

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554**

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

**COMMENTS OF BT AMERICAS INC., DEUTSCHE TELEKOM, INC., ORANGE
BUSINESS SERVICES U.S. INC. AND TELEFONICA INTERNACIONAL USA, INC.**

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SUMMARY

By its Notice of Proposed Rulemaking (NPRM), the Federal Communications Commission (Commission) has taken an important step toward much-needed reform of the process by which certain Executive Branch agencies, referred to as Team Telecom, review applications involving reportable foreign ownership for national security concerns. BT Americas Inc., Deutsche Telekom, Inc., Orange Business Services U.S. Inc. and Telefonica Internacional USA, Inc. (collectively, the Companies) greatly appreciate the Commission's leadership in promoting greater transparency and certainty in the Team Telecom review process and generally support the Commission's proposed process reforms.

The current Team Telecom review process lacks transparency and certainty as reviews often take as long as a year. Applicants are required to submit substantial amounts of detailed information but still lack the insight into Team Telecom's specific concerns thereby preventing applicants from efficiently providing information necessary to address those concerns. Reform of the Team Telecom review process is critical to eliminating the associated uncertainty, costs and delays that can also deter foreign investment. This deterrent effect, although unintended, is contrary to the Obama administration's generally welcoming posture on foreign investment in the United States and the U.S. Trade Representative's position supporting digital trade.

Accordingly, the Companies recommend the FCC exempt from referral to Team Telecom certain categories of applications, particularly those where the foreign ownership already has undergone Team Telecom review and there has been no material change in the ownership. In addition, the Team Telecom review should be subject to a definitive 75-day timeframe, consistent with the timeframe used in Committee on Foreign Investment in the

United States (CFIUS) reviews, upon expiration of which the FCC will proceed to grant the application. Any supplemental information requirements must be limited to ensure they are within Team Telecom's scope of expertise and should be provided directly to Team Telecom rather than to the FCC to avoid confidentiality concerns. The FCC should clarify and limit the proposed certification requirements to avoid the adoption of data localization obligations that go beyond legal requirements and will be contrary to United States commerce and trade policy. The Companies also support the implementation of communications channels, including identifying contact information for Team Telecom personnel at each agency involved in application reviews, to improve process transparency.

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BT Americas Inc.,¹ Deutsche Telekom, Inc., Orange Business Services U.S. Inc.² and Telefonica Internacional USA, Inc. (collectively, the Companies) submit these comments in response to the Federal Communications Commission’s (FCC or Commission) Notice of Proposed Rulemaking (NPRM)³ seeking comment on proposed rule and procedural changes designed to improve the “timeliness and transparency” of the Executive Branch agencies’ (referred to as Team Telecom)⁴ review of certain applications for FCC authority.⁵ The Companies generally support the FCC’s goals and offer additional proposals to expedite and provide greater transparency to the Team Telecom review process.

¹ BT Americas Inc. files on behalf of itself and its U.S. affiliates.

² Orange Business Services U.S. Inc., files on behalf of itself and its licensed U.S. affiliates.

³ *In re: Process Reform for Executive Branch Review of Certain FCC Applications and Petitions Involving Foreign Ownership*, Notice of Proposed Rulemaking, FCC 16-79 (June 24, 2016) (NPRM).

⁴ The Executive Branch agencies include Department of Homeland Security; the Department of Justice, including the Federal Bureau of Investigations; the Department of Defense; the Department of State; the Department of Commerce, NTIA; the United States Trade Representative; and the Office of Science and Technology Policy (collectively, Team Telecom).

⁵ NPRM, ¶ 13.

I. INTRODUCTION AND SUMMARY

The Companies appreciate and support the Commission's efforts to reform the Team Telecom review process for certain FCC applications involving foreign ownership.⁶ The Companies applaud the Commission for addressing this issue and thank the Commission for their leadership in promoting a predictable and transparent review process. The Companies recognize the importance of identifying and mitigating any national security and law enforcement implications of certain transactions and believe these goals can be met under a less burdensome and more predictable review process than is followed today. Currently, the lack of transparency into Team Telecom's specific concerns during the application review process prevents applicants from efficiently providing information necessary to address those concerns. Moreover, the absence of a definitive timeframe for completion of Team Telecom's review can complicate an applicant's ability to plan and initiate service operations or obtain necessary financing which may be withdrawn during the lengthy review process. Reforming the Team Telecom review process is particularly critical to eliminating or reducing the uncertainty, costs and delays that can inadvertently discourage foreign investors facing the lengthy review time period and uncertainty of the current review process.

