

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

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

COMMENTS OF TELECOMMUNICATIONS COMPANIES

Table of Contents

I.	INTRODUCTION AND SUMMARY	1
II.	THE COMPANIES SUPPORT THE EFFORTS OF THE FCC AND THE EXECUTIVE BRANCH TO REFORM THE TEAM TELECOM PROCESS.	3
III.	REFORM OF THE TEAM TELECOM PROCESS WILL BE MOST EFFECTIVE WITH LIMITATIONS ON THE TIME FOR REVIEW AND THE TYPE OF APPLICATIONS REFERRED.....	5
	A. The Companies Support the Proposed 90-Day Period for Review.	5
	B. Certain Categories of Applications Should Not Be Referred to Team Telecom.....	9
IV.	INFORMATION SUBMISSION REQUIREMENTS MUST BE NARROWLY TAILORED TO PROVIDE INFORMATION APPROPRIATE TO TEAM TELECOM’S REVIEW AND PROVIDE FOR SUBMISSION OF INFORMATION DIRECTLY TO THE EXECUTIVE AGENCIES.	11
	A. Information Requirements Must be Narrowly Tailored to Fall Within the Scope of Team Telecom’s Review	11
	B. Information Should Be Submitted Directly to Team Telecom at the Time of Filing the FCC Application or Petition.....	14
V.	CERTIFICATIONS MUST BE REASONABLE AND NOT EXCEED U.S. LEGAL REQUIREMENTS.....	16
	A. Certification Requirements Should Apply Only to Filers Subject to Team Telecom Review and Certifications Should be Submitted Directly to Team Telecom.....	16
	B. Certifications Must Not Exceed the Requirements of Existing U.S. Law.....	17
VI.	CONCLUSION.....	18

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Wiley Rein LLP,¹ on behalf of certain telecommunications companies (“Companies”), submits these comments in response to the above-captioned Notice of Proposed Rulemaking² that proposes changes to the Federal Communications Commission’s (“Commission” or “FCC”) procedures for applications and petitions referred by the FCC to Executive Branch agencies (“Team Telecom” or “Executive Agencies”) for their input on national security, law enforcement, foreign policy, and trade policy concerns that may arise from an applicant or petitioner’s foreign ownership.

I. INTRODUCTION AND SUMMARY

The Companies are encouraged by the Commission’s efforts to improve the process for Team Telecom review and approval of FCC applications and petitions with reportable foreign ownership. Reform is necessary to ensure that foreign investment in U.S. telecommunications companies and facilities is not obstructed or deterred by the uncertainty, costs and delays that

¹ Wiley Rein is a Washington, D.C. law firm that, among other things, regularly advises applicants seeking international section 214 authorizations (and transfers thereof), section 310 rulings, submarine cable landing licenses, and satellite earth station authorizations, including applicants with non-U.S. owners and/or investors.

² *Process Reform for Executive Branch Review of Certain FCC Applications and Petitions Involving Foreign Ownership*, Notice of Proposed Rulemaking, IB Docket No. 16-155, FCC 16-79 (rel. Jun. 24, 2016) (“NPRM”).

currently characterize this process. The instant NPRM proposes concrete rules that, with appropriate modification and consistent enforcement, can bring more predictability and transparency to the Executive Agencies' review of FCC applications and petitions with reportable foreign ownership.

One of the NPRM's most important proposals would establish a concrete deadline for Team Telecom action. The Companies believe that imposing such a deadline is critical to successful reform of the Team Telecom review process. The proposed 90-day period for review with the potential for an additional 90-day extension in extraordinary cases will provide FCC licensees and their foreign investors with more predictability about the timing of the process, while affording the Executive Agencies a reasonable amount of time to conduct an effective review.

The Commission should also limit the applications and petitions referred to Team Telecom to those that could potentially raise national security, law enforcement, trade policy, and foreign policy concerns. Specifically, the Companies urge the Commission to adopt rules exempting from referral applications for non-facilities-based resale authority as well as applications filed by entities whose foreign ownership has previously been reviewed by Team Telecom and has not materially changed or falls within previously authorized limits. Declining to refer these filings will allow the Executive Agencies to focus their limited resources and attention on applications and petitions more deserving of review, while removing unnecessary burdens and delays for applicants.

