded an opportunity to respond before a license is revoked or modified with new conditions.<sup>240</sup> T-Mobile also asserts that the standard for imposing a new condition or revoking an existing license “must be high and rigorous.”<sup>241</sup> Some commenters argue that the Committee should inform the Commission and the authorization holder when the Committee decides to start looking into a license (*i.e.*, after Committee members vote on whether to start a review), rather than at the end of the review.<sup>242</sup> Windstream argues that because the *Executive Branch NPRM* did not address Executive Branch review of existing licenses, a further notice of proposed rulemaking or separate proceeding is needed to address it.<sup>243</sup>

92. Consistent with current practice, the Commission will provide any affected authorization holder or licensee an opportunity to respond to the Committee's recommendation prior to any action by the Commission. This will address the commenters' concern that the Commission might proceed with modification or revocation of an existing authorization or license without warning or the opportunity to comment. We find that new rules or a separate proceeding are unnecessary to address Committee reviews of existing licenses<sup>244</sup> as the Commission already has procedural safeguards in place to protect licensees' due process rights, and that until such time as the Commission has more experience with such Committee recommendations, it is more appropriate to tailor such procedures to the facts and circumstances of a particular Committee recommendation.<sup>245</sup> If the Committee decides to review an existing license, one

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<sup>237</sup> Executive Order, Sec. 9(b).

<sup>238</sup> *April 2020 Public Notice* at 3.

<sup>239</sup> *See, e.g.*, CTIA 2020 Reply at 7 (“Licensees should be encouraged to invest in their businesses without fear that one of their core assets could be taken away without meaningful warning.”); T-Mobile 2020 Comments at 12 (“the risks of revocation or modification cannot be so substantial or undefined as to undermine incentives for investment.”)

<sup>240</sup> T-Mobile 2020 Comments at 8, NAB 2020 Reply at 12, Inmarsat 2020 Reply at 9, Windstream 2020 Reply at 5.

<sup>241</sup> T-Mobile 2020 Comments at 12. CTIA contends that there should be no Committee review of a license absent an increase in “foreign ownership that creates a risk to national security or law enforcement.” CTIA 2020 Reply at 7.

<sup>242</sup> CTA 2020 Comments at 7, T-Mobile 2020 Comments at 13, NAB 2020 Reply at 12.

<sup>243</sup> Windstream 2020 reply at 4-5.

<sup>244</sup> We note that “licenses” in this context is limited to licenses where the Commission had referred the application to the Executive Branch agencies, including the Committee, both prior to and after the Executive Order. *See* Executive Order, Sec. 2(a).

<sup>245</sup> For example, on April 9, 2020, NTIA filed a recommendation on behalf of the Executive Branch agencies requesting that the Commission revoke and terminate China Telecom Americas' international section 214 authorizations. Executive Branch Recommendation to the Federal Communications Commission to Revoke and Terminate China Telecom Americas' International Section 214 Common Carrier Authorizations, File Nos. ITC-214- (continued....)



possible outcome of that review is that the Committee decides not to make a recommendation to the Commission. In that case, neither the Commission nor the licensee is disadvantaged by any lack of prior notice. If the outcome of the license review is a recommendation to revoke, then the Commission would provide the authorization holder such notice and an opportunity to respond as is required by due process and applicable law, and appropriate in light of the facts and circumstances, including any opportunity for the Committee to reply. The Commission would consider all arguments in acting on the Committee recommendation. If the outcome of a license review is that the Committee recommends that the Commission condition the authorization on new mitigation terms, then the Commission would not learn about the new terms until the Committee files a petition to modify the license. In a large number of cases, we expect that the licensee would have been involved with negotiating the new mitigation terms and conditions and would have been contacted by the Committee well before any petition is filed with the Commission. In the event that the proposed mitigation terms were not previously negotiated with the licensee, and the licensee learns about them for the first time when the Committee files its petition to modify the license, we would provide the licensee an opportunity to respond consistent with due process and other legal requirements. In such a situation, it is incumbent on the licensee to comment promptly and fully on the record so that the Commission can consider all arguments in issuing its decision in the matter. We would act on the petition only after consideration of the record, including any filings by the authorization holder.

#### G. Sharing of Business Confidential Information

93. As proposed in the *Executive Branch NPRM*, we also provide for the sharing of business confidential information with the relevant agencies in the context of reviews within the scope of the Executive Order.<sup>246</sup> No party has opposed sharing of business confidential information. The Executive Order provides a basis to share confidential information with the Committee by establishing that the members of the Committee have a legitimate need for such information.<sup>247</sup> The policy of the Executive Order is to ensure the “[t]he security, integrity, and availability of the United States telecommunications networks [that] are vital to United States national security and law enforcement interests.”<sup>248</sup> With the adoption of these formal procedures, we will continue to work closely with the Committee to ensure the safety, reliability, and security of the nation’s communications systems. Rather than modifying section 0.442 of the Commission’s rules, however, we establish a new rule at section 1.40001. Because the current practice already involves submission of similar information in application materials for review by these agencies, and in light of their legitimate need for the information and the Executive Branch’s

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20010613-00346, ITC-214-20020716-00371, ITC-T/C-20070725-00285, at 1 (filed Apr. 9, 2020). On April 24, 2020, the International Bureau, Wireline Competition Bureau, and Enforcement Bureau together released Orders to Show Cause to four companies that are ultimately subject to the ownership and control of the Chinese government: China Telecom Americas, China Unicom Americas, Pacific Networks, and ComNet. The Orders directed each of the companies to explain why the Commission should not initiate the process of revoking its international and domestic section 214 authority and international signaling point codes. These matters remain pending. *See* China Telecom (Americas) Corporation, GN Docket 20-109, ITC-214-20010613-00346, ITC-214-20020716-00371, ITC-T/C-20070725-00285, Order to Show Cause, 36 FCC Rcd 3713 (IB/WCB/EB 2020); China Unicom (Americas) Operations Limited, GN Docket 20-110, ITC-214-20020728-00361, ITC-214-20020724-00427, Order to Show Cause, 35 FCC Rcd 3721 (IB/WCB/EB 2020); and Pacific Networks Corp. and ComNet (USA) LLC, GN Docket No. 20-111, ITC-214-20090105-00006, ITC-214-20090424-00199, Order to Show Cause, 35 FCC Rcd 3733 (IB/WCB/EB 2020).

<sup>246</sup> The *Executive Branch NPRM* proposed to amend section 0.442(c) to address business confidential filings under section 1.6001. *Executive Branch NPRM*, 31 FCC Rcd at 7480-85, Appendix B. The rule as adopted refers to Part 1, Subpart CC, review by Executive Branch agencies for national security, law enforcement, foreign policy, and trade policy concerns.

<sup>247</sup> *See* 47 CFR § 0.442(b)(2).

<sup>248</sup> Executive Order, Sec. 1.



important role in this process, we adopt section 1.40001 of the Commission's rules to make clear that sharing of business confidential information with Executive Branch agencies under these restrictions is permissible without the pre-notification procedures of that rule.

#### **H. Monitoring Progress**

94. Our goal in adopting these new rules and procedures is to increase the timeliness and transparency in the Executive Branch review of applications the Commission refers for expert Executive Branch agencies' feedback on any national security, law enforcement, foreign policy, and trade policy considerations that the Commission should consider as part of its overall public interest analysis. To ensure that these changes are having the intended effect, we task the International Bureau to report to the Commission on an annual basis regarding how implementation of the Executive Order and the Commission's rules has impacted Executive Branch reviews of applications. We note that the Executive Order requires the Committee to review and report on its implementation to the President on an annual basis, including any recommendations for policy, administrative, or legislative proposals.<sup>249</sup> Based on the effectiveness of these efforts, the Commission may need to revisit the rules to ensure that applications are reviewed by the Executive Branch in a timely manner consistent with public interest considerations.

#### **I. Other Changes to the Application Process**

##### **1. Voting Interests to be Included in Applications**

95. As proposed in the *Executive Branch NPRM*, we amend our rules to require that applicants for domestic section 214 transactions, international section 214 authorizations, and submarine cable licenses must identify the voting interests, in addition to the equity interests, of individuals or entities with 10% or greater direct or indirect ownership in the applicant.<sup>250</sup> Currently, an applicant is required to provide the name, address, citizenship, and principal businesses of any individual or entity that owns directly or indirectly at least 10% of the equity of the applicant.<sup>251</sup> Applicants often have multiple classes of ownership and equity interests that differ from the voting interests. As the Commission noted in the *Executive Branch NPRM*, if an application 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.<sup>252</sup> Having to request this information delays review of the application. We already require disclosure of both voting and equity interests in other contexts<sup>253</sup> and in light of the current practice of Commission staff to contact applicants and request voting interest information, we view this rule as a codification of an existing process.<sup>254</sup> TMT Financial Sponsors argues that calculation of multiple types of ownership through multiple layers in the ownership chain is "very burdensome," and asserts that the rules should require disclosure of 10% or greater equity or voting interests, but not both, although they believe that voting interest is the better indicator of control.<sup>255</sup> Although it may be more burdensome for applicants to provide both equity and voting ownership interests, we find that it is important for the

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<sup>249</sup> *Id.* Sec. 11(d).

<sup>250</sup> *Executive Branch NPRM*, 31 FCC Rcd at 7475, para. 48. We also add language to section 63.18(h)(1) to assist applicants in calculating indirect equity and voting interests, consistent with section 1.5002. *See* Appendix B.

<sup>251</sup> *See* 47 CFR §§ 1.767(a)(8), 63.04(a)(4), and 63.18(h).

<sup>252</sup> *Executive Branch NPRM*, 31 FCC Rcd at 7475, para. 49.

<sup>253</sup> *See, e.g.*, 47 CFR §§ 1.2112(a)(2) (ownership disclosure requirements for competitive bidding applications), 1.5001(e)(1) (section 310(b) petitions).

<sup>254</sup> *See, e.g.*, 47 CFR §§ 1.5001 (e)(1-3) (section 310(b) petitions), 1.2112(a)(2) (ownership disclosure requirements for applications).

<sup>255</sup> TMT Financial Sponsors 2016 Comments at 13-14.

Commission to have information on both equity and voting interests,<sup>256</sup> and that the minimal burden associated with including 10% or greater voting and equity interests in the application is outweighed by the benefit gained in preventing delays in review that are introduced when staff is required to seek supplemental information to understand the ownership structure. The requirement is also consistent with our overall goal to streamline and facilitate the efficiency of the review process of applications.

## 2. Ownership Diagram

96. We also amend the rules to require applicants to include in their applications a diagram of the applicant's ownership, showing the 10% or greater direct or indirect ownership interests in the applicant. As the Commission stated in the *Executive Branch NPRM*, inclusion of a diagram showing the 10% or greater interests in the applicant can also help speed the processing of an application.<sup>257</sup> Many applicants have complex ownership structures, particularly those with private equity ownership. Commission staff find that 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 previously included such a requirement in the rules regarding the contents of a request for declaratory ruling under section 310(b) of the Act.<sup>258</sup> 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 received no comments objecting to the proposal to require ownership diagrams in applications. NTIA supports this rule change, as the Executive Branch already frequently seeks ownership diagrams from applicants in the course of its review.<sup>259</sup> Requiring the application to include the diagram will impose a minimal burden on applicants, which will be offset by the Commission staff's ability to process applications more expeditiously and ensure that all potential commenters addressing an application have clear information.

