

**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 INCOMPAS**

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**COMMENTS OF INCOMPAS**

INCOMPAS, by its undersigned counsel, submits these Comments in response to the Commission’s Notice of Proposed Rulemaking on reforming and streamlining the process by which specified Executive Branch agencies provide input to the Commission on certain types of applications and petitions involving reportable foreign ownership.<sup>1</sup> The Executive Branch agencies that are involved in this process—a process that evaluates potential national security and law enforcement concerns that are implicated by foreign ownership—collectively are referred to as “Team Telecom.”

**INTRODUCTION AND SUMMARY**

INCOMPAS, the preeminent national industry association for providers of Internet and competitive communications network services, strongly supports the Commission’s goal of “establish[ing] ways to streamline the review process and increase transparency while continuing to ensure that any national security, law enforcement, foreign policy, and trade policy concerns receive consideration.”<sup>2</sup> To achieve this objective, the Commission should make the Team Telecom process more transparent, timely and predictable, with respect to both the information

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<sup>1</sup> *Process Reform for Executive Branch Review of Certain FCC Applications and Petitions Involving Foreign Ownership*, NPRM, IB Docket No. 16-155, FCC 16-79 (June 24, 2016) (“NPRM”).

<sup>2</sup> *Id.* ¶ 10.

required of applicants and petitioners and the timeframe for Team Telecom’s review. The Commission should not require applicants or petitioners to submit information or make certifications that go beyond legitimate national security or law enforcement concerns that relate to foreign ownership. Rather, the Commission should require no more information of applicants or petitioners than is necessary to undertake the reviews required to assess and process an application or petition. The Commission also should ensure that any new rules it adopts preserve the confidentiality of the sensitive operational, commercial, and personal information that may be required of applicants and petitioners as part of the Team Telecom review process. These various principles should be enshrined in the Commission’s rules in the following ways:

- **Team Telecom reviews should be subject to a firm 90-day deadline.** As the NPRM proposes,<sup>3</sup> Team Telecom should be required to complete its review of any application or petition within 90 days of the Commission’s release of a public notice accepting that application or petition for filing. If Team Telecom does not raise a concern over the application or petition within the initial 90-day period, then the Commission should deem Team Telecom’s review complete and without objection, and the Commission should proceed to act on the application or petition.
- **The initial 90-day deadline should be extended only in rare circumstances.** As proposed in the NPRM,<sup>4</sup> the initial 90-day review period should be extendable at Team Telecom’s express, written request for an additional appropriate period that does not exceed 90 days. But the Commission should set a high bar for such extensions. Specifically, extensions should be granted only when Team Telecom can demonstrate that (1) material and significant new information was provided or came to light after the application or petition was placed on public notice and Team Telecom was not provided with a sufficient period of time to review it within the initial 90-day period, or (2) a *force majeure* event, such as a government shutdown, prevented Team Telecom from completing its review within the initial 90-day period.

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<sup>3</sup> *Id.* ¶ 36.

<sup>4</sup> *Id.*

- **Only information that is relevant to legitimate national security and law enforcement concerns relating to foreign ownership or control of the facility in question should be required of applicants and petitioners.** Any standard set of questions that is asked of all applicants or petitioners should pertain only to matters that are directly relevant to the potential effect of foreign ownership on *bona fide* national security and law enforcement concerns. It should not, for example, include requests for audited financial statements or network information that extends beyond the agencies’ appropriate jurisdictional boundaries or the scope of the license or authorization at issue. If additional information is needed for application-specific reasons, then it should be sought by Team Telecom on a case-by-case basis—and it should be sought early enough in the process so as to not interfere with Team Telecom’s ability to complete its review within the initial 90-day review period.
- **The certification process should not be used to foist new or inappropriate legal obligations on applicants or petitioners.** Certain proposed certifications appear to require applicants or petitioners to certify that they comply with law enforcement access requirements that do not, in fact, apply to all types of communications providers. The Commission has no authority to expand those requirements.
- **Certain categories of highly sensitive data should be deemed presumptively confidential.** Information that pertains to network operation centers, security features, hiring practices, the identity of network personnel, non-public financial information, ownership at a granular level, and all personally identifiable information (“PII”) is highly confidential under any reasonable standard, and the Commission’s rules should not require parties to expend resources to justify presumptive confidential treatment for such information.
- **Applicants and petitioners should have the option of submitting certain information directly to Team Telecom without impeding the Commission from making a completeness determination and issuing a public notice.** 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. Parties instead should be permitted to certify that information not included in their filing with the Commission that is or will be material to Team Telecom’s review within the initial 90-day review period has been or will be furnished directly to Team Telecom.

