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 VERIZON

As the Commission considers streamlining its process for referring certain proceedings to the Executive Branch for review – a laudable goal – it should be careful not to impose new obligations that will unduly burden applicants. The Commission has appropriately proposed new transparency and timing constraints on the referral and review process. It should additionally work to narrow the types of license applications it refers to the Executive Branch to just those instances where there is a cognizable foreign ownership concern. Importantly, transactions where there is no cognizable foreign nexus (such as pro forma transactions, or transactions when the parties are purely domestic or have an existing authorization for their foreign ownership), should not be referred, even if there is transfer of an international Section 214 authority. Further, the Commission should refrain from creating new obligations or certifications that would apply to all applicants and which would create undue burdens or unnecessary delay.

A. The Commission Should Streamline Its Rules To Provide Additional Transparency, Timeliness, and Boundaries on the Scope of Referrals

We support the Commission's decision to pursue additional transparency and timing limits on the Executive Branch review process for international licenses and authorizations with reviewable levels of foreign ownership. It should additionally ensure that it does not expand the

types of transactions referred to the Executive Branch beyond those with significant foreign ownership implications.

Historically, the Commission referred a subset of applications to transfer licenses to the Executive Branch – also called "Team Telecom" – for review as part of the Commission's overall assessment of whether a license transfer or acquisition is in the public interest.[1] While the referral process was originally intended only to apply "in very rare circumstances," in recent years, referrals under this program have increased.[2] The Commission has since expanded its referral to include not just international licenses for which a transferor or transferee has reportable foreign ownership, but also to transactions where domestic parties seek to transfer domestic or international Section 214 authority or a submarine cable license.[3] Today, referrals average 18 percent of all international Section 214, submarine cable, and Section 310(b) applications.[4] The referral and subsequent review can often add months to the processing time for an application.[5]

In instances where the Commission will continue to refer applications to Team Telecom, the *NPRM* thus appropriately suggests new deadlines to provide applicants with greater certainty

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[1] *See 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, ¶¶ 6-8 (June 24, 2016) ("*NPRM*").

[2] *Id*. ¶ 4.

[3] *Id*. ¶ 6.

[4] *Id*. ¶ 4.

[5] *Id*. ¶¶ 4, 9; *see also* Comments of CTIA, *NTIA Letter Regarding Information and Certifications from Applicants and Petitioners for Certain International Authorizations*, IB Docket No. 16-155, at 2 (May 23, 2016) ("CTIA Comments").

about the timing of Executive Branch review.[6] The Commission should adopt its proposed 90-day timeframe, though note that reviews can, in some cases, take less time. If Team Telecom has not otherwise advised the Commission at the end of those 90 days, the Commission should act on an application. Additionally, the Commission should permit applicants to submit responses to Team Telecom requests directly to the Executive Branch within a reasonable time after filing their application with the FCC. These proposals to make the process transparent and timely should generally improve the review overall for parties and the agencies involved.

But the Commission should also be careful going forward not to refer applications without significant foreign ownership implications. Thus, the Commission should *exclude* from referral applications in which (1) there is no cognizable foreign nexus (such as *pro forma* transactions);[7] or (2) the parties are themselves entirely domestic or have an existing declaratory ruling authorizing their foreign ownership[8] or an agreement with the Executive Branch.[9] In these circumstances, even if the parties are transferring an international Section 214 license, there is no fundamental foreign ownership interest, and thus, no reason for further Team Telecom review.[10]

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[6] *See NPRM* ¶ 11; *see also* CTIA Comments at 3-4.

[7] *NPRM* ¶ 47 & n.119 (for *pro forma* transactions, "by definition, there is no change in the ultimate control of the licensee" and the process allows licensees to file notification of the transaction after the transfer is completed). *See* 47 C.F.R. §63.24(f).

[8] *See, e.g.*, *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*, Second Report and Order, 28 FCC Rcd 5741 (2013).

[9] *NPRM* ¶ 21. *See also id*. ¶ 7 (describing letters of assurance (LOAs) and national security agreements (NSAs)).

[10] We include both domestic transfers of 214 authorizations, like those the Commission proposes to excluded, and applications to transfer international licenses between domestic entities that do not raise questions of foreign ownership – or that fall into the other exceptions we describe. *NPRM* ¶ 14.

Since Team Telecom's review is limited to questions of national security, law enforcement, foreign policy, and trade policy that may arise from foreign ownership, it should not need to review applications that do not involve foreign ownership. Similarly, Team Telecom should not need to re-review parties whose foreign ownership they have previously approved. Removing these duplicate referrals will improve efficiency and timely review of applications for all.