## 3. Cable Landing Licensing Rules

97. Finally, we amend the cable landing license rules to impose reporting requirements on licensees affiliated with a carrier with market power in a cable's destination market for all countries regardless of whether the country is a WTO Member. In 2014, the Commission eliminated the effective competitive opportunities test that applies to international section 214 applications and cable landing license applications filed by foreign carriers or their affiliates that have market power in countries that are not members of the WTO.<sup>260</sup> The test was "a set of criteria first adopted in the *1995 Foreign Carrier Entry Order* as a condition of entry into the U.S. international telecommunications services market by foreign carriers that possess market power on the foreign end of a U.S.-international route on which they seek to provide service pursuant to section 214 . . . ."<sup>261</sup> The test applied only to foreign carriers that have market power in a non-WTO Member country and required such carriers or certain of their affiliates to demonstrate in their applications that there are no legal or practical restrictions on U.S. carriers' entry into the foreign carrier's market.<sup>262</sup>

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<sup>256</sup> For example, Commission staff review of transfer of control applications cannot be completed without having voting interest information, which is necessary to assess who currently has the "control" that is being transferred and to whom such control is being transferred.

<sup>257</sup> Consequently, we amend sections 1.767(a)(8), 63.04(a)(4), and 63.18(h) to require the provision of an ownership diagram.

<sup>258</sup> 47 CFR § 1.5001(h)(2).

<sup>259</sup> NTIA 2016 Comments at 25-26.

<sup>260</sup> *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. 1, 23-25 (2014).

<sup>261</sup> *Id.* at 4256, para. 2.

<sup>262</sup> *Id.* (The competitive opportunities test applied "to (1) Commission review of applications for international section 214 authority filed by foreign carriers or certain of their affiliates; (2) notifications of foreign carrier (continued....)

98. When the Commission eliminated the competitive opportunities test, it 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 such reporting requirement applies only to destination markets in WTO Member countries.<sup>263</sup> The Commission proposed to remove that limitation in the *Executive Branch NPRM* 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 received no comments on the proposal to remove this limitation,<sup>264</sup> and adopt the rule change as proposed.

#### IV. PROCEDURAL ISSUES

##### A. Regulatory Flexibility Act

99. Pursuant to the Regulatory Flexibility Act of 1980 (RFA), as amended,<sup>265</sup> the Commission has prepared a Final Regulatory Flexibility Analysis (FRFA) of the possible significant economic impact on a substantial number of small entities by the policies and actions considered in this Report and Order. The text of the FRFA is set forth in Appendix C. The Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, will send a copy of the Report and Order, including the FRFA, to the Chief Counsel for Advocacy of the Small Business Administration, in accordance with the RFA.<sup>266</sup>

##### B. Paperwork Reduction Act of 1995

100. This Report and Order contains new or modified information collection requirements subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104-13. The requirements will be submitted to the Office of Management and Budget (OMB) for review under Section 3507(d) of the PRA. OMB, the general public, and other Federal agencies are invited to comment on the new or modified information collection requirements contained in this proceeding. In addition, we note that pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107-198, *see* 44 U.S.C. § 3506(c)(4), we previously sought specific comment on how the Commission might further reduce the information collection burden for small business concerns with fewer than 25 employees.

##### C. Congressional Review Act

101. The Commission will include a copy of this Report and Order in a report to be sent to Congress and the Government Accountability Office pursuant to the Congressional Review Act. *See* 5 U.S.C. § 801(a)(1)(A).

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affiliations filed by authorized U.S.-international carriers; (3) Commission review of applications for submarine cable landing licenses filed by foreign carriers or certain of their affiliates; and (4) notifications of foreign carrier affiliations filed by U.S. cable landing licensees").

<sup>263</sup> *Id.* at 4266, para. 23 ("We take a similar approach of eliminating the [competitive opportunities test] as a formal requirement for cable landing license applications and notifications of foreign carrier affiliation by submarine cable licensees."); 47 CFR § 1.767(l).

<sup>264</sup> *Executive Branch NPRM*, 31 FCC Rcd at 7476, para. 51.

<sup>265</sup> 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).

<sup>266</sup> *See* 5 U.S.C. § 603(a).

**V. ORDERING CLAUSES**

102. 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 Report and Order IS ADOPTED.

103. IT IS FURTHER ORDERED that parts 0, 1, and 63 of the Commission's rules ARE AMENDED as set forth in Appendix B.

104. IT IS FURTHER ORDERED that as discussed herein, pursuant to 47 U.S.C. section 155(c) and 47 CFR section 0.261, the Chief of the International Bureau IS DIRECTED to administer and make available on a public website, a standardized set of national security and law enforcement questions for the Categories of Information set forth in Part 1, Subpart CC of the Commission's rules.

105. IT IS FURTHER ORDERED that this Report and Order SHALL BECOME EFFECTIVE 30 days after publication in the Federal Register, except those provisions that contain new or modified information collection requirements that require approval by the Office of Management and Budget under the Paperwork Reduction Act WILL BECOME EFFECTIVE after the Commission publishes a notice in the Federal Register announcing such approval and the relevant effective date.

106. IT IS FURTHER ORDERED that the Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, SHALL SEND a copy of this Report and Order to Congress and the Government Accountability Office pursuant to the Congressional Review Act, *see* 5 U.S.C. § 801(a)(1)(A).

107. IT IS FURTHER ORDERED that the Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, SHALL SEND a copy of this Report and Order, including the Final 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 Comments and Reply Comments****NPRM Comments (2016 Comments)**

BT Americas Inc., Deutsch Telekom, Inc., Orange Business Services U.S. Inc., and Telefonica Internacional USA, Inc. (BT Americas)

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

CTIA

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

Hibernia Atlantic U.S. LLC and Quintillion Subsea Operations LLC (Hibernia/Quintillion)

Hogan Lovells US LLP (Hogan Lovells)

INCOMPAS

Level 3 Communications, LLC (Level 3)

Morgan, Lewis & Bockius LLP on behalf of certain telecommunications, media, and technology financial sponsor entities (TMT Financial Sponsors)

National Telecommunications and Information Administration on Behalf of the Executive Branch (NTIA)

Satellite Industry Association (SIA)

Sprint Corporation (Sprint)

Telstra Corporation Limited (Telstra)

United States Telecom Association (USTelecom)

Wiley Rein LLP on behalf of certain telecommunications companies (Wiley Rein)

William J. Kirsch

**NPRM Reply Comments (2016 Reply)**

BT Americas Inc., Deutsch Telekom, Inc., Orange Business Services U.S. Inc., and Telefonica Internacional USA, Inc. (BT Americas)

CTIA

Competitive Carriers Association (CCA)

GSMA

INCOMPAS

National Telecommunications and Information Administration on Behalf of the Executive Branch (NTIA)

Sprint Corporation (Sprint)

United States Telecom Association (USTelecom)

U.S. TelePacific Corp (TelePacific)

**PN Comments (2020 Comments)**

Consumer Technology Association (CTA)

EQT AB (EQT)

INCOMPAS

Roslyn Layton, PHD

GlobeNet Cabos Submarinos Americas, Inc; Hawaiki Submarine Cable USA, LLC; and Servicio de Telecomunicaciones de Aruba (SETAR) N.V. (Joint International Providers)

National Association of Broadcasters (NAB)

National Telecommunications and Information Administration on Behalf of the Executive Branch (NTIA)

Thomas Lynch & Associates (TLA)

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

**PN Reply Comments (2020 Reply)**

CTIA

Inmarsat Inc. (Inmarsat)

National Association of Broadcasters (NAB)

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

USTelecom – The Broadband Association (USTelecom)

**Ex Parte Comments (2020 Ex Parte)**

National Association of Broadcasters (NAB)

National Telecommunications and Information Administration on Behalf of the Executive Branch (NTIA)

North American Submarine Cable Association (NASCA)

USTelecom – The Broadband Association (USTelecom)



**APPENDIX B****Final Rules**

For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR parts 0, 1 and 63 as follows:

**PART 0 – COMMISSION ORGANIZATION**

1. The authority citation for part 0 continues to read as follows:

Authority: 47 U.S.C. 155, 225, unless otherwise noted.

2. Amend paragraph section 0.261 to add paragraph (a)(16) to read as follows:

**§ 0.261 Authority delegated**

\* \* \* \* \*

(a) \* \* \*

(16) To administer and make available on a public website, a standardized set of national security and law enforcement questions for the categories of information set forth in Part 1, Subpart CC.

**PART 1 – PRACTICE AND PROCEDURE**

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

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

4. Amend section 1.47 by revising paragraph (h) to read as follows:

(h) Every common carrier and interconnected VoIP provider, as defined in § 54.5 of this chapter, and non-interconnected VoIP provider, as defined in § 64.601(a)(15) of this chapter and with interstate end-user revenues that are subject to contribution to the Telecommunications Relay Service Fund, that is subject to the Communications Act of 1934, as amended, shall designate an agent in the District of Columbia, and may designate additional agents if it so chooses, upon whom service of all notices, process, orders, decisions, and requirements of the Commission may be made for and on behalf of such carrier, interconnected VoIP provider, or non-interconnected VoIP provider in any

proceeding before the Commission. Every international section 214 authorization holder must also designate an agent in the District of Columbia who is a U.S. citizen or lawful U.S. permanent resident pursuant to § 63.18(q)(1)(iii). Such designation shall include, for the carrier, interconnected VoIP provider, or non-interconnected VoIP provider and its designated agents, a name, business address, telephone or voicemail number, facsimile number, and, if available, Internet e-mail address. Such carrier, interconnected VoIP provider, or non-interconnected VoIP provider shall additionally list any other names by which it is known or under which it does business, and, if the carrier, interconnected VoIP provider, or non-interconnected VoIP provider is an affiliated company, the parent, holding, or management company. Within thirty (30) days of the commencement of provision of service, such carrier, interconnected VoIP provider, or non-interconnected VoIP provider shall file such information with the Chief of the Enforcement Bureau's Market Disputes Resolution Division. Such carriers, interconnected VoIP providers, and non-interconnected VoIP providers may file a hard copy of the relevant portion of the Telecommunications Reporting Worksheet, as delineated by the Commission in the FEDERAL REGISTER, to satisfy this requirement. Each Telecommunications Reporting Worksheet filed annually by a common carrier, interconnected VoIP provider, or non-interconnected VoIP provider must contain a name, business address, telephone or voicemail number, facsimile number, and, if available, Internet e-mail address for its designated agents, regardless of whether such information has been revised since the previous filing. Carriers, interconnected VoIP providers, and non-interconnected VoIP providers must notify the Commission within one week of any changes in their designation information by filing revised portions of the Telecommunications Reporting Worksheet with the Chief of the Enforcement Bureau's Market Disputes Resolution Division. A paper copy of this designation list shall be maintained in the Office of the Secretary of the Commission. Service of any notice, process, orders, decisions or requirements of the Commission may be made upon such carrier, interconnected VoIP provider, or non-interconnected VoIP provider by leaving a copy thereof with such designated agent at his office or usual place of residence. If such carrier, interconnected VoIP provider, or non-interconnected VoIP provider fails to designate such an agent, service of any notice or other process in any proceeding before the Commission, or of any

order, decision, or requirement of the Commission, may be made by posting such notice, process, order, requirement, or decision in the Office of the Secretary of the Commission.