**I. TEAM TELECOM REVIEWS SHOULD BE SUBJECT TO A FIRM 90-DAY DEADLINE, WITH LIMITED EXTENSIONS GRANTED ONLY IN RARE CIRCUMSTANCES**

**A. A 90-Day Review Process Would be Appropriate and Predictable**

Setting a firm, transparent and appropriate deadline for the completion of Team Telecom's review is critical to maintaining a regulatory environment conducive to network investment and deployment, and to the efficient and effective administration of the Commission's duties. As others in this docket have noted, the lack of transparency and uncertain time frames that today accompany the Team Telecom review process likely have delayed and deterred foreign investment in the United States,<sup>5</sup> and may well have contributed to decisions to land international submarine cables in Canada or Mexico rather than in the United States.

The Commission should take this opportunity to establish a more disciplined and predictable approach to the Team Telecom review process by requiring Team Telecom to complete its review of any referred application or petition no later than 90 days after the Commission releases its public notice accepting that application or petition for filing.<sup>6</sup> Given Team Telecom's longstanding familiarity with the facts and issues that have arisen in foreign ownership reviews over the last two decades, a 90-day review period should be sufficient for Team Telecom to assess any national security or law enforcement implications stemming from reportable foreign ownership. If Team Telecom does not raise concerns or request additional time for its review within this initial 90-day period (as discussed more fully below), then the

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<sup>5</sup> See NPRM ¶ 11 & n.31 (citing comments).

<sup>6</sup> *Id.* ¶ 36.

Commission should deem Team Telecom’s review complete and without objection, and the Commission should proceed to act on the application or petition accordingly.<sup>7</sup>

As the NPRM notes, the Committee on Foreign Investment in the United States (“CFIUS”)—which is composed of nearly all of the same agencies as Team Telecom<sup>8</sup>—completes its own national security review of transactions that involve foreign control of U.S. businesses within 90 days, a deadline that applies even to the most complex transactions and that incorporates a 15-day direct review period by the President, if necessary.<sup>9</sup> Given the 90-day timeframe under which CFIUS can—and does—routinely operate, it is reasonable to expect that Team Telecom do the same.

In the event that Team Telecom’s review is delayed by the failure of an applicant or petitioner to respond to a follow-up question or request for information within seven days, as the NPRM proposes,<sup>10</sup> the initial 90-day review period should be tolled until the relevant response is submitted. The application or petition should not be dismissed under these circumstances.<sup>11</sup> Tolling the initial 90-day review period would preserve the incentives of applicants and petitioners to submit timely responses to follow-up questions and requests, while recognizing that in many cases—such as when an application involves a consortium or a group of investors—

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<sup>7</sup> At the same time, the Commission should reaffirm that applications not currently referred to Team Telecom—such as applications that lack reportable foreign ownership—will continue to not be subject to the Team Telecom review process. *See id.* ¶ 13 (“We do not propose to expand the types of applications that we refer to the Executive Branch.”). As the NPRM notes, this has been the approach to date, and there is no reason to change it.

<sup>8</sup> *Compare id.* ¶ 6 n.16 (listing Executive Branch agencies to which the Commission refers applications) *with* “Composition of CFIUS,” U.S. Dep’t of the Treasury, <https://www.treasury.gov/resource-center/international/foreign-investment/Pages/cfius-members.aspx> (last visited Aug. 18, 2016).

<sup>9</sup> NPRM ¶ 41 & n.116.

<sup>10</sup> *Id.* ¶ 45.