B. The Commission Should Reconsider or Limit Its Proposed Certification Requirements and Expanded Document Collections

In addition to its streamlining proposals, the *NPRM* also proposes new certification and data collection requirements. These proposed changes may increase the burden on applicants, rather than streamline the process, and the Commission should reject them, particularly for applicants in transactions not referred to the Executive Branch.

First, as a gating matter, the Commission should not require the proposed certifications for all applications. As CTIA and others have previously noted, the proposed certifications and data collection requirements are inappropriate as a matter of law.[11] Not only do Applicants already provide substantial information when they file transactions, the Commission and the Executive Branch have the ability to request specific information tailored to particular cases should it be warranted.[12]

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[11] *See* CTIA Comments at 6-7; Comments of T-Mobile, *NTIA Letter Regarding Information and Certifications from Applicants and Petitioners for Certain International Authorizations*, IB Docket No. 16-155, at 10-11 (May 23, 2016) ("T-Mobile Comments"); Comments of USTelecom, *NTIA Letter Regarding Information and Certifications from Applicants and Petitioners for Certain International Authorizations*, IB Docket No. 16-155, at 4 (May 23, 2016); Comments of Wiley Rein on Behalf of Certain Telecommunications Companies, *NTIA Letter Regarding Information and Certifications from Applicants and Petitioners for Certain International Authorizations*, IB Docket No. 16-155, at 11-13 (May 23, 2016) ("Wiley Rein Comments").

[12] *See, e.g.*, Letter from FCC International Bureau to Counsel for Sprint and SoftBank, *Applications of Sprint and SoftBank*, IB Docket No. 12-343 (Jan 24, 2013).

The Commission should thus reconsider its proposal to require all applicants for international licenses and authorizations to certify to compliance with CALEA and other legal process requirements.[13] Because the carriers obtaining licenses are already subject to CALEA and other lawful process requirements, the purpose and structure of these duplicative certifications is unclear and could create legal confusion or uncertainty.[14] Similarly, the proposal seeks overly broad information, asking questions about the applicants' overall business model for the next five years, the name of financial institutions providing support and audited financial statements, information about other licenses held by applicants and affiliates, and information about where records are located and may be made available. Parties have already raised legitimate concerns about whether the proposed certifications and data requests might inadvertently expand carrier obligations under or conflict with existing laws.[15] And regardless, the information sought would be burdensome and time-consuming to obtain, particularly when weighed against the benefits of moving routine or purely domestic transactions quickly. The Commission should therefore not establish any certification requirement in its licensing regime

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[13] *See NPRM* ¶¶ 30-31.

[14] The Executive Branch agencies recognize that there are other "current laws and obligations applicable to applicants" and assert such certifications are intended to "ensure that the applicants focus on those laws and obligations at the outset of the application process." Letter from Lawrence E. Strickling, Assistant Secretary for Communications & Information, U.S. Department of Commerce, to Marlene H. Dortch, Secretary, FCC, at 5 (May 10, 2016) attached to *NTIA Letter Regarding Information and Certifications from Applicants and Petitioners for Certain International Authorizations*, Public Notice, 31 FCC Rcd 4677 (2016); *NPRM* ¶ 34.

[15] *See* T-Mobile Comments at 11("The proposed certification language also appears to be trying to improperly enforce localization and repatriation in the United States."); CTIA Comments at 5-7; Wiley Rein Comments at 3, 11-13.

that creates new or separate obligations that would either duplicate or expand pre-existing and separate legal requirements.[16]

Second, even if the Commission finds that some type of new certification or data collection is appropriate – and it should not – it should at most only impose those obligations on applications that are subject to referral. Non-referred applications by definition do not pose the type of potential risks that might justify these requirements. Yet the *NPRM* proposes to require *all* applications – even those without reportable foreign ownership – to include certifications.[17] This approach would improperly expand review and create new burdens on applicants who do not have foreign ownership – and thus are wholly detached from the purported goal of Team Telecom review. The Commission should align any requirements for certifications with the more cabined approach proposed here for referrals to the Executive Branch. Accordingly, certifications and data collection should not be required for transactions that are not referred, including those transactions, as discussed above, where the applicant either has no foreign ownership or when its ownership has previously been approved.[18] The Commission should instead look for ways to avoid unnecessary collection and review, such as its common sense idea to avoid collecting duplicative information when a company already has provided information that is unchanged through a national security agreement or other mechanism.[19]

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[16] *NPRM* ¶ 34.

[17] *NPRM* ¶ 33.

[18] *See id*. ¶ 47.

[19] *Id*. ¶ 21.

CONCLUSION

Verizon supports the Commission's efforts to streamline certain aspects of its processes for applications involving foreign ownership. That streamlining, however, should ensure that referrals to the Executive Branch do not apply where foreign ownership review is unnecessary. The Commission should also eliminate or restrict its proposal to require certifications on international licenses and authorizations.

Respectfully submitted,

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