5. Amend section 1.767 by revising paragraphs (a)(8)(i), (a)(11)(i), and (j), adding paragraph (k)(5) and revising the introductory text of paragraph (l) to read as follows:

**§ 1.767 Cable landing licenses.**

(a) \* \* \* \*

(8) \* \* \*

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

\* \* \* \* \*

(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 both the pre-transaction and post-transaction ownership diagram of the licensee as required under paragraph (a)(8)(i) of this section. The applicant shall also include a narrative describing 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 concerning the transaction to aid it in making its public interest determination.

\* \* \* \* \*

(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.

(k) \* \* \*

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

\* \* \* \* \*

(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:

\* \* \* \* \*

6. Amend section 1.5001 by adding paragraphs (m) and (n) to read as follows:

**§1.5001 Contents of petitions for declaratory ruling under the Communications Act of 1934.**

\* \* \* \* \*

(m) For each petition subject to a referral to the Executive Branch pursuant to § 1.40001, the petitioner must submit:

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

(2) a complete and unredacted copy of its FCC petition(s), including the file number(s) and docket number(s), to the Committee within three (3) business days of filing it with the Commission. The

instructions for submitting a copy of the FCC petition(s) to the Committee are available on the FCC website.

(n) Certifications.

(1) Broadcast applicants and licensees shall make the following certifications by which they agree:

(i) To designate a point of contact who is located in the United States and is a U.S. citizen or lawful U.S. permanent resident, for the execution of lawful requests and as an agent for legal service of process;

(ii) (A) That the petitioner is responsible for the continuing accuracy and completeness of all information submitted, whether at the time of submission of the petition or subsequently in response to either the Commission or the Committee's request, as required in section 1.65(a), and that the petitioner agrees to inform the Commission and the Committee of any substantial and significant changes while a petition is pending.

(B) After the petition is no longer pending for purposes of section 1.65 of the rules, the petitioner must notify the Commission and the Committee of any changes in petitioner information and/or contact information promptly, and in any event within thirty (30) days;

(iii) That the petitioner understands that if the petitioner or an applicant or licensee covered by the declaratory ruling fails to fulfill any of the conditions and obligations in the certifications set out in paragraph (n)(1) or in the grant of an application, petition, license, or authorization associated with the declaratory ruling and/or that if the information provided to the United States Government is materially false, fictitious, or fraudulent, the petitioner, applicants, and licensees may be subject to all remedies available to the United States Government, including but not limited to revocation and/or termination of the Commission's declaratory ruling, authorization or license, and criminal and civil penalties, including penalties under 18 U.S.C. § 1001.

(2) Common carrier applicant, licensee, or spectrum lessee shall make the following certifications by which they agree:

(i) To comply with all applicable Communications Assistance for Law Enforcement Act (CALEA) requirements and related rules and regulations, including any and all FCC orders and opinions governing the application of CALEA, pursuant to Communications Assistance for Law Enforcement Act and the Commission's rules and regulations in part 1, subpart Z—

Communications Assistance for Law Enforcement Act;

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

(iii) To designate a point of contact who is located in the United States and is a U.S. citizen or lawful U.S. permanent resident, for the execution of lawful requests and as an agent for legal service of process;

(iv) (A) That the petitioner is responsible for the continuing accuracy and completeness of all information submitted, whether at the time of submission of the petition or subsequently in response to either the Commission or the Committee's request, as required in section 1.65(a), and that the petitioner agrees to inform the Commission and the Committee of any substantial and significant changes while a petition is pending.

(B) After the application is no longer pending for purposes of section 1.65 of the rules, the petitioner must notify the Commission and the Committee of any changes in petitioner information and/or contact information promptly, and in any event within thirty (30) days; and



(v) That the petitioner understands that if the petitioner or an applicant or licensee covered by the declaratory ruling fails to fulfill any of the conditions and obligations set forth in the certifications set out in paragraph (n)(2) or in the grant of an application, petition, license, or authorization associated with this declaratory ruling and/or that if the information provided to the United States Government is materially false, fictitious, or fraudulent, the petitioner, applicants, and licensees may be subject to all remedies available to the United States Government, including but not limited to revocation and/or termination of the Commission's declaratory ruling, authorization or license, and criminal and civil penalties, including penalties under 18 § U.S.C. 1001.

7. Add subpart CC to part 1 to read as follows:

**Subpart CC – Review of Applications, Petitions, Other Filings, and Existing Authorizations or Licenses with Reportable Foreign Ownership By Executive Branch Agencies for National Security, Law Enforcement, Foreign Policy, and Trade Policy Concerns**

Sec.

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

1.40002 Referral of applications, petitions, and other filings with reportable foreign ownership to the Executive Branch agencies for review

1.40003 Categories of Information to be Provided to the Executive Branch Agencies

1.40004 Time frames for Executive Branch review of applications, petitions, and/or other filings with reportable foreign ownership

**§ 1.40001 Executive Branch review of applications, petitions, other filings, and existing authorizations or licenses with foreign ownership**

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

(1) The Commission will generally refer to the Executive Branch applications filed for an international section 214 authorization and submarine cable landing license as well as an application to assign, transfer control of, or modify those authorizations and licenses where the applicant has reportable foreign ownership and petitions for section 310(b) foreign ownership rulings for broadcast, common carrier wireless, and common carrier satellite earth station licenses pursuant to §§ 1.767, 63.18, 63.24, and 1.5000 *et seq.*

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

(i) pro forma notifications and applications;

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

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

(iv) applications filed pursuant to §§ 63.18 and 63.24 where the applicant was reviewed by the Executive Branch within 18 months of the filing of the application and the Executive Branch had not previously requested that the Commission condition the applicant's international section 214

authorization on compliance with an agreement with an Executive Branch agency concerning national security and/or law enforcement and there are no new reportable foreign owners of the applicant since that review.

(3) In circumstances where the Commission, in its discretion, refers to the Executive Branch an application, petition, or other filing not identified in this paragraph or determines to refer an application or petition identified in paragraph (a)(2), the Commission staff will instruct the applicant, petitioner or filer to follow the requirements for a referred application or petition, including submitting responses to the Standard Questions to the Committee and making the appropriate certifications.

(b) The Commission will consider any recommendations from the Executive Branch on pending application(s) for an international section 214 authorization or cable landing license(s) or petition(s) for foreign ownership ruling(s) pursuant to § 1.5000 *et seq.* or on existing authorizations or licenses that may affect national security, law enforcement, foreign policy and/or trade policy as part of its public interest analysis. The Commission will evaluate concerns raised by the Executive Branch and will make an independent decision concerning the pending matter.

(c) In any such referral pursuant to paragraph (a) or when considering any recommendations pursuant to paragraph (b), the Commission may disclose to relevant Executive Branch agencies, subject to the provisions of 44 U.S.C. 3510, any information submitted by an applicant or petitioner in confidence pursuant to section 0.457 or 0.459 of this chapter. Notwithstanding the provisions of section 0.442 of this chapter, notice will be provided at the time of disclosure.

Note to Section 1.40001: As used in this section, “reportable foreign ownership” for applications filed pursuant to §§ 1.767, 63.18 and 63.24 means any foreign owner of the applicant that must be disclosed in the application pursuant to § 63.18(h); and for petitions filed pursuant to § 1.5000 *et seq.* “reportable foreign ownership” means foreign disclosable interest holders pursuant to § 1.5001(e) and (f).

**§ 1.40002 Referral of applications, petitions, and other filings with foreign ownership to the Executive Branch agencies for review**

(a) The Commission will refer any applications, petitions, or other filings for which it determines to seek Executive Branch review by placing the application, petition, or other filing on an accepted for filing public notice that will provide a comment period for the Executive Branch to seek deferral for review for national security, law enforcement, foreign policy, and/or trade policy concerns.

(b) (1) The Executive Branch agency(ies) must electronically file in all applicable Commission file numbers and dockets associated with the application(s), petition(s), or other filing(s) a request that the Commission defer action until the Committee completes its review. In the request for deferral the Executive Branch agency must notify the Commission on or before the comment date and must state whether the Executive Branch: (1) sent tailored questions to the applicant(s), petitioner(s), and/or other filer(s); (2) will send tailored questions to the applicant(s), petitioner(s), and/or other filer(s) by a specific date not to be later than thirty (30) days after the date on which the Commission referred the application to the Executive Branch in accordance with § 1.40002(a); or (3) will not transmit tailored questions to the applicant(s), petitioner(s), and/or other filer(s).

(2) The Executive Branch agency(ies) must electronically file in all applicable Commission file numbers and dockets associated with the application(s), petition(s), or other filing(s) a request by the comment date if it needs additional time beyond the comment period set out in the accepted for filing public notice to determine whether it will seek deferral.

(c) If an Executive Branch agency(ies) does not notify the Commission that it seeks deferral of referred application(s), petition(s), and/or other filing(s) within the comment period established by an accepted for filing public notice, the Commission will deem that the Executive Branch does not have any national security, law enforcement, foreign policy, and/or trade policy concerns with the application(s), petition(s), and/or other filing(s) and may act on the application(s), petition(s), and/or other filing(s) as appropriate based on its determination of the public interest.

**§ 1.40003 Categories of Information to be Provided to the Executive Branch Agencies**

(a) Each applicant, petitioner, and/or other filer subject to a referral to the Executive Branch pursuant to § 1.40001:

(1) must submit detailed and comprehensive information in the following categories: (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, in responses to standard questions, prior to or at the same time the applicant files its application(s), petition(s), and/or other filing(s) with the Commission directly to the Committee for the Assessment of Foreign Participation in the United States Telecommunications Services Sector (Committee).

(2) must submit a complete and unredacted copy of its FCC application(s), petition(s), and/or other filing(s) to the Committee, including the file number(s) and docket number(s), within three (3) business days of filing it with the Commission.

(b) The standard questions and instructions for submitting the responses and the FCC application(s), petition(s), and/or other filing(s) are available on the FCC website.

(c) The responses to the standard questions shall be submitted directly to the Committee.

**§ 1.40004 Time frames for Executive Branch review of applications, petitions, and/or other filings with reportable foreign ownership**

(a) *Tailored Questions.* For application(s), petition(s), and/or other filing(s) referred to the Executive Branch, in accordance with § 1.40002(b)(1), the Executive Branch agency(ies) shall notify the Commission:

(1) that the Committee has sent tailored questions to the applicant(s), petitioner(s), and/or other filer(s); and

(2) when the Chair of the Committee determines that the applicant's, petitioner's, and/or other filer's responses to any questions and information requests from the Committee are complete.

(b) *Initial Review – 120-Day Time Frame.* The Executive Branch shall notify the Commission by filing in the public record, in all applicable Commission file numbers and dockets for the application(s), petition(s), or other filing(s), no later than 120 days from the date that the Chair of the Committee determines that the applicant's, petitioner's, or other filer's responses to any questions and information requests from the Committee are complete, in accordance with the procedures set forth in Executive Order 13913 (or as it may be amended) and subject to subsections (e) and (f) of this section, whether it:

- (1) has no recommendation and no objection to the FCC granting the application;
- (2) recommends that the FCC only grant the application contingent on the applicant's compliance with mitigation measures; or
- (3) Needs additional time to review the application(s), petition(s), or other filing(s).