<sup>11</sup> *Id.*

more than seven days may be needed to coordinate and compile responsive information. In such cases, tolling the 90-day review period when responsive information has not been provided would be both fair and efficient. It would avoid burdening the parties (and the Commission) with formal extension requests or potential dismissals, which in most cases would require the parties and the agencies to duplicate earlier efforts by, for example, refiling applications or petitions, reissuing public notices, and refiling comment submissions.

If an applicant or petitioner is unable to provide Team Telecom with responsive information within seven days of a request, it should be required to notify Team Telecom and the Commission in writing so that the Commission can easily and accurately track the status of the initial 90-day review period. In addition, to facilitate an efficient review process, applicants or petitioners that are part of a consortium or that involve multiple investors should be permitted to designate a single party as their representative and point of contact for Team Telecom review.

Submarine cables, for example, frequently are owned by a consortium of investors, and it is common for consortium members to submit a joint application for a license. Requiring each investor or consortium member individually to field and respond to Team Telecom requests in these circumstances would require considerable coordination and likely result in unnecessary confusion, both with respect to the substance of the responses themselves and with respect to keeping track of the various response deadlines and potential tolling considerations. For instance, if one consortium member does not respond to a question from Team Telecom within seven days, an issue could arise as to whether the 90-day review period is tolled for its co-applicants. Allowing entities in these and similar situations to designate a single point of contact

to coordinate with Team Telecom—which is the practice today—would help avoid this confusion.<sup>12</sup>

**B. Limited Extensions Should Be Permitted Only in Rare Circumstances, and Should Not in the Aggregate Exceed One Additional 90-Day Period**

On rare occasions, it may be appropriate to grant Team Telecom an additional appropriate period, no longer than necessary and never exceeding 90 days, to complete its review. But such extensions should be granted only in rare circumstances and should not exceed 90 days in the aggregate for any application or petition (or group of applications or petitions being considered together). Indeed, to maximize efficiency and predictability, extensions beyond the initial 90-day review period cannot—and should not—become the default position. Extensions should be possible only when (1) material and significant new information is provided to Team Telecom or comes to light after the application or petition has been placed on public notice and Team Telecom was not provided with a sufficient period of time to review it within the initial 90-day period, or (2) a *force majeure* event, such as a government shutdown, prevented Team Telecom from completing its review within the initial 90-day period. Under this approach, a meaningful change in the location of a submarine cable landing station or a controlling foreign investor would be considered material; a mere change in corporate name or location, or the addition of a consortium member or investor with a limited non-controlling interest, would not.

Any such extension should have to be sought from the Commission in writing and the extension request should have to explain the specific facts and circumstances that warrant it.<sup>13</sup>

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<sup>12</sup> As noted below in Section III, individual applicants still should be permitted to submit particularly sensitive responses directly to Team Telecom, in which case each responding party would advise the other parties that its response has been submitted.

Such requests also should have to be narrowly tailored (*i.e.*, they should be for periods of less than 90 days, as circumstances warrant), and the affected applicant(s) or petitioner(s) should have an opportunity to respond to such requests in writing before the Commission acts on them. Lastly, in no event should one or any combination of additional review periods extend beyond a total of 90 days after the initial review period ends (*i.e.*, the review period should never exceed 180 days in total).

Once its review is completed, Team Telecom should have to report its findings to the Commission as it does today by filing a letter in the relevant Commission docket(s). In the event Team Telecom presents a favorable recommendation, it should state either that it has not identified any issues that should prevent the Commission from processing the application or petition or that the issues it identified have been resolved through an agreement with the applicant(s) or petitioner(s) and should be reflected in a condition on a Commission grant.<sup>14</sup> In the event that Team Telecom asks the Commission to deny an application or petition, it should be required to file its request in the relevant docket(s) and articulate its concerns with sufficient specificity so as to permit the applicant(s) or petitioner(s) to respond to them.<sup>15</sup> As noted above, if Team Telecom fails to submit a filing (or an extension request) before the end of the initial 90-day review period, then the Commission should deem Team Telecom's review complete and without issue and should proceed to process the application or petition.

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<sup>13</sup> Sensitive information disclosed or identified in connection with this process would have to be subject to appropriate protections.

<sup>14</sup> NPRM ¶ 8.