The Companies additionally support making the Team Telecom review process more streamlined and predictable by requiring the upfront submission of certain required information and applicant certifications. However, such information requests must be appropriately targeted

to Team Telecom’s limited review of the filings. Similarly, any required certifications should be narrow in scope as well as consistent with U.S. legal requirements. And, both the informational submission and certification requirements should be submitted directly to Team Telecom and apply only to applicants and petitioners subject to Team Telecom review. The Companies submit that such reforms will greatly improve the Team Telecom review process by providing much increased predictability and transparency for applicants, while facilitating the Executive Agencies’ ability to conduct an effective and appropriate review.

II. THE COMPANIES SUPPORT THE EFFORTS OF THE FCC AND THE EXECUTIVE BRANCH TO REFORM THE TEAM TELECOM PROCESS.

The Companies strongly support the efforts of the Commission, and the National Telecommunications and Information Administration (“NTIA”), on behalf of the Executive Branch, to improve the Executive Branch review process. The FCC has recognized that “foreign investment has been and will continue to be an important source of financing for U.S. telecommunications companies, fostering technical innovation, economic growth, and job creation.”³ At the present time, however, foreign investment in the U.S. communications sector is unnecessarily burdened and discouraged by the Team Telecom review process.

³ See *Review of Foreign Ownership Policies for Common Carrier and Aeronautical Radio Licensees under Section 310(b)(4) of the Communications Act, as Amended*, IB Docket No. 11-133, Second Report and Order, 28 FCC Rcd 5741, 5744 (2013) (“*Foreign Ownership Second Report and Order*”) (citing *The Economic Benefits of New Spectrum for Wireless Broadband*, Council of Economic Advisors (Feb. 2012) at 14-16, available at http://www.whitehouse.gov/sites/default/files/cea_spectrum_report_2-21-2012.pdf (visited Apr. 17, 2013) and *U.S. Inbound Foreign Direct Investment*, Council of Economic Advisors (June 2011) (U.S. affiliates of foreign-domiciled companies play an important role in crucial areas of U.S. economic activity, accounting for over 14 percent of total U.S. private investment in research and development, employing five percent of the U.S. private workforce, and accounting for over 11 percent of total U.S. private capital investment), available at http://www.whitehouse.gov/sites/default/files/microsites/cea_fdi_report.pdf (visited Apr. 17, 2013); *Summary Estimates for Multinational Companies: Employment, Sales and Capital Expenditures for 2010*, News Release, Bureau of Economic Analysis (Apr. 18, 2012) (majority-

As the Companies have noted previously, FCC applications requiring referral to Team Telecom (or applications with accompanying section 310(b) petitions that are referred to Team Telecom) take three to four times longer to receive approval than applications not subject to this review. In most cases, the applicant's engagement with Team Telecom often does not commence until many months after the FCC's referral, even in cases where the applicant actively reaches out to the Executive Branch agencies to try to jumpstart the process. And, once the process begins, the applicant generally receives little feedback – about status, the timeframe for the review, the specific concerns the agencies may have, or how they can be mitigated.

The result is that companies generally take great pains to structure their ownership to avoid Team Telecom review, if possible, though these companies have no reason to believe that a national security issue exists. Sometimes this means rejecting non-U.S. investors or significantly limiting their investments even though such capital could facilitate infrastructure expansion or service enhancements that would benefit the public – either directly or through increased competition. In other cases, it means shutting down the U.S. operations of a regional or global business or foregoing entry into the U.S. market to avoid the delays and uncertainties of the review process. Indeed, in transactions involving mostly non-U.S. assets, the Team Telecom review associated with the transfer of a single section 214 authorization for a resale business with a minor U.S. presence can delay the closing of the transaction by many months or thwart it completely. This seems to make little sense.⁴

owned U.S. affiliates of foreign multinational companies employed 5.2 million workers in 2010), *available at* <http://www.bea.gov/newsrelease/international/mnc/2012/mnc2010.htm> (visited Apr. 17, 2013)).

⁴ While the Team Telecom process has evolved in a way that tends to discourage foreign investment, it is not clear that the Executive Agencies' review has uncovered actual national security, law enforcement or other relevant concerns. Indeed, the FCC noted that "[t]o date, the agencies have not requested that the Commission deny an application." NPRM, ¶ 8.