The Companies suggest that any review process reforms be tailored to ensure they bring certainty and transparency to the process without increasing an applicant's regulatory burdens. The Commission's efforts should remain focused on its expressed goal of implementing reforms to "expeditiously and efficiently review and respond to the applications."⁷

⁶ NPRM, ¶ 13 (noting the proposed reforms would apply to applications, with reportable levels of foreign ownership, for (i) international Section 214 authorization and transfers or assignments of same, submarine cable landing licenses and transfers or assignments of same, and petitions for Section 310(b) foreign ownership rulings.).

⁷ NPRM, ¶ 2.

Accordingly, the Companies recommend the FCC adopt the following reforms:

- (1) Exempt from referral to Team Telecom certain categories of applications, particularly those where the foreign ownership already has undergone Team Telecom review and there has been no material change in the ownership;
- (2) Adopt a definitive timeframe within which the Team Telecom review process must be completed, upon expiration of which the FCC will proceed to grant the application;
- (3) Limit any supplemental information requirements to ensure they are within Team Telecom's scope of expertise and require such information be provided directly to Team Telecom;
- (4) Clarify and limit the proposed certification requirements to avoid the adoption of data localization obligations that go beyond legal requirements and will be contrary to United States commerce and trade policy and
- (5) Implement communications channels, including identifying contact information for Team Telecom personnel involved in application review, to improve process transparency.

II. THE COMPANIES STRONGLY SUPPORT THE FCC'S EFFORTS TO PROVIDE TRANSPARENCY AND CERTAINTY IN THE TEAM TELECOM REVIEW PROCESS

The Companies applaud the FCC's efforts to bring clarity, certainty and efficiency to the process by which applications involving foreign ownership are referred to, and reviewed by, Team Telecom.

A. The Current Team Telecom Review Process Lacks Certainty and Transparency

The Commission's International Bureau (Bureau) is tasked with reviewing and approving applications requesting authorization to provide international telecommunications, to construct and operate submarine cable systems, and for subsequent transactions involving such international licensees.⁸ Where these applications involve threshold levels of foreign ownership,

⁸ See, e.g., 47 C.F.R. §§ 1.767, 63.18, 63.24.

the Bureau temporarily suspends its review and the application is referred to Team Telecom to review for national security concerns.⁹ It is at this point that the transparency of the review process and certainty of the application approval timeframe is lost to both applicants and the FCC itself¹⁰ as, unlike Commission and Bureau reviews, Team Telecom’s review is not subject to regulation or statutes which could serve to provide clarity and certainty to the process. FCC Commissioner O’Rielly succinctly described the problems with the Team Telecom review process: “[o]nce transaction applications are submitted, there is little to no information available to the Commission, much less to applicants, on status or potential areas of concern, no timeline for conclusion, and way to discern which agency, if any, has concerns.”¹¹

B. The Team Telecom Review Process May Be Discouraging Foreign Investment in United States Carriers

The uncertainty of the application approval timeframe and the costs of deploying resources to respond to Team Telecom’s information requests during the review process also may have the unintended effect of discouraging foreign investment in United States entities. Such foreign investors may face challenges explaining to their shareholders or management the lack of a definitive timeframe for approval and the associated delays in initiating operations or closing a transaction. With a plethora of alternative global investment opportunities available, it may be a challenge to justify the lengthy wait for Team Telecom approval.¹² This outcome

⁹ See NPRM, ¶ 13.

¹⁰ See NPRM, ¶ 11.

¹¹ See Michael O’Rielly, “Team Telecom Reviews Need More Structure”, FCC Blog (Sept. 18, 2015, 2:18 PM), <https://www.fcc.gov/news-events/blog/2015/09/18/team-telecom-reviews-need-more-structure>.