(c) *Secondary Assessment – Additional 90-Day Time Frame.* When the Executive Branch notifies the Commission that it needs an additional 90-day period beyond the initial 120-day period for review of the application, petition, or other filing under paragraph (a) of this section, in accordance with the secondary assessment provisions of Executive Order 13913 (or as it may be amended), the Executive Branch must:

- (1) Explain in a filing on the record why it was unable to complete its review within the initial 120-day review period and state when the secondary assessment began; and
- (2) Notify the Commission by filing in the record for the application, petition, or other filing no later than 210 days, plus any additional days as needed for escalated review and for NTIA to notify the Commission of the Committee's final recommendation in accordance with Executive Order 13913 (or as it may be amended), from the date of the Chair's acceptance of the applicant's, petitioner's, or other filer's complete responses to the tailored questions, provided that the Committee sent tailored questions within thirty (30) days of the date of the Commission's referral in accordance with § 1.40002(a), and subject to subsections (e) and (f) of this section, whether it:

- (i) has no recommendation and no objection to the FCC granting the application;



(ii) recommends that the FCC only grant the application contingent on the applicant's compliance with mitigation measures; or

(iii) recommends that the FCC deny the application due to the risk to the national security or law enforcement interests of the United States.

(d)(1) The Executive Branch shall file its notifications as to the status of its review in the public record established in all applicable Commission file numbers and dockets for the application, petition, or other filing. Status notifications include notifications of the date on which the Committee sends the tailored questions to an applicant, petitioner, or other filer and the date on which the Chair accepts an applicant's, petitioner's, or other filer's responses to the tailored questions as complete. Status notifications also include extensions of the 120-day review period and 90-day extension period (to include the start and end day of the extension) and updates every thirty (30) days during the 90-day extension period. If the Executive Branch recommends dismissal of the application, petition, or other filing without prejudice because the applicant, petitioner, or other filer has failed to respond to requests for information, the Executive Branch shall file that recommendation in the public record established in all applicable Commission file numbers and dockets.

(2) In circumstances where the notification of the Executive Branch contains non-public information, the Executive Branch shall file a public version of the notification in the public record established in all applicable Commission file numbers and dockets for the application, petition, or other filing and shall file the non-public information with the Commission pursuant to § 0.457 of this chapter.

(e) Alternative start dates for the Executive Branch's initial 120-day review.

(1) In the event that the Executive Branch has not transmitted the tailored questions to an applicant within thirty (30) days of the Commission's referral of an application, petition, or other filing, the Executive Branch may request additional time by filing a request in the public record established in all applicable Commission file numbers and dockets associated with the application, petition, or other filing. The Commission, in its discretion, may allow an extension or start the Executive Branch's 120-day review clock immediately. If the Commission allows an extension and the Executive Branch

does transmit the tailored questions to the applicant, petitioner, or other filer within the authorized extension period, the initial 120-day review period will begin on the date that Executive Branch deems the applicant's, petitioner's, or other filer's responses to be complete. If the Executive Branch does not transmit the tailored questions to the applicant, petitioner, or other filer within the authorized extension period, the Commission, in its discretion, may start the initial 120-day review period.

(2) In the event that the Executive Branch's notification under § 1.6002(b) indicates that no tailored questions are necessary, the 120-day initial review period will begin on the date of that notification.

(f) In accordance with Executive Order 13913 (or as it may be amended), the Executive Branch may in its discretion extend the initial 120-day review period and 90-day secondary assessment period.

The Executive Branch shall file notifications of all extensions in the public record.

**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**

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

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

9. Amend section 63.04 by revising paragraph (a)(4) to read as follows:

**§ 63.04 Filing procedures for domestic transfer of control applications**

(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. Every individual or entity with ownership shall be depicted and all controlling interests must be identified. The ownership diagram shall include both the pre-transaction and post-transaction ownership of the authorization holder.

\* \* \* \* \*

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

**§ 63.12 Processing of international Section 214 applications.**

\* \* \* \* \*

(c)\* \* \*

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

\* \* \* \* \*

11. Amend section 63.18 by revising paragraph (h) and the Note to Paragraph (h) and redesignating paragraphs (p), (q) and (r) as paragraphs (r), (s), and (t), and adding new paragraphs (p) and (q) to read as follows:

**§ 63.18 Contents of applications for international common carriers.**

\* \* \* \* \*

(h)(1) The name, address, citizenship and principal businesses of any individual or entity that directly or indirectly owns 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.

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

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

(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. Every individual or entity with ownership shall be depicted and all controlling interests must be identified. The ownership diagram shall include both the pre-transaction and post-transaction ownership of the authorization holder.

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

\* \* \* \* \*

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

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

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

(q) Certifications.

(1) Each applicant shall make the following certifications by which they agree:

(i) To comply with all applicable Communications Assistance for Law Enforcement Act (CALEA) requirements and related rules and regulations, including any and all FCC orders and opinions governing the application of CALEA, pursuant to Communications Assistance for Law

Enforcement Act and the Commission's rules and regulations in part 1, subpart Z—

Communications Assistance for Law Enforcement Act;

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

(iii) To designate a point of contact who is located in the United States and is a U.S. citizen or lawful U.S. permanent resident, for the execution of lawful requests and as an agent for legal service of process;

(iv) (A) That the applicant is responsible for the continuing accuracy and completeness of all information submitted, whether at the time of submission of the application or subsequently in response to either the Commission or the Committee's request, as required in section 1.65(a), and that the applicant agrees to inform the Commission and the Committee of any substantial and significant changes while an application is pending.

(B) After the application is no longer pending for purposes of section 1.65 of the rules, the applicant must notify the Commission and the Committee of any changes in the authorization holder or licensee information and/or contact information promptly, and in any event within thirty (30) days; and

(v) That the applicant understands that if the applicant or authorization holder fails to fulfill any of the conditions and obligations set forth in the certifications set out in paragraph (q) or in the grant of an application or authorization and/or that if the information provided to the United States Government is materially false, fictitious, or fraudulent, applicant and authorization holder may be subject to all remedies available to the United States



Government, including but not limited to revocation and/or termination of the Commission's authorization or license, and criminal and civil penalties, including penalties under 18 U.S.C. 1001.

\* \* \* \* \*

12. Amend section 63.24 by revising paragraphs (e)(2) and (f)(2)(i) to read as follows:

**§ 63.24 Assignments and transfers of control.**

\* \* \* \* \*

(e) \* \* \*

(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. The applicant shall include a narrative describing the means by which the proposed transfer or assignment will take place.

\* \* \* \* \*

(f) \* \* \*

(2) \* \* \*

(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

## Final Regulatory Flexibility Act Analysis

1. As required by the Regulatory Flexibility Act (RFA),<sup>1</sup> the Commission has prepared this Final Regulatory Flexibility Analysis (FRFA) of the possible significant economic impact on small entities by the policies and rules adopted in this Report and Order (Order). The Commission will send a copy of the Order, including this FRFA, to the Chief Counsel for Advocacy of the Small Business Administration.<sup>2</sup> In addition, the Order and FRFA (or summaries thereof) will be published in the Federal Register.<sup>3</sup>

**A. Need for, and Objectives of, the Report and Order**

2. This Report and Order adopts rules and procedures regarding coordination with the Executive Branch agencies for the review of certain applications and petitions for declaratory rulings filed with the Commission with foreign ownership, for national security, law enforcement, foreign policy, and trade policy issues. The Commission's objective is to improve the timelines and transparency of the Executive Branch review process as Industry has expressed concern about the uncertainty and lengthy review times that make it difficult for parties to put a business plan in place and move forward on it.

3. For over 20 years, the Commission has been referring certain applications and petitions with foreign ownership to the Executive Branch agencies for review through an informal procedure. This process, often referred to as the "Team Telecom" process, has led to delays in Commission action on applications as the Commission waits for the Executive Branch agencies to complete their review. Consequently, new services have been delayed and parties have had to wait, over a year in many instances, to complete transactions.

4. These rules adopted in the Report and Order will not only formalize the review process, but also improve the timeliness and transparency of the Executive Branch review by establishing time frames consistent with the process and time frames set forth in the President's Executive Order No. 13913, Establishing the Committee for the Assessment of Foreign Participation in the United States Telecommunications Services Sector.<sup>4</sup>

5. The rules that the Commission adopts, as summarized below, will expedite the Executive Branch review process and provide for a more transparent review.

- *Types of Applications Referred to the Executive Branch.* The Commission will refer: (1) applications for an international section 214 authorization or to assign or transfer control of an international section 214 authorization with reportable foreign ownership; (2) applications for a submarine cable landing license or to assign or transfer control of a submarine cable landing license with reportable foreign ownership; and (3) petitions seeking a foreign ownership ruling under section 310(b) of the Communications Act of 1934, as amended (the "Act") for broadcast, common carrier wireless, or common carrier earth station applicants and licensees;<sup>5</sup>

<sup>1</sup> 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).

<sup>2</sup> See 5 U.S.C. § 603(a).

<sup>3</sup> *Id.*

<sup>4</sup> Executive Order No. 13913, Establishing the Committee for the Assessment of Foreign Participation in the United States Telecommunications Services Sector, 85 Federal Register 19643 (April 8, 2020) (Executive Order).

<sup>5</sup> Applicants must report any foreign individual or entity that directly or indirectly owns at least 10% of the equity in the applicant. 47 CFR §§ 1.767(a)(8), 63.18(h), 63.24(e)(2). Broadcast, common carrier wireless and common

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- When such applications are part of a larger transaction, the Commission will also refer all associated applications involved in the transaction;
- The Commission will no longer refer standalone domestic section 214 authorizations, and nor will it refer applications for broadcast or common carrier wireless or satellite earth station licenses unless the applicant is required to seek a section 310(b) foreign ownership ruling;
- Within the types of applications referred, the Commission will exclude the following categories of applications from referral to the Executive Branch: (1) *pro forma* notifications; (2) applications for international section 214 authorizations and submarine cable landing licenses, and petitions for section 310(b) foreign ownership rulings where the only reportable foreign ownership is held through wholly owned intermediate holding companies and the ultimate ownership and control is held by U.S. citizens or entities; (3) international section 214 applications where the applicant has an existing mitigation agreement with the Executive Branch, the applicant certifies that it will continue to comply with the mitigation agreement, and there has been no change in foreign ownership since the effective date of the mitigation agreement; and (4) international section 214 applications where the Executive Branch has cleared the applicant in the past 18 months without requiring a mitigation agreement, and there has been no change in foreign ownership since the Executive Branch cleared;
- *All Applicants Required to Submit Certifications.* All applicants for international section 214 authority, submarine cable licenses, and section 310(b) foreign ownership declaratory rulings are required to certify that they: (1) will comply with the Communications Assistance for Law Enforcement Act (CALEA); (2) will make certain communications and records available and subject to lawful request or valid legal process under U.S. law; (3) will designate a point of contact in the United States who is a U.S. citizen or lawful permanent resident; (4) will keep all submitted information accurate and complete during application process and after the application is no longer pending for purposes of section 1.65 of the rules, the authorization holder and/or license must notify the Commission and Committee of any contact information change within thirty (30) days; and (5) understand that failing to fulfill any condition of the grant or providing materially false information could result in revocation or termination of their authorization and other penalties. Broadcast licensee petitions for a section 310(b) declaratory ruling are excluded from the first two certification requirements;
- *Applicants Required to File Responses to Standard Questions.* Applicants with reportable foreign ownership when applying for international section 214 authority, submarine cable licenses, and section 310(b) foreign ownership declaratory rulings, are required to file with the Committee – prior to or at the same time they file their application with the Commission – responses to a standardized set of national security and law enforcement questions (Standard Questions) regarding: (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;
- *Committee Required to Send Tailored Questions within 30 days.* The Committee is required to send any specifically tailored national security and law enforcement questions (Tailored Questions), the complete response to which will commence the Committee’s 120-day initial review period, to an applicant within thirty (30) days of Commission referral of an application;

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carrier satellite earth station licensees must seek Commission prior approval for aggregate foreign ownership that exceeds the statutory benchmarks in sections 310(b)(3) and (4), as applicable. 47 U.S.C. §§ 310(b)(3), (4).