<sup>15</sup> In all cases, Team Telecom should be asked to seek, and the Commission should readily grant, confidentiality protection for all sensitive materials incorporated or referenced in its filing (with the aid of the presumption discussed below), and Team Telecom should be asked to consult with the applicant prior to filing in cases of doubt over whether certain information qualifies as confidential.

By establishing a predictable, reasonable timeframe and clear standards for Team Telecom review, the Commission will encourage a broader range of investment in telecommunications and media companies and U.S. submarine cable facilities, thereby expanding the capital available to such companies and for endeavors that focus on developing and deploying the next generation of infrastructure and service to American consumers.

## **II. APPLICANTS AND PETITIONERS SHOULD BE REQUIRED TO PROVIDE ONLY THE INFORMATION AND CERTIFICATIONS NECESSARY FOR THE COMMISSION AND TEAM TELECOM TO PERFORM THEIR ASSESSMENTS**

### **A. Standardized Questions Should Seek Only Necessary and Appropriate Information**

The NPRM asks whether applicants with reportable foreign ownership and petitioners seeking a foreign ownership determination should be required to submit, with their application or petition, responses to “a publicly available set of standardized questions,” which “will help to streamline the Executive Branch review process.”<sup>16</sup> Streamlining the foreign ownership review process with standardized questions can make sense, but only if applicants and petitioners are required to respond to *appropriate* questions—those that are consistent with the scope of the foreign ownership review process.

Applicants and petitioners should not be required to submit information that goes beyond the scope of the foreign ownership review processes undertaken today by the Commission and Team Telecom. NTIA’s sample questionnaire proposes that applicants be required to provide “[t]he name of any and all financial institutions providing support or other assistance” and “[a]udited financial statements from the preceding accounting year, or suitable equivalent.”<sup>17</sup> To

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<sup>16</sup> NPRM ¶ 23. For the reasons discussed in Section III below, applicants should have the option of submitting certain information directly to Team Telecom, rather than to the Commission, given that Team Telecom-specific responses are not relevant to the Commission’s review.

<sup>17</sup> *Id.* App. D, at 40.

our knowledge, neither the Commission nor Team Telecom has ever required applicants or petitioners seeking Section 214, submarine cable, or similar authorizations to provide this sort of information because generally it is not relevant to the issues that fall within the Commission's or Team Telecom's authority. Accordingly, applicants and petitioners should not have to provide such information in the ordinary course.

In the unlikely event that this information turns out to be directly relevant to Team Telecom's review of a particular application or petition, Team Telecom should seek such information through follow-up questions. But applicants and petitioners should not as a rule be required to provide it absent a specific request. Indeed, some applicants or petitioners may not even prepare audited financial statements in the ordinary course; these entities (and others) should not be subjected to this burden solely for the purpose of a regulatory review that has never before required such information and where such information is not directly relevant to the analysis.

Other questions proposed by NTIA are similarly overbroad. For instance, NTIA proposed that applicants be required to explain their "intended overall business model for licensed and unlicensed services in the United States for the next five years."<sup>18</sup> While it may be appropriate for an applicant seeking Commission authority to operate certain services or facilities to explain how it intends to use those services or facilities in connection with its business, it is inappropriate and unnecessary to require the applicant to disclose its business plans for unrelated services. Likewise, NTIA's proposal that applicants disclose "[p]resent or future anticipated relationships with any trusted third party providers" is both vague (in failing to define what a "trusted third party provider" means in this context) and overly broad (to the extent it could be

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<sup>18</sup> NPRM App. D, at 39.

read to require a description of the applicant’s relationship with virtually any vendor or business partner).

Finally, the Commission should make clear—consistent with its delegated authority to issue licenses to “land or operate” submarine cables in the United States<sup>19</sup>—that submarine cable landing license applicants need only provide information relevant to the submarine line terminal equipment, the landing site, and the equipment within the jurisdiction of the United States (*i.e.*, within 12 nautical miles of U.S. shores). Information about purely domestic portions of the applicant’s network, or facilities located outside the United States, do not fall within the scope of the review authorized by the Cable Landing License Act and thus should not be part of the Commission’s review process for cable landing licenses.<sup>20</sup> And because Team Telecom lacks its own jurisdiction over such matters, its review necessarily must be limited to the scope of the Commission’s authority.

