

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

In the Matter of )  
 )  
NTIA Letter Regarding Information and ) IB Docket No. 16-155  
Certifications from Applicants and Petitioners )  
for Certain International Authorizations )

**COMMENTS OF CTIA**

CTIA<sup>1</sup> submits these comments in response to the Commission’s *Public Notice* on Executive Branch proposals related to its review of certain FCC applications and petitions for national security and law enforcement issues, as laid out in a May 10, 2016 letter from the National Telecommunications and Information Administration (“NTIA”).<sup>2</sup> The *Public Notice* states that the Commission will launch a Notice of Proposed Rulemaking (“NPRM”) on these issues. CTIA welcomes this opportunity and urges the Commission to apply the following goals in the upcoming rulemaking:

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<sup>1</sup> CTIA® (www.ctia.org) represents the U.S. wireless communications industry. With members from wireless carriers and their suppliers to providers and manufacturers of wireless data services and products, the association brings together a dynamic group of companies that enable consumers to lead a 21st century connected life. CTIA members benefit from its vigorous advocacy at all levels of government for policies that foster the continued innovation, investment and economic impact of America’s competitive and world-leading mobile ecosystem. The association also coordinates the industry’s voluntary best practices and initiatives and convenes the industry’s leading wireless tradeshow. CTIA was founded in 1984 and is based in Washington, D.C.

<sup>2</sup> *NTIA Letter Regarding Information and Certifications from Applicants and Petitioners for Certain International Authorizations*, Public Notice, IB Docket No. 16-155, DA 16-531 (rel. May 12, 2016) (“*Public Notice*”); Letter from Lawrence E. Strickling, Assistant Secretary for Communications & Information, U.S. Department of Commerce, to Marlene H. Dortch, Secretary, Secretary, FCC (filed May 10, 2016) (“*NTIA Letter*”).

- Establish reasonable timeframes for Executive Branch review of foreign ownership and ensure that those timeframes are adhered to, consistent with the recommendations set forth in the 2014 FCC Process Reform Report;<sup>3</sup> and
- Institute procedures that will make the Executive Branch review process more efficient and transparent.

CTIA looks forward to working with the Commission and the Executive Branch on ways to improve the Executive Branch review procedures.

## I. INTRODUCTION

CTIA commends the Commission’s efforts to facilitate Executive Branch review of foreign ownership issues in international applications and petitions (together, “applications”). The current Executive Branch review process routinely takes six months to complete even for uncontroversial cases, and in some cases longer. The delay in the International Bureau’s streamlined review process prevents applicants and petitioners (“applicants”) from moving forward with their business plans in the competitive and quickly evolving telecommunications marketplace. Indeed, absent this months-long Executive Branch review process, the International Bureau’s streamlined procedures call for approval of international Section 214 applications and Section 310(b) petitions, for example, two weeks after public notice.<sup>4</sup>

While CTIA appreciates that the NTIA Letter is intended to “streamline” Executive Branch review,<sup>5</sup> it does not address the timeline for review or many details associated with the

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<sup>3</sup> Staff Working Group Report on FCC Process Reform, Recommendation 1.15 (rel. Feb. 14, 2014) (“FCC Process Reform Report”).

<sup>4</sup> In the International Bureau licensing context, the FCC has specific policies and rules for certain applications that are deemed “streamlined” or “routine.” *See, e.g.*, 47 C.F.R. § 63.12 (specifying streamlined procedures under which international Section 214 applications are deemed granted after 14 days); *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, ¶¶ 129-33 (2013) (streamlined procedures under which Section 310(b)(4) petitions are granted automatically on the 15th day after public notice).

<sup>5</sup> NTIA Letter at 1.

review process. Moreover, some of the proposals could make the process more onerous or are already statutorily required. CTIA looks forward to working with the Commission and other interested stakeholders to develop reasonable proposals regarding the Executive Branch’s review of foreign ownership issues.

**II. ANY FCC RULE AND PROCEDURAL CHANGES SHOULD FACILITATE A MORE EFFECTIVE AND TIMELY FCC APPLICATION AND EXECUTIVE BRANCH REVIEW PROCESS.**

**A. The NPRM Should Propose Firm Timeframes for Executive Branch Review of Foreign Ownership in FCC Applications.**

The Commission should maintain authority over the prosecution and timing of applications before it and should set an Executive Branch review period to provide more certainty and transparency for applicants. The FCC Process Reform Report accurately identified the Executive Branch review process as one area where action is needed to improve the efficiency, effectiveness, and transparency of the Commission’s work.<sup>6</sup> The report recommended setting “reasonable timeframes” for Executive Branch review of foreign ownership issues raised in applications, as well as ensuring “those timeframes are met, or that the causes for any delays are clearly identified and addressed.”<sup>7</sup> Chairman Wheeler has noted that the Commission has been “engaged in an ongoing review with these Executive Branch agencies to establish a more efficient and timely process,”<sup>8</sup> and Commissioner O’Rielly has also advocated for firm procedures to promote transparency and curb unnecessary delay.<sup>9</sup>

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<sup>6</sup> See FCC Process Reform Report at 14.