- The Commission has discretion to start the Committee’s initial review 120-day time frame if the Committee has not issued Tailored Questions by the end of the 30-day window;
- *Initial Review – 120-Day Time Frame.* Commencement of the initial 120-day review time frame begins when the Committee Chair notifies the Commission that it has determined that the responses to the national security and law enforcement questions are complete, or, at Commission discretion, when the Committee fails to provide Tailored Questions to the applicant within thirty (30) days of Commission referral;
- The Commission will have discretion to act on any application if, after 127 days (the initial review period plus seven (7) days for the NTIA to notify the Commission), the Committee has not provided a final recommendation, notification of an extension granted to applicants, or written justification for a secondary assessment;
- *Secondary Assessment – Additional 90-Day Time Frame.* Commencement of the secondary assessment, an additional review period of up to 90 days, begins when the Committee Chair notifies the Commission that it seeks secondary review of the application because it poses a risk to the national security or law enforcement interests of the United States that cannot be mitigated through standard mitigation measures; and
- *Other Rule Changes.* To assist the Commission in its timely review of applications, an applicant is required to include in its application the voting interests, in addition to the equity interests, and a diagram of individuals or entities with 10% or greater direct or indirect ownership or controlling interests at any level of ownership.

**B. Summary of Significant Issues Raised by Public Comments in Response to the IRFA**

6. There were no comments filed that specifically addressed the rules and policies in the IRFA. Nonetheless, in adopting the rules and procedures reflected in the Report and Order, the Commission has considered the potential impact of the rules and procedures proposed in the IRFA on small entities in order to reduce the economic impact of the rules and procedures enacted herein on such entities.

**C. Response to Comments by the Chief Counsel for Advocacy of the Small Business Administration**

7. Pursuant to the Small Business Jobs Act of 2010, which amended the RFA, the Commission is required to respond to any comments filed by the Chief Counsel for Advocacy of the Small Business Administration (SBA), and to provide a detailed statement of any change made to the proposed rules as a result of those comments.

8. The Chief Counsel did not file any comments in response to the proposed rules in this proceeding.

**D. Description and Estimate of the Number of Small Entities to Which the Rules Will Apply**

9. The RFA directs agencies to provide a description of and, where feasible, an estimate of the number of small entities that will be affected by rules.<sup>6</sup> The RFA generally defines the term “small entity” as having the same meaning as the terms “small business,” “small organization,” and “small governmental jurisdiction.”<sup>7</sup> In addition, the term “small business” has the same meaning as the term “small business concern” under the Small Business Act.<sup>8</sup> A small business concern is one which: (1) is

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<sup>6</sup> 5 U.S.C. § 603(a)(3).

<sup>7</sup> 5 U.S.C. § 601(6).

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).<sup>9</sup> An estimate of the number of small entity applicants that may be affected by the adopted rules is described below.

10. **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 telecommunications 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.”<sup>10</sup> 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.<sup>11</sup> U.S. Census data for 2012 show that there were 3,117 firms that operated that year.<sup>12</sup> Of this total, 3,083 operated with fewer than 1,000 employees.<sup>13</sup> Thus, under this size standard, the majority of firms in this industry can be considered small.

11. **Competitive Local Exchange Carriers (CLECs), 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 10 of this FRFA.<sup>14</sup> Under that size standard, such a business is small if it has 1,500 or fewer employees.<sup>15</sup> U.S. Census data for 2012 show that there were 3,117 firms that operated that year.<sup>16</sup> Of this total, 3,083 operated with fewer than 1,000 employees.<sup>17</sup> Based on this data, the Commission concludes that the majority of CLECs, 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.<sup>18</sup> Of these 1,442 carriers, an

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<sup>8</sup> 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).

<sup>9</sup> Small Business Act, 15 U.S.C. § 632 (1996).

<sup>10</sup> See U.S. Census Bureau, *2017 NAICS Definition*, <https://go.usa.gov/xfSAz> (last visited June 29, 2020); see also NAICS Search (Search for code 517311 “Wired Telecommunications Carriers”).

<sup>11</sup> 13 CFR § 121.201, NAICS code 517311.

<sup>12</sup> U.S. Census Bureau, *Information: Subject Series - Estab & Firm Size: Employment Size of Firms U.S.: 2012*, <https://go.usa.gov/xfSAh>.

<sup>13</sup> *Id.*

<sup>14</sup> NAICS Search (Search for code 517311 “Wired Telecommunications Carriers”).

<sup>15</sup> 13 CFR § 121.201, NAICS code 517311.

<sup>16</sup> U.S. Census Bureau, *Information: Subject Series - Estab & Firm Size: Employment Size of Firms U.S.: 2012*, <https://go.usa.gov/xfSsq>.

<sup>17</sup> *Id.*

<sup>18</sup> See U.S. Federal Communications Commission, *Trends in Telephone Services*, at tbl. 5.3 (Sept. 2010), <https://go.usa.gov/xfSs3>.

estimate of 1,256 carriers have 1,500 or fewer employees.<sup>19</sup> 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.<sup>20</sup> The data also show that 72 carriers have reported as other local service providers.<sup>21</sup> Of this total, 70 have 1,500 or fewer employees.<sup>22</sup> Consequently, the Commission estimates that most providers of competitive local exchange services, competitive access providers, shared-tenant service providers, and other local service providers are small entities that will be affected by the rules and procedures adopted pursuant to the *Order*.

12. **Interchange Carriers (IXCs).** Neither the Commission nor the SBA has developed a small business size standard specifically for Interexchange Carriers. The closest applicable NAICS Code category is Wired Telecommunications Carriers.<sup>23</sup> The applicable size standard under SBA rules is that such a business is small if it has 1,500 or fewer employees.<sup>24</sup> According to Commission's Industry analysis Division of the Wireline Competition Bureau data, 359 companies reported that their primary telecommunications services activity was the provision of interexchange services.<sup>25</sup> Of this total, an estimate of 317 companies have 1,500 or fewer employees, whereas 42 companies have more than 1,500 employees.<sup>26</sup> Consequently, the Commission estimates that the majority of interexchange service providers are small entities that may be affected by the rules and procedures adopted pursuant to the *Order*.

13. **Prepaid Calling Card Providers.** Neither the Commission nor the SBA has developed a small business definition specifically for prepaid calling card providers. The most appropriate NAICS code-based category for defining prepaid calling card providers is Telecommunications Resellers.<sup>27</sup> 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. Establishments in this industry resell telecommunications; they do not operate transmission facilities and infrastructure. Mobile virtual networks operators (MVNOs) are included in this industry.<sup>28</sup> Under the applicable SBA size standard, such a business is small if it has 1,500 or fewer employees.<sup>29</sup> U.S. Census Bureau data for 2012 show that 1,341 firms provided resale services during that year.<sup>30</sup> Of that number, 1,341 operated with fewer than

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<sup>19</sup> *Id.*

<sup>20</sup> *Id.*

<sup>21</sup> *Id.*

<sup>22</sup> *Id.*

<sup>23</sup> See U.S. Census Bureau, 2017 NAICS Definition, "517311 Wired Telecommunications Carriers", <https://go.usa.gov/xGWsv>.

<sup>24</sup> 13 CFR § 121.201, NAICS code 517311.

<sup>25</sup> See U.S. Federal Communications Commission, *Trends in Telephone Services*, at tbl. 5.3 (Sept. 2010), <https://go.usa.gov/xfSsx>.

<sup>26</sup> *Id.*

<sup>27</sup> See U.S. Census Bureau, 2017 NAICS Definition, "517911 Telecommunications Resellers", <https://go.usa.gov/xGWsf>.

<sup>28</sup> *Id.*

<sup>29</sup> See 13 CFR § 121.201, NAICS Code 517911.

<sup>30</sup> See U.S. Census Bureau, 2012 Economic Census of the United States, Table ID: EC1251SSSZ5, *Information: Subject Series - Estab & Firm Size: Employment Size of Firms for the U.S.: 2012*, NAICS Code 517911, <https://go.usa.gov/xGWs7>.



1,000 employees.<sup>31</sup> 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 the Commission's Form 499 Filer Database, 500 companies reported that they were engaged in the provision of prepaid calling cards.<sup>32</sup> The Commission does not have data regarding how many of these 500 companies have 1,500 or fewer employees. The Commission estimates that there are 500 or fewer prepaid calling card providers that may be affected by these rules.

14. **Local Resellers.** The SBA has not developed a small business size standard specifically for Local Resellers. The SBA category of Telecommunications Resellers is the closest NAICS code category for local resellers. The Telecommunications Resellers industry comprises establishments engaged in purchasing access and network capacity from owners and operators of telecommunications networks and reselling wired and wireless telecommunications services (except satellite) to businesses and households. Establishments in this industry resell telecommunications; they do not operate transmission facilities and infrastructure. Mobile virtual network operators (MVNOs) are included in this industry.<sup>33</sup> Under the SBA's size standard, such a business is small if it has 1,500 or fewer employees.<sup>34</sup> U.S. Census Bureau data from 2012 show that 1,341 firms provided resale services during that year.<sup>35</sup> Of that number, all operated with fewer than 1,000 employees.<sup>36</sup> Thus, under this category and the associated small business size standard, the majority of these resellers can be considered small entities. According to Commission data, 213 carriers have reported that they are engaged in the provision of local resale services.<sup>37</sup> Of these, an estimated 211 have 1,500 or fewer employees and two have more than 1,500 employees.<sup>38</sup> Consequently, the Commission estimates that the majority of local resellers are small entities.

15. **Toll Resellers.** The Commission has not developed a definition for Toll Resellers. The closest NAICS Code Category is Telecommunications Resellers. The Telecommunications Resellers industry comprises establishments engaged in purchasing access and network capacity from owners and operators of telecommunications networks and reselling wired and wireless telecommunications services (except satellite) to businesses and households. Establishments in this industry resell telecommunications; they do not operate transmission facilities and infrastructure. MVNOs are included in this industry.<sup>39</sup> The SBA has developed a small business size standard for the category of

<sup>31</sup> *Id.* Available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that have employment of 1,500 or fewer employees. The largest category provided is for firms with "1000 employees or more."

<sup>32</sup> See Fed. Comm'n's Comm'n, *FCC Form 499 Filer Database*, <https://go.usa.gov/xGWsH> (last visited June 20, 2017).

<sup>33</sup> See U.S. Census Bureau, *2017 NAICS Definition, "517911 Telecommunications Resellers"*, <https://go.usa.gov/xGWsM>.

<sup>34</sup> See 13 CFR § 121.201, NAICS Code 517911.

<sup>35</sup> See U.S. Census Bureau, *2012 Economic Census of the United States*, Table ID: EC1251SSSZ5, *Information: Subject Series - Estab & Firm Size: Employment Size of Firms for the U.S.: 2012*, NAICS Code 517911, <https://go.usa.gov/xGWse>.

<sup>36</sup> *Id.* Available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that have employment of 1,500 or fewer employees. The largest category provided is for firms with "1000 employees or more."

<sup>37</sup> See *Trends in Telephone Service*, Federal Communications Commission, Wireline Competition Bureau, Industry Analysis and Technology Division at Table 5.3 (Sept. 2010) (*Trends in Telephone Service*).