Requesting information that is unrelated to, and unnecessary for, the Commission’s and Team Telecom’s reviews of the license or facility in question not only is burdensome for applicants and petitioners, but also would have a chilling effect on investment in U.S. companies and on decisions to land submarine cables in the United States. Submitting such sensitive information also unnecessarily risks inadvertent public exposure. Any set of standardized questions that the Commission may develop under the Paperwork Reduction Act process, as the NPRM proposes,<sup>21</sup> therefore should adhere to the above-described principles.

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<sup>19</sup> See Executive Order No. 10530 § 5(a) (citing 47 U.S.C. §§ 34-39).

<sup>20</sup> For instance, NTIA’s proposal to require applicants to provide “[a] description and location of any and all facilities, whether owned or leased, where any applicant-owned or leased equipment is located” extends far beyond the Commission’s jurisdiction over submarine cable landing sites. See NPRM App. D, at 41.

<sup>21</sup> NPRM ¶ 22.

**B. Certifications Should Not Be Used to Foist New, Inappropriate or Duplicative Legal Obligations on Applicants and Petitioners**

Although certifications, like standardized questions, can be helpful to streamline the application and petition processes, they should not be used to seek commitments or impose substantive requirements that go beyond the existing foreign ownership review process. Certifications also should not duplicate existing legal requirements.

By way of example, two of the three proposed certifications in the NPRM either would be duplicative of existing legal obligations or inappropriately expand them. The first certification, initially proposed by NTIA, would require applicants and petitioners to certify that they will “comply with applicable provisions of the Communications Assistance for Law Enforcement Act (CALEA).”<sup>22</sup> This certification would serve no supportable legal purpose. For telecommunications providers subject to CALEA, the statute’s requirements already would apply, regardless of such a certification. For entities not covered by CALEA, the certification would create unnecessary confusion by erroneously implying that these entities may be subject to “applicable provisions” of CALEA, when in fact no provisions of the statute apply to entities that do not provide telecommunications services. Thus, the certification sought by NTIA arguably would foist new legal obligations on entities that are not subject to them, or at a minimum create confusion. Imposing such a certification requirement on entities not subject to CALEA would violate basic principles of statutory construction, would not serve a legitimate legal purpose, and should be rejected categorically by the Commission.<sup>23</sup>

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<sup>22</sup> *Id.* ¶ 31.

<sup>23</sup> NTIA’s proposed questionnaire goes even further by asking applicants “[w]hether records may be accessed and/or made available in the U.S. within three business days of receipt of lawful U.S. process.” NPRM App. D, at 41. There is no such requirement under CALEA or any other existing law. Deadlines for responding to legal process are determined on a case-by-case basis, as they should be. The investigating agent, the prosecutor, and/or a judge are better situated to (continued...)

The Commission also should reject NTIA’s proposal that applicants 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, for services covered under the requested Commission license or authorization.”<sup>24</sup> As others in this docket have noted, NTIA’s proposed certification is, at best, unclear, and could be read to improperly impose decryption obligations or data localization requirements that Congress has never authorized.<sup>25</sup> Neither the Commission nor the Team Telecom agencies possess the authority to enact such an extension of U.S. surveillance laws. Moreover, by suggesting that carriers or submarine cable operators can be required to route or store traffic so as to provide U.S. government agencies with authority to intercept or search and retrieve user content, the proposed certification would undermine the U.S. government’s opposition to data localization requirements in other countries, which the U.S. Trade Representative very recently identified as “key barriers to digital trade.”<sup>26</sup> These requirements also could abrogate the laws and sovereignty of other jurisdictions, creating unnecessary and avoidable situations that could threaten careful and longstanding diplomatic balances. To our knowledge, neither the Commission nor Team Telecom has ever conditioned a license in this manner. Rather than potentially undermine the Commission’s Order with requirements that exceed the government’s

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evaluate how quickly information is needed in a particular case than is the Commission or the Team Telecom agencies.