¹² See Bruce Andrews, Deputy Secretary, U.S. Department of Commerce, Remarks at FDI Frontlines Coalition Event (June 22, 2016), <https://www.commerce.gov/news/deputy-secretary-speeches/2016/06/us-deputy-secretary-commerce-bruce-andrews-delivers-remarks-2> (“Our nation’s ability to attract FDI has never been more important. In today’s global economy, capital is more mobile than ever. Decades ago, states across America competed against each other for business. Today, the entire country is competing against the rest of the world. Put simply: there is a global race for capital.”).

seems at odds with the message of President Obama’s administration, which has been positive and welcoming of foreign investment.¹³ As the Deputy Secretary of Commerce recently noted in prepared remarks:

[W]hile the United States is already a magnet for global investment, we must continue to make the case that America is the right place for a global investor to open their next factory, their next sales office, or their next R&D center. That’s where SelectUSA comes in. At the Department of Commerce, our SelectUSA team works to make the process of investing in America as easy as possible. We provide regional economic data to help guide investment decisions, we connect foreign investors to economic development organizations from across the country, and we help foreign companies navigate the U.S. regulatory system.¹⁴

The Team Telecom review process must be reformed to eliminate these disincentives to foreign investment in U.S. carriers.

C. The Companies Support the Commission’s Timely Reform Efforts and Urge Adoption of Reforms that Promote, and Not Hinder, the FCC’s Goals of Creating an Efficient and Transparent Review Process

The Commission’s adoption of the NPRM, in response to the National Telecommunications and Information Administration’s (NTIA) May 2016 letter requesting the Commission adopt new application information requirements,¹⁵ is a critical step toward resolving

¹³ See, e.g., President Barack Obama, Remarks at the 2016 SelectUSA Investment Summit (June 20, 2016), <https://www.whitehouse.gov/the-press-office/2016/06/20/remarks-president-2016-selectusa-investment-summit> (“In today’s world, where business doesn’t stop at borders, and when trade is how we shape economic change to our advantage, when the term “global economy” is redundant because of global supply chains being tied into every element and every aspect of our lives, these partnerships are the keys to success for all of us no matter where we live, no matter if you’re a small startup or a major multinational. As the local economic development experts here all know, communities that open their doors to foreign investment create more jobs and economic activity than those that don’t.”).

¹⁴ See Bruce Andrews, Deputy Secretary, U.S. Department of Commerce, Remarks at FDI Frontlines Coalition Event (June 22, 2016), <https://www.commerce.gov/news/deputy-secretary-speeches/2016/06/us-deputy-secretary-commerce-bruce-andrews-delivers-remarks-2>.

¹⁵ 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 (May 10, 2016) (“NTIA Letter”).

the challenges of the Team Telecom review process. In particular, the Companies applaud the timeliness of the Commission's issuance of the NPRM a mere three (3) months after NTIA's request was submitted.¹⁶ The Companies strongly support the Commission's stated goals of "establish[ing] ways to streamline the review process and increas[ing] transparency while continuing to ensure that any national security, law enforcement, foreign policy, and trade policy concerns receive consideration."¹⁷ The Companies recognize that national security is of paramount concern to Team Telecom and the importance of the Team Telecom application review process in meeting that goal. The Commission's proposed reforms endeavor to strike a balance between ensuring Team Telecom's security concerns are addressed and providing transparency and certainty in the application review process. However, some of the NPRM's proposals raise concerns among the Companies as they appear to stray from, and possibly hinder, the Commission's goal of fostering an efficient and expeditious application review process. Certain of the NPRM proposals will impose additional regulatory burdens on applicants without providing any concomitant benefit of increased transparency or efficiency in the Team Telecom review process. Proposals such as those requiring applicants to provide financial statements and identify U.S.-affiliate regulatory enforcement actions¹⁸ require more work by applicants but do not provide new insight into Team Telecom's application review considerations. The Companies hope the Commission refrains from such distractions and remains focused on adopting only those reforms that advance the Commission's goals.

¹⁶ In fact, the International Bureau released a Public Notice seeking comment on the NTIA letter just two days after the Commission received it. *See* NPRM, ¶ 11.

¹⁷ NPRM, ¶ 10.

¹⁸ *See* NPRM, App'x D.