<sup>38</sup> *Id.*

<sup>39</sup> See U.S. Census Bureau, *2017 NAICS Definition, "517911 Telecommunications Resellers"*, <https://go.usa.gov/xGWH3>.

Telecommunications Resellers.<sup>40</sup> Under that size standard, such a business is small if it has 1,500 or fewer employees.<sup>41</sup> 2012 U.S. Census Bureau data show that 1,341 firms provided resale services during that year.<sup>42</sup> Of that number, 1,341 operated with fewer than 1,000 employees.<sup>43</sup> Thus, under this category and the associated small business size standard, the majority of these resellers can be considered small entities. According to Commission data, 881 carriers have reported that they are engaged in the provision of toll resale services.<sup>44</sup> Of this total, an estimated 857 have 1,500 or fewer employees.<sup>45</sup> Consequently, the Commission estimates that the majority of toll resellers are small entities.

16. **Other Toll Carriers.** Neither the Commission nor the SBA has developed a definition for small businesses specifically applicable to Other Toll Carriers. This category includes toll carriers that do not fall within the categories of interexchange carriers, operator service providers, prepaid calling card providers, satellite service carriers, or toll resellers. The closest applicable size standard under SBA rules is for Wired Telecommunications Carriers.<sup>46</sup> The applicable SBA size standard consists of all such companies having 1,500 or fewer employees.<sup>47</sup> U.S. Census Bureau data for 2012 indicates that 3,117 firms operated during that year.<sup>48</sup> Of that number, 3,083 operated with fewer than 1,000 employees.<sup>49</sup> Thus, under this category and the associated small business size standard, the majority of Other Toll Carriers can be considered small. According to internally developed Commission data, 284 companies reported that their primary telecommunications service activity was the provision of other toll carriage.<sup>50</sup> Of these, an estimated 279 have 1,500 or fewer employees.<sup>51</sup> Consequently, the Commission estimates that most Other Toll Carriers are small entities.

17. **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.<sup>52</sup> The appropriate size standard under SBA rules is that such a business is small

<sup>40</sup> See 13 CFR § 121.201, NAICS Code 517911.

<sup>41</sup> *Id.*

<sup>42</sup> See U.S. Census Bureau, *2012 Economic Census of the United States*, Table ID: EC1251SSSZ5, *Information: Subject Series - Estab & Firm Size: Employment Size of Firms for the U.S.: 2012*, NAICS Code 517911, <https://go.usa.gov/xGWHC>.

<sup>43</sup> *Id.* Available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that have employment of 1,500 or fewer employees. The largest category provided is for firms with “1000 employees or more.”

<sup>44</sup> See *Trends in Telephone Service*, Federal Communications Commission, Wireline Competition Bureau, Industry Analysis and Technology Division at Table 5.3 (Sept. 2010) (*Trends in Telephone Service*).

<sup>45</sup> *Id.*

<sup>46</sup> See U.S. Census Bureau, *2017 NAICS Definition*, “517311 Wired Telecommunications Carriers”, <https://go.usa.gov/xGWHr>.

<sup>47</sup> See 13 CFR § 121.201, NAICS Code 517311 (previously 517110).

<sup>48</sup> See U.S. Census Bureau, *2012 Economic Census of the United States*, Table ID: EC1251SSSZ5, *Information: Subject Series - Estab & Firm Size: Employment Size of Firms for the U.S.: 2012*, NAICS Code 517110, <https://go.usa.gov/xGWHY>.

<sup>49</sup> *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard of employment of 1,500 or fewer employees.

<sup>50</sup> See *Trends in Telephone Service*, Federal Communications Commission, Wireline Competition Bureau, Industry Analysis and Technology Division at Table 5.3 (Sept. 2010) (*Trends in Telephone Service*).

<sup>51</sup> *Id.*

<sup>52</sup> See NAICS Search (Search for 517312 “Wireless Telecommunications Carriers (except Satellite)”).

if it has 1,500 or fewer employees.<sup>53</sup> For this industry, Census Data for 2012 show that there were 967 firms that operated for the entire year.<sup>54</sup> Of this total, 955 firms had fewer than 1,000 employees.<sup>55</sup> Thus, under this category and the associated size standard, the Commission estimates that the majority of wireless telecommunications carriers (except satellite) are small entities. The Commission's own data—available in its Universal Licensing System—indicate that, as of August 31, 2018 there are 265 Cellular licensees that will be affected by our actions.<sup>56</sup> The Commission does not know how many of these licensees are small, as the Commission does not collect that information for these types of entities. Similarly, according to internally developed Commission 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) Telephony services.<sup>57</sup> Of this total, an estimated 261 have 1,500 or fewer employees, and 152 have more than 1,500 employees.<sup>58</sup> Thus, using available data, we estimate that the majority of wireless firms can be considered small.

18. **All Other Telecommunications.** “All Other Telecommunications” is defined as follows: This U.S. industry comprises establishments 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.<sup>59</sup> The SBA has developed a small business size standard for “All Other Telecommunications,” which consists of all such firms with gross annual receipts of \$35 million or less.<sup>60</sup> For this category, census data for 2012 shows that there were 1,442 firms that operated for the entire year.<sup>61</sup> Of this total, 1,400 had annual receipts below \$25 million per year.<sup>62</sup> Consequently, we estimate that the majority of “All Other Telecommunications” firms are small entities.

19. **Satellite Telecommunications.** This category comprises firms “primarily engaged in providing 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.”<sup>63</sup> Satellite telecommunications service providers include satellite

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13 CFR § 121.201, NAICS code 517312.

<sup>54</sup> U.S. Census Bureau, *Information: Subject Series – Estab and Firm Size: Receipts Size of Firms for the U.S.: 2012*, <https://go.usa.gov/xfSsN>.

<sup>55</sup> *Id.*

<sup>56</sup> See Federal Communications Commission, *Universal Licensing System*, <https://go.usa.gov/xGWHR>. For the purposes of this FRFA, consistent with Commission practice for wireless services, the Commission estimates the number of licensees based on the number of unique FCC Registration Numbers.

<sup>57</sup> See Federal Communications Commission, Wireline Competition Bureau, Industry Analysis and Technology Division, Trends in Telephone Service at Table 5.3 (Sept. 2010) (*Trends in Telephone Service*), <https://go.usa.gov/xGWH4>.

<sup>58</sup> *Id.*

<sup>59</sup> See NAICS Search (Search for code 517919 “All Other Telecommunications”).

<sup>60</sup> 13 CFR § 121.201, NAICS code 517919.

<sup>61</sup> U.S. Census Bureau, *Information: Subject Series – Estab and Firm Size: Receipts Size of Firms for the U.S.: 2012*, <https://go.usa.gov/xfSsU>.

<sup>62</sup> *Id.*

<sup>63</sup> See U.S. Census Bureau, *2017 NAICS Definition*, “517410 Satellite Telecommunications”, <https://go.usa.gov/xGWH2>.

and earth station operators. The category has a small business size standard of \$35 million or less in average annual receipts, under SBA rules.<sup>64</sup> For this category, U.S. Census Bureau data for 2012 show that there were a total of 333 firms that operated for the entire year.<sup>65</sup> Of this total, 299 firms had annual receipts of less than \$25 million.<sup>66</sup> Consequently, we estimate that the majority of satellite telecommunications providers are small entities.

20. **Radio Stations.** This Economic Census category “comprises establishments primarily engaged in broadcasting aural programs by radio to the public. Programming may originate in their own studio, from an affiliated network, or from external sources.”<sup>67</sup> The SBA has established a small business size standard for this category as firms having \$41.5 million or less in annual receipts.<sup>68</sup> U.S. Census Bureau data for 2012 show that 2,849 radio station firms operated during that year.<sup>69</sup> Of that number, 2,806 firms operated with annual receipts of less than \$25 million per year and 17 with annual receipts between \$25 million and \$49,999,999 million.<sup>70</sup> Therefore, based on the SBA’s size standard the majority of such entities are small entities.

21. According to Commission staff review of the BIA/Kelsey, LLC’s Media Access Pro Radio Database as of January 2018, about 11,261 (or about 99.9 percent) of 11,383 commercial radio stations had revenues of \$38.5 million or less and thus qualify as small entities under the SBA definition.<sup>71</sup> The Commission has estimated the number of licensed commercial AM radio stations to be 4,580 stations and the number of commercial FM radio stations to be 6,726, for a total number of 11,306.<sup>72</sup> We note the Commission has also estimated the number of licensed noncommercial (NCE) FM radio stations to be 4,172.<sup>73</sup> Nevertheless, the Commission does not compile and otherwise does not have access to information on the revenue of NCE stations that would permit it to determine how many such stations would qualify as small entities.

22. We also note, that in assessing whether a business entity qualifies as small under the above definition, business control affiliations must be included.<sup>74</sup> The Commission’s estimate therefore likely overstates the number of small entities that might be affected by its action, because the revenue figure on which it is based does not include or aggregate revenues from affiliated companies. In addition, to be determined a “small business,” an entity may not be dominant in its field of operation.<sup>75</sup> We further

<sup>64</sup> See 13 CFR § 121.201, NAICS Code 517410.

<sup>65</sup> See U.S. Census Bureau, *2012 Economic Census of the United States*, Table ID: EC1251SSSZ4, *Information: Subject Series - Estab and Firm Size: Receipts Size of Firms for the U.S.: 2012*, NAICS Code 517410, <https://go.usa.gov/xGWHW>.

<sup>66</sup> *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard.

<sup>67</sup> See U.S. Census Bureau, *2017 NAICS Definition*, “515112 Radio Stations,” <https://go.usa.gov/xGWHB>.

<sup>68</sup> See 13 CFR § 121.201, NAICS Code 515112.

<sup>69</sup> See U.S. Census Bureau, *2012 Economic Census of the United States*, Table ID: EC1251SSSZ4, *Information: Subject Series – Estab and Firm Size: Receipts Size of Firms for the U.S.: 2012*, NAICS Code 515112, <https://go.usa.gov/xGWHK>.

<sup>70</sup> *Id.*

<sup>71</sup> BIA/Kelsey, MEDIA Access Pro Database (viewed Jan. 26, 2018).

<sup>72</sup> Broadcast Station Totals as of March 31, 2020, Press Release (MB April 6, 2020) (March 31, 2020 Broadcast Station Totals), <https://go.usa.gov/xGWHN>.

<sup>73</sup> *Id.*

<sup>74</sup> “[Business concerns] are affiliates of each other when one concern controls or has the power to control the other, or a third party or parties controls or has power to control both.” 13 C.F.R. § 121.103(a)(1).

<sup>75</sup> 13 C.F.R. § 121.102(b).

note, that it is difficult at times to assess these criteria in the context of media entities, and the estimate of small businesses to which these rules may apply does not exclude any radio station from the definition of a small business on these basis, thus our estimate of small businesses may therefore be over-inclusive. Also, as noted above, an additional element of the definition of “small business” is that the entity must be independently owned and operated. The Commission notes that it is difficult at times to assess these criteria in the context of media entities and the estimates of small businesses to which they apply may be over-inclusive to this extent.