<sup>24</sup> *Id.* ¶ 31.

<sup>25</sup> *Id.* ¶ 34.

<sup>26</sup> “Fact Sheet: Key Barriers to Digital Trade,” Office of the United States Trade Representative, <https://ustr.gov/about-us/policy-offices/press-office/fact-sheets/2016/march/fact-sheet-key-barriers-digital-trade> (last visited Aug. 18, 2016).

authority, the Commission should focus its reform efforts solely on proposals that will effectively and lawfully streamline the existing foreign ownership review process.

**III. DATA SHOULD BE SUBJECT TO APPROPRIATE SAFEGUARDS AND IN CERTAIN CASES SHOULD BE PERMITTED TO BE SUBMITTED DIRECTLY TO TEAM TELECOM FOR REVIEW**

**A. The Commission Should Adopt Appropriate Procedures for Sensitive Data**

The Commission must preserve the security and confidentiality of information that applicants and petitioners submit for Team Telecom’s review. By its nature, Team Telecom’s assessment of whether an application poses national security, law enforcement, or foreign policy concerns often requires applicants to submit detailed information about the applicant’s network operations, personnel, and ownership structure. For instance, submarine cable landing license applicants typically must provide Team Telecom with detailed information about topics such as the network operations centers (“NOCs”) that will control the cable, the cable’s security features (such as encryption technologies, access points, and physical or logical security measures), the operator’s hiring practices, and the PII (including residential addresses and passport and Social Security numbers) of employees with access to sensitive information or facilities, in addition to identifying any person or entity with a five percent or greater equity or voting interest in the cable.

This information can be—and often is—highly sensitive, particularly at the level of granularity that Team Telecom requires. Today, Team Telecom routinely receives highly sensitive information via unencrypted e-mail, and it is not readily apparent what sort of security mechanisms Team Telecom employs when evaluating and retaining this information or sharing it among its members. It is critical that, as the NPRM proposes, the Commission put in place secure systems and best practices that will protect the confidentiality of this information, both when it is submitted to the Commission, and, because Team Telecom is operating under the

Commission's regulatory framework, when it is submitted to, shared with, and held by Team Telecom.

The NPRM focuses its security considerations principally on whether applicants or petitioners should submit their sensitive information to the Commission through a secure portal, noting that the Commission has some experience operating such portals.<sup>27</sup> This would be a good start. But the Commission also should ensure that information is transmitted and stored securely by the Commission and Team Telecom throughout the review process and for as long as the Commission or Team Telecom retains the information. Furthermore, given the particular sensitivity of information about network infrastructure, any data security framework that is adopted here should, among other things, require multiple levels of protection before data can be accessed and limit access to individuals directly involved in Team Telecom's review on a need-to-know basis. Additionally, individuals should be given the option of providing information other than PII to confirm their citizenship. For example, proof of a security clearance held by an individual should suffice as a permissible alternative to the provision of PII in these circumstances.

**B. Sensitive Data Should Be Deemed Presumptively Confidential**

The NPRM notes that confidential information can be protected from public disclosure through requests filed pursuant to Section 0.459 of the Commission's rules.<sup>28</sup> That may be true, but requiring applicants and petitioners to seek confidential treatment for each and every submission that clearly will contain information worthy of such protection will needlessly complicate the filing process and create more, not less, work for affected parties (and the

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<sup>27</sup> NPRM ¶ 26.

<sup>28</sup> *Id.* ¶ 26.

Commission). For submarine cables in particular, much of the information provided is highly confidential and typically is interspersed throughout key documents. Requiring applicants to submit individualized requests for confidentiality in these circumstances would amount to an unnecessary expenditure of time and resources. Under these circumstances, it would be prudent for the Commission to classify information submitted by applicants or petitioners that pertains to NOCs, security features, hiring practices, PII, or financial interests of less than ten percent, as well as information filed by Team Telecom that discusses or relates to this information, as presumptively confidential when designated as such in applicants' filings with the Commission.<sup>29</sup>

**C. Applicants or Petitioners Should Be Permitted to Submit Certain Sensitive Data Directly to Team Telecom Without Affecting the Commission's Ability to Evaluate a Submission's Completeness and Issue a Public Notice**

Applicants and petitioners should, at their election, be permitted to submit the most sensitive information relating to Team Telecom's foreign ownership review directly to Team Telecom (provided, of course, that Team Telecom has in place appropriate security measures), rather than pass that information through the Commission. Information about an operator's security or hiring practices, for example, could be used to compromise the security of a NOC. The same is true for PII associated with personnel who operate a NOC. Indeed, certain ownership or other information may be so commercially sensitive that it typically is not even shared among members of a consortium seeking a license from the Commission.