The Executive Branch review is plainly important. However, it should not be so burdensome and lengthy as to thwart investment, force business closings, discourage market entry, or put entities with reportable foreign ownership at a competitive disadvantage. A truly streamlined and efficient Team Telecom process can both promote foreign investment and protect important national security and law enforcement interests – as demonstrated by the sister national security review process for foreign investment conducted by the Committee on Foreign Investment in the United States (“CFIUS”), which is subject to strict timelines and procedural rules. The Commission should move forward rapidly to put in place needed reforms to the process to get Team Telecom the information it needs promptly, to limit Team Telecom reviews to a reasonable scope and period of time, and to ensure more transparency among Team Telecom, the FCC and each applicant to facilitate an efficient review. And, it should do so through targeted measures designed specifically to improve the process, not to expand the scope of Team Telecom’s or the FCC’s review.

III. REFORM OF THE TEAM TELECOM PROCESS WILL BE MOST EFFECTIVE WITH LIMITATIONS ON THE TIME FOR REVIEW AND THE TYPE OF APPLICATIONS REFERRED.

A. The Companies Support the Proposed 90-Day Period for Review.

The Companies strongly support the Commission’s proposal to adopt a 90-day deadline for Team Telecom to complete its review of referred applications and petitions, with the possibility of a single 90-day extension in extraordinary cases where Team Telecom “demonstrates that issues of complexity warrant such an extension and provides to the Commission the status of its review every 30 days thereafter.”⁵ This proposed review period should provide ample time for the Executive Agencies to review a referred filing and enter into a

⁵ NPRM, ¶ 36.

mitigation agreement if necessary, particularly if applicants and petitioners of filings subject to referral are obligated to submit certain required information and certifications to Team Telecom simultaneously with the filing of their FCC application or petition. As noted in the NPRM, 90 days generally should be more than adequate to conduct an effective review as this timeframe is consistent with the time statutorily allowed for CFIUS to conduct a similar inquiry.⁶

The Companies do not object to up to a single 90-day extension of time in certain cases, but urge the FCC to require that such extensions occur only in “rare instances.”⁷ Additionally, an extension should be allowed only if Team Telecom provides to the Commission a specific explanation as to why additional time is warranted, the amount of time needed, and why the extra time will allow resolution of any concerns. A processing backlog should not be a basis for granting an extension. If necessary to protect classified or other information, Team Telecom’s explanation for the extension can be provided in a non-public manner. The Companies also suggest that the applicant be briefed on the reasons for delay. Further, to facilitate FCC oversight, Team Telecom must be required to provide the FCC with regular status updates during the extension period.⁸

The Companies support the proposal to begin the 90-day period when the application is formally referred to Team Telecom, which would occur upon release of the FCC public notice

⁶ *Id.*, ¶ 41, n.116. CFIUS has authority to review transactions “by or with any foreign person which could result in foreign control of any person engaged in interstate commerce in the United States” to determine the effects of the transaction on the national security of the United States. 50 U.S.C.A. § 4565. Once an applicant has filed a notice with CFIUS that is deemed to be complete, CFIUS has 30 days to review the transaction and a possible additional 45 days in which to conduct an investigation. *Id.* See also U.S. Department of the Treasury, Resource Center, Process Overview, <https://www.treasury.gov/resource-center/international/foreign-investment/Pages/cfius-overview.aspx> (Dec. 1, 2010).

⁷ NPRM, ¶ 36.

⁸ *Id.*, ¶ 43.

referencing the application as accepted for filing.⁹ Team Telecom should be encouraged to complete at least a preliminary review of the filing within the comment period set by the public notice. Most non-streamlined public notice periods provide 30-days for public comment, and this time period is consistent with the time period provided CFIUS to review a transaction.¹⁰ For applications and petitions that will not require further scrutiny or any mitigation agreement, Team Telecom should be able to complete its review so the FCC can act on an application as soon as the public notice period ends. With respect to applications requiring more in-depth review, Team Telecom should be directed to notify the FCC within the public notice period if it will require time beyond the public notice period to review an application.¹¹ The public notice period should provide Team Telecom with sufficient time to determine whether the full 90-day review period is needed. This interim deadline will provide greater certainty to the FCC, applicants and petitioners, as well as encourage Team Telecom to move forward expeditiously on filings referred to it for review.