III. THE COMPANIES SUPPORT EXEMPTION FROM TEAM TELECOM REVIEW, AND THE PROPOSED ADDITIONAL APPLICATION INFORMATION REQUIREMENTS, FOR CERTAIN CATEGORIES OF APPLICATIONS

The NPRM notes the Commission's current practice of referring all applications with reportable levels of foreign ownership to Team Telecom for review¹⁹ and proposes that such applicants be required to provide, with their applications, the substantial categories of data typically required during the Team Telecom review process.²⁰ The Commission solicited comment on whether there should be exceptions to its referral practice, highlighting scenarios such as when the applicant has an existing Letter of Assurances (LOA) or National Security Agreement (NSA) or for *pro forma* transactions that do not result in change of the applicant's ultimate ownership.²¹

The Companies strongly urge the Commission to adopt categorical exemptions from the automatic referral practice and additional information submission requirement. Specifically, the Companies recommend the following applicants not be subject to referral to Team Telecom review absent a material change in foreign ownership: (i) applicants already subject to an NSA or LOA; (ii) applicants that have undergone Team Telecom review and Team Telecom determined it had no objections to the foreign ownership; or (iii) non-substantive, *pro forma* transactions. These exemptions would provide applicants with increased certainty

¹⁹ NPRM, ¶ 13

²⁰ See NPRM, ¶ 18. Specifically, applicants are required to provide the following information: (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.

²¹ See NPRM, ¶¶ 21, 47.

regarding the timeframe for application approval as the application would be approved in accordance with the FCC's applicable regulatory regime.²²

The NPRM proposals also reflect NTIA's request that applicants be required to submit, with the application filing, detailed information to aid Team Telecom's assessment of whether an application may raise national security concerns.²³ The Companies suggest the Commission conclude, and adopt rules reflecting, that to the extent an applicant comes within an exemption from automatic referral to Team Telecom, there is no need for the applicant to provide any additional information with its application.

A. Requiring an Applicant to Repeat Team Telecom Review, Where There Has Been No Material Change in Foreign Ownership, Is Not an Efficient Use of Team Telecom's Time and Resources and Is Not Necessary to Protect Against National Security Concerns

The stated purpose of Team Telecom's review of an application is to identify any "national security, law enforcement, foreign policy, and trade policy concerns" associated with the foreign ownership of a U.S. entity.²⁴ These reviews often take several months – in some cases taking nearly a year²⁵ - and involve the submission of detailed information regarding, including but not limited to, the applicant, its services, facilities, relationships with foreign entities and information protection procedures.²⁶ Accordingly, any Team Telecom review of an

²² See, e.g., 47 C.F.R. §63.12 (providing for automatic approval of applications for International Section 214 authority 14 days after publication on public notice); 47 C.F.R. §1.767(i) (providing for Commission action on application for submarine cable landing license within 45 days of application publication on public notice).

²³ NPRM, ¶¶ 17-18.

²⁴ NPRM, ¶ 28.

²⁵ See e.g., *See, e.g., Routertrader, Inc.*, Application for authority to provide resold international service, ITC-214-20140319-00096 (2015) (11 months from application acceptance to FCC grant; resulted in LOA with Federal Bureau of Investigation); *Vista Latina Technologies, LLC*, Application for authority to provide facilities-based and resold international service, ITC-214-20140616-00181 (2015) (10 months from application acceptance to FCC grant; resulted in LOA with Federal Bureau of Investigation).

²⁶ NPRM, ¶ 7.

applicant reflects a thorough consideration of the applicant and results in either the applicant executing an LOA or NSA with Team Telecom or a determination that Team Telecom has no objection to the foreign ownership without the execution of such a document.²⁷ The Companies assert that, 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. Team Telecom’s interest in reviewing an application is triggered by an applicant’s foreign ownership. Consequently, subsequent transactions involving an applicant that has already undergone Team Telecom review and involve no material change in that applicant’s foreign ownership, should not trigger a new review.

B. Eliminating Unnecessary and Duplicative Team Telecom Reviews Creates Certainty in the Application Approval Process

The categorical applicant exemptions from referral to Team Telecom proposed by the Companies will provide qualifying applicants with certainty regarding the application approval process. Applicants will know, at the time of submitting an application, the statutory timeframe within which the application should be granted.²⁸ This certainty and standardized application approval timeframe can encourage a carrier to enter into business transactions or seek authorizations to expand their service offerings. In contrast, the lack of a definitive timeframe for the review process can have wide-ranging effects including hindering an applicant’s business operations planning and, particularly concerning is that such uncertainty can make it difficult to

²⁷ NPRM, ¶ 8.