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

23. The Report and Order adopts 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(b) petitions for declaratory ruling (common carrier wireless, common carrier satellite earth stations, or broadcast). Applicants with reportable foreign ownership will be required to submit responses to standard national security and law enforcement questions and will need to certify in their applications that they have made that submission and will send a copy of the FCC application to the Committee. All applicants for international section 214 authority and submarine cable licenses, regardless of whether they have reportable foreign ownership will be required to certify that they: (1) will comply with the Communications Assistance for Law Enforcement Act (CALEA); (2) will make certain communications and records available and subject to lawful request or valid legal process under U.S. law; (3) will designate a point of contact in the United States who is a U.S. citizen or lawful permanent resident; (4) will keep all submitted information accurate and complete during application process and after the application is no longer pending for purposes of section 1.65 of the rules, the authorization holder and/or licensee must inform the Commission and the Committee of any contact name changes; and (5) understand that failing to fulfill any condition of the grant or providing materially false information could result in revocation or termination of their authorization and other penalties. Petitioners for broadcast licensee petitions for a section 310(b) declaratory ruling for broadcast licenses will make the last three certifications but will not need to make the first two certifications.

**F. Steps Taken to Minimize the Significant Economic Impact on Small Entities, and Significant Alternative Considered**

24. 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 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.”<sup>76</sup>

25. In this Report and Order, the adopted changes for Executive Branch’s review of FCC applications involving foreign ownership will 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 adopted certification requirements may 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 the Commission and industry, including small entities, including to make the Executive Branch review process as efficient as possible. Time frames for review of FCC applications referred to the Executive Branch have also been adopted, which will help prevent unnecessary delays and make the process more efficient and transparent, which ultimately benefits all applicants, including small entities.

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<sup>76</sup> 5 U.S.C. §§ 603(c)(1)-(c)(4).

26. The Commission declined to adopt a proposal from commenters to exclude from referral applications that involve resellers with no facilities, which are often small businesses. Although the commenters support such an exclusion,<sup>77</sup> the Executive Branch asserts that applications from non-facilities based resellers “require review by the Executive Branch, because the companies possess records that may be requested in the course of national security or criminal investigations.”<sup>78</sup> The Commission agreed with the Executive Branch that resellers without facilities could potentially raise national security or law enforcement issues because their records, for example, might assist the Executive Branch discover instances of money laundering or other activities with national security and law enforcement implications.

**G. Report to Congress**

27. The Commission will send a copy of the *Order*, including this FRFA, in a report to be sent to Congress pursuant to the Small Business Regulatory Enforcement Fairness Act of 1996.<sup>79</sup> In addition, the Commission will send a copy of the *Order*, including the FRFA, to the Chief Counsel for Advocacy of the SBA. A copy of the *Order* and the FRFA (or summaries thereof) will also be published in the Federal Register.<sup>80</sup>

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<sup>77</sup> See, e.g., TMT Financial Sponsors 2016 Comments at 5; Wiley Rein 2016 Comments at 9-10; CTIA 2016 Comments at 10; TLA 2020 Comments at 2.

<sup>78</sup> NTIA 2016 Reply at 13-14; see also NTIA 2016 Comments 19.

<sup>79</sup> 5 U.S.C. § 801(a)(1)(A).

<sup>80</sup> 5 U.S.C. § 604(b).



**STATEMENT OF  
CHAIRMAN AJIT PAI**

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

Today marks a critical milestone regarding foreign involvement in the U.S. communications sector. By reforming the Team Telecom process—that is, the process by which the Executive Branch offers its views on applications and petitions to the FCC involving foreign ownership—we formalize the close working relationship across our agencies on this matter and offer much-needed clarity to the private sector on the rules of the road.

The importance of this topic is driven in part by the importance of the communications sector to our nation’s economy. The United States benefits immensely from both domestic and foreign investment in our communications sector. Worldwide spending on information and communications technology is estimated to reach \$4.3 trillion in 2020, according to one study.<sup>1</sup> This raises potentially competing interests. On one hand, we want to seize the opportunities that an influx of capital and talent can afford, such as stronger research and development, more innovation, domestic job creation, and economic growth. On the other hand, we also need to take into account the serious national security, law enforcement, foreign policy, and trade policy issues that such an influx can present in some circumstances. To properly address these interests, we need an approach that allows us to identify and expedite beneficial foreign investment but block or place appropriate remedial conditions on foreign investment that threatens our nation’s interests. And we rely on input from expert Executive Branch agencies to ensure that the FCC has the information we need to make the appropriate judgment.

When we initiated this proceeding in 2016, I called the current foreign ownership review process “broken.”<sup>2</sup> And it was. Among other things, the review process often took far too long and lacked basic transparency. The good news today is that—working together with the Executive Branch—we are fixing it.

Earlier this year, the President signed Executive Order 13913, which established the new Committee for the Assessment of Foreign Participation in the United States Telecommunications Services Sector and streamlined the process by which Executive Branch agencies review applications for international section 214 authorizations and petitions for foreign ownership rulings under section 310(b) of the Communications Act, among other applications. Today, we revise our own procedures to complement the framework set forth in the Executive Order. Our actions will provide greater regulatory certainty to stakeholders, promote beneficial foreign investment in our telecommunications industry, and better protect U.S. national security, law enforcement, foreign policy, and trade policy interests.

Under our new rules, we will require parties to furnish Executive Branch agencies with responses to a set of standardized national security and law enforcement questions designed to provide the agencies with information they need from applicants to facilitate their review. We will also require applicants to certify that they will comply with Commission rules, designate a U.S. citizen or permanent resident as a point of contact for lawful requests and legal service of process, and maintain the accuracy and completeness of applications or petitions. These *ex ante* requirements will create clear expectations for

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<sup>1</sup> International Data Corp. (IDC), *Worldwide ICT Spending to Reach \$4.3 Trillion in 2020 Led by Investments in Devices, Applications, and IT Services, According to a New IDC Spending Guide* (Feb. 18, 2020), <https://www.idc.com/getdoc.jsp?containerId=prUS46047320>.

<sup>2</sup> See *Process Reform for Executive Branch Review of Certain FCC Applications and Petitions Involving Foreign Ownership*, IB Docket No. 16-155, Notice of Proposed Rulemaking, 31 FCC Rcd 7456, 7503 (2016) (Statement of Commissioner Ajit Pai).

applicants, will incentivize prompt and thorough submissions to the Executive Branch during the review process, and as a result, will enable those agencies to more quickly and efficiently complete their work.

These new rules will also expedite the review process. Consistent with the Executive Order, we adopt a 120-day initial review period for applications that we refer to the Executive Branch, with a possible 90-day follow-on period for a secondary assessment in limited circumstances. Under our new timetables, most Executive Branch reviews should be completed within 127 days from the date the Committee determines that an application is complete—effectively cutting the review time in half, as compared to the average time of 260 days for Commission action on applications reviewed and cleared by Team Telecom during calendar years 2016-19.

In short, our actions today will provide for a more efficient and effective review of foreign ownership applications. They will also improve our teamwork by aligning the Commission's rules with the reforms adopted by the Executive Branch earlier this year. And they will help us strike the right balance, encouraging beneficial foreign investment and ownership in the U.S. communications sector while limiting or barring transactions that could impair the national interest.

It would not have been possible for us to reform the Team Telecom process without the dedication and effort of many people within this agency. I first want to thank Commissioner O'Rielly for his work to draw attention to a topic that many years ago wasn't getting the attention it merited. And I want to thank the committed staff that worked on this item. From the International Bureau: Denise Coca, Kate Collins, Francis Gutierrez, Jenna Fattah, Leah Kim, David Krech, Arthur Lechtman, Sumita Mukhoty, Tom Sullivan, and Troy Tanner; from the Wireline Competition Bureau: Melissa Kirkel and Jodie May; from the Wireless Telecommunications Bureau: Kathy Harris; from the Media Bureau: David Roberts and Holly Saurer; from the Enforcement Bureau: Jeff Gee and Shannon Lipp; from the Office of Communications Business Opportunities: Maura McGowan; from the Office of Economics and Analytics: Daniel Shiman; and from the Office of General Counsel: Doug Klein and Bill Richardson.

I would also be remiss if I didn't thank all of those in the Executive Branch who have worked for many years on Team Telecom reform and whose efforts resulted in the Executive Order that paved the way for today's Order.

**STATEMENT OF  
COMMISSIONER MICHAEL O'RIELLY**

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

A little over five years ago, I wrote about the need to improve the opaque Executive Branch review process for certain Commission applications involving foreign ownership, commonly known as “Team Telecom.” Ever since, I have been urging for reforms to provide transparency and certainty for affected applicants and licensees trapped in this regulatory black hole, not knowing what concerns executive agencies have, how long the review will last, and who they can talk to about getting their application out of the morass. Working with former Chairman Wheeler, my efforts culminated in a proceeding to improve the Team Telecom process, which, after many, many conversations with the affected agencies, was approaching the finish line when, without explanation, someone slammed the brakes just hours after the 2016 election.

Under current procedures, the Commission welcomes the advice of relevant federal agencies, and, while we could act alone, in certain situations it’s wise to allow the experts to have a say. America’s national security and law enforcement agencies are in a much better position to analyze the multitude of threats facing the U.S., and they have a legitimate role to play in this process. Thus, preserving the current framework and goals, while fixing any existing problems, is in everyone’s interest.

We must give all due credit to the Trump Administration for crafting and approving an Executive Order to do just that. Ultimately, the Executive Order revamps Team Telecom with a fairly sound structure and operating process. By setting timeframes for application review, increasing accountability by placing one Department in a lead position, expressly excluding review of transactions that do not directly affect the control of a company, and insisting that a simple contact number be provided, among other fixes, the Executive Order improves the process enormously.

That is not to suggest that the Executive Order is perfect. Certainly, there are things I would have done differently, such as including a more definitive and objective standard for starting the review clock, shortening the review periods even more, and limiting the ability of the new Committee to review previous decisions. In this vein, the Commission is taking steps to rectify some of these concerns, for example, by ensuring that those entities whose foreign ownership is being re-reviewed will be afforded due process and the opportunity to respond. Additionally, I am pleased that my requested edit to finalize the list of standard questions within 90 days was accepted. By answering these questions and submitting them to the Committee prior to filing their FCC application, applicants will expedite the start of the review period. Other rules we are adopting, such as providing 30 days for the Committee to send tailored questions to the applicant, will also help speed the process along.

Despite some nitpicking and the tweaks around the edges, let’s be clear: the basic structure provided by this item will go a long way in assuring applicants that they will get an answer within a reasonable timeframe. This is a clear victory for both national security and government efficiency.

**STATEMENT OF  
COMMISSIONER BRENDAN CARR**

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

America is known for great teams. The A-Team, of course, is a classic. The 2019 World Series Champion Washington Nationals is another. And as a longtime, if not life-long, fan of the Kansas City Chiefs, the reigning Super Bowl Champions are definitely on this list. Now, I will admit that Team Telecom does not grab the public's attention the way those other teams have. But for those of us that work in telecom we know that it plays a key role, often behind the scenes, in helping to secure our communications infrastructure.

The Order we're voting on today significantly improves the Team Telecom process by promoting greater transparency and certainty. It reflects years of hard work and countless staff hours across multiple administrations, agencies, and departments. It builds on the Executive Order that President Trump issued earlier this year. And it reaffirms our commitment to do whatever it takes to secure our communications networks from the threats posed by foreign actors.

I would like to thank the International Bureau for their work on this item. It has my support.

**STATEMENT OF  
COMMISSIONER JESSICA ROSENWORCEL**

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

For more than two decades, a collection of Executive Branch authorities, informally known as Team Telecom, has been responsible for national security decisions concerning telecommunications assets. In practice, this meant if a transaction was proposed that featured foreign interests, it was Team Telecom that called the shots. Likewise, if there were ownership questions about foreign facilities, Team Telecom would take the lead in any government review.