This sort of information generally has no relevance to the Commission's own review of an application or petition; indeed, the NPRM acknowledges that the Commission would "leave

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<sup>29</sup> If such information is provided directly to Team Telecom, it should be presumed confidential under the applicable provisions associated with confidential treatment by such agencies.

the substantive review” of such information “to the Executive Branch.”<sup>30</sup> If so, then sound data hygiene practices and data minimization principles suggest that submitting such information to Team Telecom via the Commission would add an additional layer of vulnerability—and impose additional security obligations on the Commission—with no meaningful countervailing benefit.<sup>31</sup> For this reason, applicants and petitioners should be permitted to submit highly sensitive information directly to Team Telecom without affecting the Commission’s ability to evaluate the completeness of a submission and issue a public notice seeking comment on it.<sup>32</sup> The Commission and Team Telecom should establish clear procedures governing the submission of such sensitive information—including procedures allowing applicants to use data vaults or other secure transmission methods—and the security measures necessary to protect it.

Applicants and petitioners can submit highly sensitive and other information directly to Team Telecom without affecting the Commission’s ability to evaluate the completeness of a submission and issue a public notice using the same certification process that the NPRM embraces in other areas. As a practical matter, applicants for submarine cable landing licenses today already provide certain information—such as NOC providers and equipment suppliers, the specific identity of employees that will be staffing the NOC, the identities of minority investors that fall below the ten percent threshold, and other data—to Team Telecom well after its review

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<sup>30</sup> *Id.* ¶ 25.

<sup>31</sup> As the Commission has recognized in the private-sector context, “[a] related concept to data security is that of data minimization,” which is “the idea that a company will only retain personal information it actually needs and only for the amount of time that it is needed. Security vulnerabilities thus are minimized because even in the event of a security breach, the amount of data at risk has been minimized.” See “Location-Based Services,” Staff Report, at 30 (WTB 2012), *available at* [https://apps.fcc.gov/edocs\\_public/attachmatch/DOC-314283A1.pdf](https://apps.fcc.gov/edocs_public/attachmatch/DOC-314283A1.pdf).

<sup>32</sup> For the same reason, if Team Telecom requests follow-up information that requires an applicant or petitioner to provide highly sensitive information, the applicant or petitioner should have the option to submit that information directly to Team Telecom.

of the application has commenced without in any way impeding the timing of Team Telecom's review. Requiring such information to be submitted to the Commission before an application can be deemed complete and placed on public notice would inject an unnecessary level of complexity into the application and petition planning and submission process, thereby creating barriers to infrastructure investment and deployment that cannot easily be overcome.

To avoid this outcome, the Commission should allow applicants and petitioners that elect to submit certain information directly to Team Telecom to certify in their submissions to the Commission (under penalty of perjury) that any information required to be provided under the Commission's rules either is included in the application or petition or that such information has been or will be furnished directly to Team Telecom. The Commission could rely comfortably on this approach given the ramifications associated with making false certifications. In other words, the burden would be on the applicant or petitioner to make sure that any information left out of the application filed with the Commission will be furnished to Team Telecom in sufficient time for Team Telecom to complete its own assessment within the initial 90-day review period.

## CONCLUSION

INCOMPAS strongly supports the Commission's goal of making the Team Telecom review process more transparent, timely and predictable. The NPRM provides an encouraging framework for achieving this objective, but the Commission must ensure that any future rules maximize the efficiency of the review process, avoid creating unnecessary obligations, and preserve the confidentiality and security of sensitive information.

Respectfully submitted,

**INCOMPAS**

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