In addition, the Commission should require the Executive Agencies to act by consensus to compile follow-up questions or to impose a “mitigation obligation” on an FCC applicant or petitioner. Currently, applicants and petitioners are subject to “the whim of the individual members of Team Telecom.”¹² As the Companies have noted previously, entities subject to Team Telecom review regularly face costly delays and burdens initiated by one Team Telecom agency, when other Team Telecom agencies indicate they have no national security concern and

⁹ *Id.*, ¶ 39.

¹⁰ *Id.*, ¶ 41, n.116.

¹¹ *Id.*, ¶ 40.

¹² Commissioner Michael O’Rielly, *Team Telecom Reviews Need More Structure*, FCC Blog (September 18, 2015, 2:18 PM), available at <https://www.fcc.gov/blog/team-telecom-reviews-need-more-structure>.

are not involved. Often these delays and burdens are not related to the underlying FCC application or any new foreign ownership proposed therein. When sister agencies do not support a Team Telecom agency's actions, there are serious questions about whether that Team Telecom agency is appropriately balancing costs and risks. Accordingly, the FCC should expect Team Telecom to work by consensus, just as CFIUS does. Where one agency is an outlier, the FCC should act in accordance with the view of the remaining Executive Branch agencies.

Similarly, the Commission should explicitly set its expectation that, in the interest of streamlining the process, Team Telecom will issue any follow-up questions (beyond the threshold questions) to the applicant in one consolidated request that reflects a consensus of the Executive Agencies. In no event should Team Telecom issue more than two follow-up requests. The Commission should be vigilant against any efforts to extend the 90-day review period through the repeated issuance of follow-up questions with the goal of stopping the clock.

It is imperative that the Commission enforce these timeframes and associated requirements in order for the goals of this proceeding to be realized. Team Telecom's failure to communicate its lack of objection to an application or petition by the end of the 90-day review period should not freeze the filing in regulatory limbo. Rather, the Executive Agencies' lack of objection must be presumed if they fail to raise a specific concern or demonstrate the need for an extraordinary extension before the end of the 90-day period.¹³ In such case, the FCC should then move forward promptly to act on the filing.

¹³ NPRM, ¶ 40.

B. Certain Categories of Applications Should Not Be Referred to Team Telecom

The NPRM seeks comment as to whether there are certain categories of applications with foreign ownership that the Commission should not forward to the Executive Branch for review.¹⁴ The Companies urge the FCC to exempt from referral both applications for non-facilities-based resale authority and applications filed by entities whose foreign ownership has previously been reviewed by Team Telecom and has not materially changed or falls within previously authorized limits. Due to the inherent nature of these types of applications, neither is likely to raise national security, law enforcement, foreign policy or trade issues and thus referral of these filings for review of such issues is unnecessary. Adopting rules that categorically exempt such filings from referral will serve the public interest by facilitating prompt processing of these applications, while allowing the Executive Agencies to focus their limited resources and attention on applications and petitions more deserving of review.

It is difficult to see how an entity proposing to provide telecommunications services on a purely resale basis, without owning any facilities, could raise concerns for the Executive Agencies within the narrow scope of their review. Such an entity would have no ability to assist government agencies in fulfilling authorized national security and law enforcement requirements. Similarly, such proposed resale operations could not conceivably raise foreign policy or trade issues. For these reasons, applications to operate on a purely resale basis should be categorically excluded from Team Telecom referral. In order to qualify for such an exception, an applicant with reportable foreign ownership could provide a certification with its application or petition that it will operate purely as a reseller and will not own any

¹⁴ *Id.*, ¶ 47.

telecommunications facilities. The entity would need to reapply to the Commission, with possible referral to Team Telecom, before changing its operations to become facilities-based.

Applications filed by entities whose foreign ownership has previously been reviewed by Team Telecom and has not materially changed or falls within previously authorized limits should also be categorically exempted from review. In order to qualify for this exception, an applicant could identify in its FCC filing the last application or petition reviewed by the FCC and Team Telecom and certify that its foreign ownership has not changed materially since that filing or falls within the limits previously authorized. Where the applicant's ownership is not changing or is within authorized limits, there is no new information for the Executive Agencies to review and thus any review would merely be duplicative and unnecessary. Avoiding such duplicative review benefits applicants by eliminating unnecessary regulatory costs and facilitating processing of their applications. It also benefits the Executive Agencies by allowing them to focus their limited resources on filings that might actually raise issues of concern, which hopefully should reduce the processing times of those filings as well.