²⁸ See, e.g., 47 C.F.R. §63.12 (providing for automatic approval of applications for International Section 214 authority 14 days after publication on public notice); 47 C.F.R. §1.767(i) (providing for Commission action on application for submarine cable landing license within 45 days of application publication on public notice).

obtain, and potentially cause the loss of, financing. When applicants know the timeframe within which their applications will be approved, they may be more likely to deploy new or improved service offerings resulting in more competitive markets. In addition, Applicant costs would decrease significantly as the applicants are no longer required to devote time and resources to responding to data requests during the Team Telecom review process. As importantly, the review exemptions would free up Team Telecom time and resources to devote to other uses.

IV. THE COMPANIES SUPPORT THE ADOPTION OF A DEFINITIVE TIME PERIOD FOR COMPLETION OF TEAM TELECOM REVIEW

One of the key criticisms of the Team Telecom review process is the length of the review and the uncertainty regarding when a review will be completed. Accordingly, the Companies strongly support the FCC's efforts to bring certainty to the application review process by adopting a definitive timeframe with specific milestone dates. However, the Companies are concerned that the FCC's proposal enables Team Telecom potentially to extend the application review period indefinitely. Consequently, the Companies propose an alternative review timeframe, similar to that mandated in Committee on Foreign Investment in the United States (CFIUS) reviews, containing strict deadlines that cannot be extended.

A. The FCC's Proposed Team Telecom Review Timeframe is Laudable but Does Not Provide Sufficient Certainty for the Review Process

The Companies support the Commission's proposal to adopt a definitive timeframe for review but think the Commission's proposal does not go far enough to provide the necessary certainty in the Team Telecom review process. The FCC has acknowledged that "Executive Branch review can add several months of processing time for an application"²⁹ and the Bureau's database confirms that some applications subjected to Team Telecom review have

²⁹ NPRM, ¶ 9.

taken nearly a year before approval was granted.³⁰ The FCC's proposal of an initial 90-day review period with a single 90-day extension upon Team Telecom demonstration of complex issues warranting an extension for a potential total of 180 days³¹ is laudable but is both too lengthy and contains provisions that can be used to extend the review process indefinitely. Specifically the FCC proposal requires applicants to respond to follow-up Team Telecom questions within seven (7) days and an applicant's request for an extension of time to respond would stop the review clock for the duration of the extension.³² The Companies have concerns that the review process can inadvertently be extended by numerous follow-up information requests. This ability to "stop the clock", potentially indefinitely, through repeated and voluminous data requests essentially negates the FCC's proposed review timeframe and must be avoided. Adopting an approval timeframe, similar to the CFIUS review timeframe, will allay these concerns.

B. The Commission Should Adopt an Approval Timeframe Similar to that Used in CFIUS Reviews

The Companies propose the Commission adopt a timeframe structure for Team Telecom review similar to that in CFIUS reviews of transactions involving foreign investment. CFIUS, comprised of nine agencies which overlap significantly with the Team Telecom agencies,³³ is provided an initial 30 day review period, with an additional 45 days available

³⁰ See, e.g., *Routertrader, Inc.*, Application for authority to provide resold international service, ITC-214-20140319-00096 (2015) (11 months from application acceptance to FCC grant; resulted in LOA with Federal Bureau of Investigation); *Vista Latina Technologies, LLC*, Application for authority to provide facilities-based and resold international service, ITC-214-20140616-00181 (2015) (10 months from application acceptance to FCC grant; resulted in LOA with Federal Bureau of Investigation).

³¹ NPRM, ¶¶36, 39.

³² NPRM, ¶ 46.