So here is a bit of radical candor. I worked for the former Chairman of the Senate Intelligence Committee and recall finding this arrangement really opaque. I now serve as a Commissioner at the Federal Communications Commission and I still find this process less than fully transparent. For years it has had no statutory basis and no governing rules.

But this is changing. In April an Executive Order was released entitled Establishing the Committee for the Assessment of Foreign Participation in the United States Telecommunications Service Sector. It formalizes Team Telecom and seeks to make clear what for too long has been murky about the national security review process. This is long overdue. And today the FCC takes its own steps to update our rules consistent with this Executive Order. I believe these changes, which include strict timeframes and increased clarity about just which applications will be referred to this committee, will improve national security review. They also add much-needed transparency to the process. These changes recognize that the integrity of the United States telecommunications networks is vital to our national security process. This is good because national security and network security go hand in hand.

But we make a mistake if we stop here. In June the Senate Permanent Subcommittee on Investigations, which is part of the Committee on Homeland Security and Governmental Affairs, released a report reviewing the extent of foreign telecommunications companies operating in the United States. It memorializes past deficiencies with the Team Telecom and FCC review process. While some of these problems are remedied going forward by the Executive Order and our action here, there is more we can do. In particular, the report criticized Team Telecom and the FCC because for nearly twenty years neither has monitored foreign-owned carriers after they were authorized to provide service to the United States.

This is not acceptable. National security risks are constantly evolving. It is not enough to formalize a process for reviewing new foreign ownership at a single point in time. The FCC must continue to monitor and engage with carriers once they are authorized to operate in the United States. To this end, I am pleased that we have begun reviews of four companies that are ultimately subject to the ownership and control of a foreign government: China Telecom Americas, China Unicom Americas, Pacific Networks, and ComNet. We should complete these national security reviews as soon as possible.

Then we should establish a clear standard and process for revoking a foreign carrier's existing authorizations on national security grounds. Right now we don't have one and that means our hands are unnecessarily tied when it comes to national security. We also should require periodic review and renewal of foreign carrier's FCC authorizations. While the recent Executive Order allows Executive

Branch agencies to review existing authorizations, it doesn't require it and it envisions no role for the FCC. We should take initiative and change that so that the agency can continually account for evolving risks.

I hope we can pursue these additional reforms soon. Because our efforts today represent progress but it is clear we have more work to do.



**STATEMENT OF  
COMMISSIONER GEOFFREY STARKS**

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

I'm glad we're adopting these rules to govern our coordination with the Executive Branch on applications potentially impacting national security and law enforcement. These procedures will formalize our coordination process with Team Telecom so we can work more effectively to protect national security while providing predictability and timely feedback to applicants on their proposals.

Communications networks have become even more essential to our national security because of the critical nature of the internet and because adversary states and criminals continue their attempts to tamper with, block, or illegally access our communications. While the Commission has been rightfully focused on removing threats within US networks, whether through foreign-made equipment or via authorizations to operate within the United States, I again call attention to a critical aspect of modern communications that is also subject to the Commission's oversight -- the international carriage of traffic between the US and the rest of the world via undersea cables.

Far below the surface of the ocean, 99% of the world's internet traffic travels through about 300 fiber optic cables about the width of a garden hose.<sup>1</sup> The first undersea cable transmission was a telegraph message between the US and the UK three years before the Civil War. Back in those days, it took more than two minutes to transmit a single character.<sup>2</sup> The latest undersea cables will transmit at 250 terabits per second -- fast enough to send everything in the Library of Congress to Europe three times every second.<sup>3</sup>

These cables have been important to international communications for a long time, but the internet has made them essential. Earlier this year, we saw the catastrophic effect of an undersea cable cut in Yemen, when the loss of a single cable reduced the entire country's internet capacity by 80 percent.<sup>4</sup> Cloud computing allows us to store our data in remote servers around the world, and undersea cables allow us to access those servers wherever we're located. That's why an increasing number of cables are owned by tech companies, as opposed to traditional communication companies. Companies like Google, Microsoft, Facebook and Amazon now own or lease nearly half the world's undersea bandwidth.<sup>5</sup>

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<sup>1</sup> Alex Gray, *This Map shows how Undersea Cables move Internet around the World*, World Economic Forum (Nov. 26, 2016), <https://www.weforum.org/agenda/2016/11/this-map-shows-how-undersea-cables-move-internet-traffic-around-the-world/>.

<sup>2</sup> Duncan Geere, *How the First Cable Was Laid Across the Atlantic*, WIRED (Jan. 18, 2011), <https://www.wired.co.uk/article/transatlantic-cables>.

<sup>3</sup> Klint Finley, *How Google is Cramming More Data into its New Atlantic Cable*, WIRED (Apr. 5, 2019), <https://www.wired.com/story/google-cramming-more-data-new-atlantic-cable/>.

<sup>4</sup> Lily Hay Newman, *Cut Undersea Cable Plunges Yemen Into Day-Long Internet Outage*, WIRED (Jan. 13, 2020), <https://www.wired.com/story/yemen-internet-blackout-undersea-cable/>.

<sup>5</sup> Nadia Schadow & Brayden Helwig, *Protecting Undersea Cables Must be Made a National Security Priority*, Defense News (July 1, 2020), <https://www.defensenews.com/opinion/commentary/2020/07/01/protecting-undersea-cables-must-be-made-a-national-security-priority/>.

Because these cables are so important, we must ensure that adversary countries and other hostile actors can't tamper with, block, or intercept the communications they carry. That's why I expressed concerns about the Pacific Light Cable Network, which was proposed by two major American tech firms and a Chinese partner and would have connected landing sites in Los Angeles and Hong Kong. Team Telecom shared my concerns, stating that if the project was granted with the Hong Kong connection, "U.S. customers may soon have little choice but to let their traffic flow through Hong Kong in order to reach final destinations in other parts of Asia,"<sup>6</sup> and that such a cable "landing in Hong Kong would provide additional opportunities for [Chinese government] authorities to collect U.S. communications traffic for further big data analysis."<sup>7</sup> This summer, the applicants withdrew their application for the Hong Kong connection. Just a few weeks ago, another pair of American tech companies and a Chinese partner withdrew their application to connect San Francisco and Hong Kong as part of the Bay to Bay Express Cable System.<sup>8</sup>

The concerns aren't just about the landing sites of the cables but who owns and operates them. Even though PLCN will no longer connect through Hong Kong, it's still owned in part by a Chinese company that has been convicted of bribing Chinese government officials and that built a surveillance network for Beijing police.<sup>9</sup> In its opposition to the PLCN application, Team Telecom raised additional concerns about this company's compliance with FCC transfer of control requirements as well as Chinese government connections with the company that will operate the undersea cable.<sup>10</sup> And the Chinese partner for the Bay to Bay Express Cable System remains none other than China Mobile,<sup>11</sup> whose application to operate in the United States was denied by this Commission last year.

It doesn't stop there. One of the largest undersea cable companies in the world is Huawei Marine, which has built or repaired almost a quarter of the world's cables. This includes upgrades to a major submarine cable connecting the US and Canada, as well as a cable connecting New York City and London.<sup>12</sup> Huawei Marine was sold to another Chinese company last year, but that company's director

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<sup>6</sup> Executive Branch Recommendation Partial Denial and Partial Grant of Application, *GU Holdings Inc., et al.*, File Nos. SCL-LIC-20170421-00012 *et seq.* at 52 (filed June 17, 2020) (hereinafter "Team Telecom PLCN Recommendation").

<sup>7</sup> *Id.* at 15.

<sup>8</sup> *Facebook drops San Francisco - Hong Kong submarine cable amid growing national security concerns*, Intelligence Online, (Sept. 14, 2020), <https://www.intelligenceonline.com/international-dealmaking/2020/09/14/facebook-drops-san-francisco-hong-kong-submarine-cable-amid-growing-national-security-concerns.109606444-art>.

<sup>9</sup> Kate O'Keefe, Drew FitzGerald & Jeremy Page, *National Security Concerns Threaten Undersea Data Link Backed by Google, Facebook*, Wall St. J., (Aug. 28, 2019), <https://www.wsj.com/articles/trans-pacific-tensions-threaten-u-s-data-link-to-china-11566991801>.

<sup>10</sup> Team Telecom PLCN Recommendation at 42-43, 44-47.

<sup>11</sup> *NEC to Build the Bay to Bay Express Cable System*, Submarine Telecoms Forum (July 9, 2018), <https://subtelforum.com/nec-build-bay-to-bay-cable/>.

<sup>12</sup> Jeremy Page, Kate O'Keefe, and Rob Taylor, *America's Undersea Battle with China for Control of the Global Internet Grid*, Wall St. J. (March 12, 2019).

and founder is a Chinese government official. As one official Chinese Communist Party outlet explained, “although undersea cable laying is a business, it is also a battlefield where information can be obtained.”<sup>13</sup>

Clearly, undersea cables are a critical national security asset. The FCC must work with our partners at Team Telecom to treat them accordingly. We must take a closer look at cables with landing locations in adversary countries. This includes the four existing submarine cables connecting the US and China, most of which are partially owned by Chinese state-owned companies. One of these cables received FCC approval only three years ago.<sup>14</sup> While undersea cable connections between the United States and China are appropriate, the Commission must work with Team Telecom to ensure that our communications are secure. And new cables are essential to our economic and technological future, but they, too, must be secure. Because of their greater capacity and speed, these new cables will likely become the least expensive option for our communications.<sup>15</sup> There is more work to be done here.

As I’ve stated previously, the Commission should issue a Public Notice forming a national security inter-bureau task force. The Commission currently reviews national security issues on a distributed basis among the various bureaus. For example, the International Bureau refers undersea cable landing license applications to Team Telecom for national security review. The Public Safety and Homeland Security Bureau participates in the National Security Council’s NSPM-4 process. And the Wireline Competition and Wireless Telecommunications Bureaus consider national security in license transfers and number portability matters. Even now, we’re considering an item from the Media Bureau that would establish disclosure requirements for broadcast television and radio content sponsored or provided by foreign governments.

This distributed structure makes internal coordination challenging and risks inconsistent treatment of national security issues between different bureaus. These issues will only happen more often as our world becomes even more interconnected. We must be more intentional than ever to ensure that the whole of the FCC is more coordinated, more deliberative, and more collaborative.

Finally, the Commission should work with Congress and the Executive Branch to examine whether our authority over these cables should be updated. The Commission’s authority to grant undersea cable landing licenses is pursuant to a delegation of authority from the President under a statute that predates the Communications Act by 13 years. That’s nearly 100 years old! Given that the issues surrounding these cables will only become more complex and important to our national security, we must take a close look at whether our regulatory authority is sufficient to meet the moment.

Thank you to the International Bureau for their work on this important item.

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<sup>13</sup> See *supra* note 5 (citing Notice of Withdrawal of Cable Landing License Application, *Edge Cable Holdings USA LLC, et al.*, File No. SCL-LIC-20181125-00037 (filed Sept. 10, 2020)).

<sup>14</sup> Mark Harris, *Google and Facebook Turn their Backs on Undersea Cable to China*, (Feb. 6, 2020), <https://techcrunch.com/2020/02/06/google-and-facebook-turn-their-backs-on-undersea-cable-to-china>.

<sup>15</sup> For example, the PLCN can transmit data at a rate of 144 terabits per second, dwarfing the capabilities of existing trans-Pacific cables. If the Hong Kong portion of the cable had been approved, it would have become the least costly option for routing communications between the US and Asia. Team Telecom PLCN Recommendation at 47-48.