The FCC in 2013 engaged in similar reasoning in adopting rules to reform the agency's review of Section 310(b) petitions. There, the Commission eliminated the need for entities with approved foreign ownership to seek additional Section 310(b) authority (and undergo subsequent Team Telecom review) when there were no material changes to the entity's previously reviewed and authorized foreign ownership.¹⁵ This policy has helped to minimize the filing of repetitious petitions with the FCC and referrals to Team Telecom, which has served the public interest. The Commission should extend this same policy to qualifying applications for Section 214 authority and submarine cable landing licenses with reportable foreign ownership.

¹⁵ See *Foreign Ownership Second Report and Order*, *supra*, note 3.

IV. INFORMATION SUBMISSION REQUIREMENTS MUST BE NARROWLY TAILORED TO PROVIDE INFORMATION APPROPRIATE TO TEAM TELECOM'S REVIEW AND PROVIDE FOR SUBMISSION OF INFORMATION DIRECTLY TO THE EXECUTIVE AGENCIES.

The NPRM proposes that applicants with reportable foreign ownership provide information on ownership, network operations, and related matters when filing their applications or section 310(b) petitions.¹⁶ The Companies agree with the Commission that the Executive Agency review process should be expedited by requiring entities submitting filings subject to Team Telecom review to also submit certain additional information needed for the review at the outset of the process. Prompt submission of this information should help to expedite Team Telecom's review by ensuring the agencies have the record necessary to begin their work on Day One. However, it is imperative that the Commission ensure that these information requirements are limited to match the appropriate scope of the Executive Agencies' review. Further, to address confidentiality concerns and facilitate the commencement of Team Telecom review, the information should be submitted directly to Team Telecom and not to the Commission.

A. Information Requirements Must be Narrowly Tailored to Fall Within the Scope of Team Telecom's Review

The NPRM proposes that applicants with reportable foreign ownership be required to provide information about their ownership, network operations and related matters when filing their applications.¹⁷ However, the illustrative sample questionnaire provided by NTIA and included in the NPRM contains requests that are extremely broad and burdensome and, in some cases, beyond the scope of appropriate Executive Agency review. Some questions address areas where Congress has granted the FCC exclusive authority to review and assess an applicant's

¹⁶ NPRM ¶ 16.

¹⁷ *Id.*

qualifications. Having the Executive Agencies duplicate the FCC's review of such issues wastes scarce government resources and imposes an unnecessary burden on applicants. Further, the Executive Branch should not be enabled to engage in fishing expeditions that stray from the core issues for which the referral is made. If the Commission is to achieve its goals in this proceeding of streamlining and expediting the Team Telecom process, it is imperative that the informational requirements be narrowly tailored to fall within the boundaries of appropriate Team Telecom review.

For example, there is no reason for Team Telecom to review information related to the applicant's financial condition. Appendix D suggests that applicants or petitioners would need to provide information on all financial institutions providing support or other assistance and audited financial statements.¹⁸ Such a request seems incredibly broad and utterly unnecessary. A large company, particularly one that operates globally, may have myriad relationships with financial institutions. Such relationships are normal and not indicative of any national security, law enforcement, foreign policy or trade concern. This information also goes well beyond what Team Telecom typically requests in its current Triage Questionnaire. Particularly since Congress has granted the Commission exclusive authority to review an applicant's qualifications, including whether an applicant has the financial ability to own and control communication facilities,¹⁹ the Executive Agencies' review of such information seems especially unnecessary.

¹⁸ *Id.*, Appendix D.

¹⁹ *See* 47 U.S.C. §§ 303 and 319. *See, e.g. also*, Section 25.165 of the FCC's rules requires entities granted a satellite license to post a bond to confirm the licensee has the financial qualifications to construct, launch, and operate a satellite in a timely manner. 47 C.F.R. § 25.165. This rule was specifically adopted by the FCC to replace the financial qualification requirement that had previously required applicants for a space station license to provide a financial showing. *Amendment of the Commission's Space Station Licensing Rules and Policies*, First Report and Order and Further Notice of Proposed Rulemaking, 18 FCC Rcd 10760, 10825 (2003).

In addition, applicants and petitioners should not be required to provide broad information regarding the regulatory and other legal compliance history of the applicant, its owners, affiliates and certain employees. As written, this request is enormously broad without any temporal or relevance limitation. It would also seem to require the submission of lots of information not easily discoverable by the applicant – like the minor legal infractions of an employee or the compliance history of third party entities with whom the applicant shares a common minority investor. It is hard to understand how such information could possibly be relevant to the areas designated for Team Telecom to review. To the extent this inquiry would elicit information about the applicant’s past regulatory compliance, that would fall within the FCC’s review of the applicant’s qualifications and there is no need for Team Telecom to duplicate that effort.