³³ The following agencies are involved in both CFIUS and Team Telecom reviews: Department of Justice, Department of Homeland Security, Department of Commerce, Department of Defense, Department of State, Office of the U.S. Trade Representative and Office of Science & Technology Policy.

should CFIUS determine additional investigation is required, to coordinate and complete comprehensive reviews of often complex financial transactions.³⁴ The Companies urge the Commission to adopt a review period of an initial 30-day period with a single 45-day extension upon a Team Telecom determination that an application requires further review by Team Telecom. Absent a Team Telecom decision within the 75-day timeframe, the application would be deemed granted. To expedite the Team Telecom review process and limit the need for, and delays associated with, extensive follow-up questions, applications that do not meet the Companies' proposed criteria for exemption from Team Telecom review, would include additional information. Specifically, such applicants would provide to Team Telecom the additional information proposed by NTIA with the exception of information regarding financial conditions and circumstances and regulatory compliance.

C. No Single Agency Should be Able to Delay the Team Telecom Review Process

The Companies recognize that Team Telecom is comprised of several agencies, each with its own priorities, however, a single agency should not be able to delay conclusion of Team Telecom's review. The Team Telecom agencies should be required to reach a review decision by consensus and the reformed review process should emphasize that an application will be deemed granted absent Team Telecom objection by review deadline. The CFIUS review process confirms that a collection of agencies can navigate consideration of individual member agency priorities while meeting statutory review deadlines.

³⁴ See 31 C.F.R. §§ 800.502, 800.505, 800.506. The CFIUS rules permit, in certain circumstances, referral of an application to the President for decision, thereby adding 15 days to the standard 75 day review period. See 50 U.S.C.A. § 4565(d)(2).

V. **THE COMPANIES SUPPORT THE ADOPTION OF MODIFIED SUPPLEMENTAL INFORMATION REQUIREMENTS BUT RECOMMEND THE COMMISSION DECLINE TO ADOPT THE CERTIFICATION REQUIREMENTS**

The Companies understand that Team Telecom’s national security interests require information beyond what is included in FCC applications and agree with NTIA and the Commission that submission of supplemental information and certifications at the time an application is filed can help to expedite the Team Telecom review process. However, any additional information categories should be limited to exclude those, such as financial fitness and regulatory compliance, which appear to exceed Team Telecom’s area of expertise. Moreover, these supplemental information requirements should not be required for any applications exempted from Team Telecom review as proposed by the Companies in Section III, *supra*. The Companies recommend any supplemental information be provided directly to Team Telecom to avoid an unnecessary strain on FCC resources caused by additional review and processing time, including the need to implement measures to protect the confidentiality of the information.

A. **The Proposed Supplemental information Requirements Should Exclude Topics Not Within Team Telecom’s Subject Matter Expertise**

The NTIA categories of information that the NPRM proposes applicants include with initial application submissions appear to exceed the scope of Team Telecom’s area of expertise and purview. Specifically, the Companies believe the financial conditions and circumstances and regulatory compliance information categories³⁵ do not provide insight into an applicant’s national security risk and are not usually the subject of Team Telecom’s review. To the Companies’ understanding, financial and legal compliance issues are not addressed in Team Telecom’s standard “triage” questionnaire. In contrast, NTIA’s other proposed information

³⁵ NPRM, ¶ 18.

categories, such as relationships with foreign entities and business and operational structure do appear relevant to a national security review and are often included in Team Telecom’s “triage” questions. The Companies agree that the submission of supplemental information is helpful to Team Telecom’s review, but urge the Commission to limit the requirements by excluding the financial and legal compliance categories.

B. The Proposed Certifications Appear to Exceed Legal Requirements or Duplicate Existing Requirements and Should Not Be Mandated in Applications

In addition to requesting that applicants be required to provide supplemental information, NTIA also seeks a requirement that applicants make specific certifications and the Commission seeks comment on the need for, and scope of, these certifications.³⁶ The Companies question the need for, and scope of, the certifications. In summary, the three proposed certifications require applicants to: (i) comply with the Communications Assistance for Law Enforcement Act (CALEA); (ii) make communications and related records available in a location and form that subjects them to legal process under U.S. law; and (iii) designate a U.S. point of contact for legal process.³⁷ The Companies are particularly concerned about the second certification which appears to obligate applicants to “localize” data to subject it to U.S. legal process or require data availability beyond what is legally required. As other commenters have noted in initial comments on NTIA’s Letter, as drafted, this certification is very broad and potentially can be interpreted to require carriers to change data format such as by decrypting encrypted data or to force localization of data.³⁸ In addition to being inconsistent with recent

³⁶ NPRM, ¶¶ 31, 35.

³⁷ NPRM, ¶¶ 30-31.

³⁸ *See, e.g.*, Comments of T-Mobile, IB Dkt No. 16-155, at 10-11 (May 23, 2016) (noting that the certification can be interpreted to “be read as prohibiting encryption, establishing duties to decrypt, and requiring disclosure to government agencies that is not legally compelled.”). *See also, e.g.*, Comments of Telecommunications Companies, IB Dkt. No. 16-155, at 12 (suggesting the FCC “clarify that the certification extends only to

Department of Commerce statements supporting the free global exchange of information,³⁹ and with the United States Trade Representative position supporting digital trade,⁴⁰ this localization requirement can subject carriers to significant additional costs and inefficiencies, particularly for global carriers and cloud providers that lose the ability to leverage their international communications data storage solutions. If adopted, this certification should be clarified to require applicants to comply with existing laws. The Companies assert the CALEA compliance certification is unnecessary as most, if not all, telecommunications providers licensed in the United States are subject to CALEA compliance.⁴¹ Moreover, both CALEA and the FCC's Form 499A carrier registration require carriers to identify a point of contact for legal process.⁴² As 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 the duplicative certification requirements.

obligations otherwise required by law” and noting that “[f]orced localization is antithetical to this policy favoring the free flow of information.”).

³⁹ See, e.g., Alan Davidson, Commerce Department, “The Commerce Department’s Digital Economy Agenda,” <https://www.commerce.gov/news/blog/2015/11/commerce-departments-digialeconomy-agenda> (Nov. 9, 2015); Commerce Department Digital Economy Agenda, http://www.nist.gov/director/vcat/upload/Davidson_VCAT-2-2016_post.pdf at 5 (Feb. 2016).

⁴⁰ This year USTR identified as key barriers to digital trade data localization requirements in Russia and Indonesia. USTR notes that “Russian law requires that certain data collected electronically by companies on Russian citizens be processed and stored in Russia. For many U.S. companies, ensuring local storage and processing is either technically or economically infeasible, forcing them to operate with significant legal uncertainty.” <https://ustr.gov/about-us/policy-offices/press-office/fact-sheets/2016/march/fact-sheet-key-barriers-digital-trade>.

⁴¹ See, e.g., *In re Communications Assistance for Law Enforcement Act and Broadband Access and Services*, ET Docket No. 04-295, RM-10865, Second Report and Order and Memorandum Opinion and Order, 21 FCC Rcd. 5360 (2006) (extending CALEA compliance to facilities-based broadband Internet access providers and providers of interconnected Voice over Internet Protocol (VoIP)); see also, e.g. *In re Communications Assistance for Law Enforcement Act and Broadband Access and Services*, ET Docket No. 04-295, RM-10865, Notice of Proposed Rulemaking and Declaratory Ruling, 19 FCC Rcd 15676, ¶ 1 (2004).

⁴² See, e.g., 47 C.F.R. §§ 1.20003(b)(4)(ii), 1.47(h) and 64.1195.

VI. IMPROVED COMMUNICATION BY TEAM TELECOM IS KEY TO PROVIDING TRANSPARENCY DURING THE REVIEW PROCESS

The Companies also support the Commission's proposal that Team Telecom identify contact information for inquiries as a means of providing greater transparency during the application review process.⁴³ The NPRM suggests Team Telecom could identify a single point of contact within each agency or a single agency for applicant and Commission inquiries.⁴⁴ The current Team Telecom review process requires applicants to provide information in response to initial questions standardized by application type and sometimes follow up questions.⁴⁵ However, this process is essentially one-sided as applicants typically are not provided with contact information for someone within each of the Team Telecom agencies that can answer inquiries. 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. Absent such contact information, Applicants can only guess at Team Telecom's areas of focus regarding the application, based on follow-up questions received.

⁴³ NPRM, ¶ 37.

⁴⁴ NPRM, ¶ 37.

⁴⁵ NPRM, ¶ 45.

VII. CONCLUSION

For the foregoing reasons, the Companies urge the Commission to adopt the Companies' proposals identified herein as a means of bringing greater clarity, transparency and certainty to the Team Telecom review process.

Respectfully Submitted,



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