Finally, Appendix D proposes a requirement to provide a “[l]isting of all FCC licenses, including cancelled and/or terminated licenses, and all licenses held by affiliates.”²⁰ For some applicants, this could mean producing a list of hundreds or thousands of licenses, which would be extremely burdensome to compile. It is difficult to understand how a listing of all of an applicant’s FCC licenses and all of the licenses of all of its affiliates – including those that have been cancelled – can assist Team Telecom in its review of national security, law enforcement and related concerns. Moreover, as the FCC already specifically reviews the applicant’s licenses, cancelled licenses and enforcement history as part of its character qualification assessment, such a review by Team Telecom would be duplicative.²¹ For these reasons, the

²⁰ NPRM, Appendix D.

²¹ *See, e.g.*, FCC Form 312, Questions 36-39 and FCC Form 603, Questions 100-102.

information requirements must be narrowly tailored to adhere to the boundaries of appropriate Team Telecom review.

B. Information Should Be Submitted Directly to Team Telecom at the Time of Filing the FCC Application or Petition.

The Companies recommend modifying the FCC's proposal to have the response to the foreign ownership questionnaire submitted to the FCC for staff to review for completeness before forwarding to Team Telecom.²² The Companies propose instead that the information be submitted directly to Team Telecom contemporaneously with the filing of the FCC application. Any review by FCC staff, even to verify completeness, is redundant of the review that must ultimately be done by Team Telecom staff (which is better positioned to determine the completeness of the response) and seems a needless expenditure of the FCC's scarce resources. Initial Commission review also delays the delivery of the information to the Executive Agencies, postponing the start of their review. Submission of the information directly to Team Telecom also will address the significant confidentiality concerns associated with submitting such particularly sensitive information²³ to the Commission. Team Telecom has historically maintained the confidentiality of the highly sensitive information it considers, and has strict procedures in place to do so.

The Companies believe that these important concerns regarding confidentiality, redundancy and delay are addressed and eliminated by submitting the required information directly to Team Telecom. Applicants and petitioners whose filings are subject to Executive Agency review should be required to submit the informational response directly to Team

²² NPRM, ¶ 25.

²³ As the Commission notes in the NPRM, the information to be submitted to Team Telecom includes personally identifiable and business sensitive information. *Id.*, ¶ 29.

Telecom on the date they file their application or petition with the FCC. To allow the FCC to have verification of the submission, these entities should be required to include in their FCC filing a certification that the required information is simultaneously being provided to Team Telecom. This process would allow the Executive Agencies to commence their review immediately, which should help to address the critical concerns raised about the length of Team Telecom review. The Commission should incentivize Team Telecom to do its completeness review immediately and promptly notify the Commission and the applicant of any missing information. If Team Telecom provides such notification before the release of the public notice of the filing, the FCC should delay the issuance of the public notice until the applicant/petitioner provides the requested information and notifies the FCC of such. If Team Telecom does not notify the FCC of a deficiency, the FCC should proceed expeditiously to issue the public notice, which would begin the 90-day clock. The Companies believe this process would be more effective than the Commission's proposal in jumpstarting Team Telecom's review. It would also address the significant confidentiality concerns with filing highly sensitive material with the Commission.²⁴

²⁴ In the event that the Commission determines to proceed with its proposal to have the information submitted first to the FCC for staff review, it should make clear that any staff review is limited to looking only at completeness and that the submissions are presumed confidential and not disclosable. Given that the nature of the information requested is highly sensitive and that it is being forwarded to other agencies for a confidential, non-public review, there is no basis for permitting public disclosure.

V. CERTIFICATIONS MUST BE REASONABLE AND NOT EXCEED U.S. LEGAL REQUIREMENTS.

A. Certification Requirements Should Apply Only to Filers Subject to Team Telecom Review and Certifications Should Be Submitted Directly to Team Telecom.

The Commission seeks comment on Team Telecom's request that *all* applicants seeking an international section 214 authorization or a submarine cable landing license, or applications to assign or transfer control of such authorizations, and petitioners for section 310(b) foreign ownership rulings be required to make certain certifications, not just those applicants with reportable foreign ownership.²⁵ The certification proposal is intended to avoid a need for Team Telecom to negotiate assurances from applicants as part of the Team Telecom review process.²⁶ As such, there is no rationale for requiring certification from entities that are not subject to Team Telecom review, as it would not advance the goals of this proceeding.

The vast majority of Section 214 applications, in particular, are not subject to Team Telecom review, because many applicants have no reportable foreign ownership. Expanding the certification requirement to all international Section 214 and submarine cable license applications (initial applications, transfers and assignments) would thus impose an unnecessary burden on the majority of applicants for such licenses with no associated benefit. It is difficult to understand how such certifications serve any national security, law enforcement, foreign or trade policy concerns when the applicants are not even reviewed by Team Telecom. There is also no legal or policy concern to limiting the certifications only to filers of referred applications and petitions as such entities today are singled out for the additional information submission and certification burdens of this additional process as a result of their foreign ownership. Like the

²⁵ NPRM, ¶ 33.

²⁶ *Id.*, ¶ 31.

information submission, the certifications should be provided directly to Team Telecom as they are being made solely for the purpose of facilitating the Executive Agencies' review.

B. Certifications Must Not Exceed the Requirements of Existing U.S. Law.

For entities subject to Team Telecom review, the Companies do not object to a certification requirement as such certifications could be useful to expedite the review process. However, the specified certifications must not encompass obligations that exceed the requirements of existing U.S. law. As proposed in the NPRM, several of the certifications seem to impose obligations that are inconsistent with existing legal requirements and should not be required of any applicants, including those with foreign ownership.

For example, the second certification, requiring that applicants “make communications to, from, or within the United States, as well as records thereof, available in a form and location that permits them to be subject to lawful request or valid legal process under U.S. law, for services covered under the requested Commission license or authorization” appears to be overly broad and contemplate requirements exceeding existing laws and policies. The Companies are concerned this certification could be interpreted to prohibit encryption, establish duties to decrypt, or require disclosures to government agencies that are not legally compelled. Entities not subject to these requirements by existing U.S. law should not be required to certify to them in order to hold an FCC license or authorization.

The Companies also remain concerned about the portion of the certification requiring records to be 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”, improperly enforces localization and repatriation in the United States in contravention of existing U.S. laws and policies. As previously explained by the Companies in this proceeding, the Commerce Department has

explicitly stated that the “free and open global Internet, with minimal barriers to the flow of data and services across borders, is the lynchpin of the digital economy’s success,”²⁷ and forced localization is antithetical to this policy favoring the free flow of information.²⁸

The Companies submit that it would be more appropriate to require applicants to certify that they will comply with “U.S. law regarding assistance and disclosure of records to law enforcement.” Such language should address any Team Telecom concerns about ongoing legal compliance. It would better capture the requirements of existing law as it continues to evolve and not impose requirements that depart from Congress’ careful balancing of law enforcement and private interests.

VI. CONCLUSION

The Companies support the Commission’s continuing efforts to improve the Team Telecom review process. Many of the FCC’s proposals will bring much needed efficiency and transparency to the process. The Companies urge the Commission also to consider certain modifications to the proposals detailed herein, which are designed to maximize the efficiency and effectiveness of the Team Telecom process while addressing genuine concerns about confidentiality, applicant burden and consistency with current legal requirements. The

²⁷ Alan Davidson, Director of Digital Economy, Commerce Department Digital Economy Agenda at 5 (Feb. 2016), available at http://www.nist.gov/director/vcat/upload/Davidson_VCAT-2-2016_post.pdf.

²⁸ The NTIA Letter proposed some additional certifications that were not included in the proposed certifications in the NPRM. The Companies support the deletion of such certifications, which were unduly burdensome and exceeded current U.S. legal requirements. In particular, an applicant should only have to certify to the accuracy and completeness of its application to the best of its knowledge at the time of filing. Any certification with respect to all future filings is not reasonable or workable. An applicant (or representative of an applicant) filing a certification at the time of submission cannot possibly certify that information provided at an unknowable time in the future will be accurate and complete.

Companies urge the Commission to move forward expeditiously to adopt appropriate reforms to the Team Telecom process.

Respectfully Submitted,

**WILEY REIN LLP on behalf of certain
TELECOMMUNICATIONS COMPANIES**

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