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

<sup>8</sup> *Review of Foreign Ownership Policies for Broadcast, Common Carrier and Aeronautical Radio Licensees under Section 310(b)(4) of the Communications Act of 1934, as Amended, Notice of Proposed Rulemaking, Statement of Chairman Tom Wheeler, 30 FCC Rcd 11830, 11872 (2015).*

<sup>9</sup> See Statement of Michael O’Rielly, FCC Commissioner Before the Subcommittee on Communications and Technology House Energy and Commerce Committee on the “Oversight of the Federal Communications Commission” (Nov. 17, 2015) (“The critical national security analysis provided by

The NPRM should propose a reasonable period during which the Executive Branch must conduct its review. One potential approach would be to establish a date by which the Executive Branch would report to the Commission, with the understanding that in the absence of any such response the Commission will move forward with processing the application or petition. To the extent the Executive Branch has any concerns with a pending application, it should notify the Commission as soon as possible. Any request by the Executive Branch to extend the review period must be supported with an explanation detailing why approval of the application poses a concern to U.S. communications, systems, or infrastructure, or creates the potential of illegal activity or prevents the ability to effectuate legal process. In short, Executive Branch review must not unduly delay Commission action on the application or petition.

**B. The Information Requests Associated With the Executive Branch’s Review Must Be Reasonable and Not Further Complicate the Application Process.**

CTIA commends the Executive Branch’s proposal to standardize and make public the questionnaires that it requires foreign-owned applicants to complete as part of its review process, but other issues concerning the questionnaires would complicate the application and review process.

*Standardizing the Questionnaires Would Improve the Review Process.* Standardizing and making public the Executive Branch questionnaires would help make the review process more efficient and transparent.<sup>10</sup> The questionnaires, however, must be subject to notice and comment to ensure the elicited information is in fact pertinent to the national security or law enforcement concerns expressed by the Executive Branch.

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Team Telecom can and should occur within a reasonable, timely, and transparent process that is fair to the parties involved, with no potential of transactions falling into a black hole of uncertainty.”); *see also* Commissioner Michael O’Rielly, *Team Telecom Reviews Need More Structure*, Blog, Sept. 18, 2015, <https://www.fcc.gov/news-events/blog/2015/09/18/team-telecom-reviews-need-more-structure>.

<sup>10</sup> *See* NTIA Letter at 3.

***Filing the Questionnaires as part of FCC Applications Would Likely Delay and Complicate Applications.*** The submission of responses to an Executive Branch questionnaire with an FCC application should not be required. The Commission's and Executive Branch's review processes are, and should remain, independent of each other. Preparing responses to the questionnaires is a resource-intensive process. Thus requiring the questionnaire to be filed with the FCC application could delay the submission, and Commission review, of the application. A more effective option would be to require applicants with disclosable foreign ownership to certify in their application that they will provide complete responses to the questionnaire within a particular timeframe after filing the application. The Executive Branch's review period would start upon submission of the questionnaire.

***Filing the Questionnaires with the FCC is Unnecessary.*** It is unclear whether and how the proposal to require the submission of the questionnaires to the Commission, rather than directly to the Executive Branch as exists today, benefits the review process. The Commission does not collect the type of information elicited in the questionnaires, and doing so would require modifications of the International Bureau's filing system. Responses to the questionnaires include highly confidential and sensitive information, and the proposal contains no rationale justifying further dissemination than is necessary.

***Other Issues Must Be Addressed.*** A number of other issues could impact the efficiency of the review process. For example, applicants should not be required to complete a new questionnaire with each new transaction or application that does not raise issues related to foreign ownership. The questionnaires also should not apply to *pro forma* transactions that are subject to prior FCC approval given that such transactions do not result in any substantive

transfer of control. It also is unclear how existing letters of assurance and mitigation agreements would be affected by new procedures, and vice versa.

**C. The Certifications Proposed by the Executive Branch Raise Significant Concerns.**

CTIA supports the Executive Branch's suggestion that there are ways – such as through certifications – to obviate the need for letters of assurance or mitigation agreements in a large number of cases.<sup>11</sup> The NTIA Letter, however, does not adequately explain how the certifications proposed by the Executive Branch promote efficiency in the review process.

First, the Executive Branch proposes that all international Section 214, earth station, and submarine cable applicants and Section 310(b) petitioners be required to complete the certifications set forth in Attachment A of the NTIA Letter – regardless of whether applicants have any foreign ownership.<sup>12</sup> The Executive Branch review process today is limited to applications with reportable foreign ownership, purportedly because the foreign ownership raises national security and law enforcement concerns. The NTIA Letter does not explain why any such certifications should be extended to all applicants, even those that have no reportable foreign ownership and thus under the Executive Branch's own review standard do not raise national security or law enforcement concerns.

In addition, the second proposed certification regarding the “mak[ing] [of] communications to, from or within the United States, as well as records thereof, available in a form and location that permits them to be subject to a valid and lawful request or legal process in accordance with U.S. law” raises significant customer privacy and security concerns that require further exploration. Telecommunications carriers already are required to comply with all

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<sup>11</sup> *See id.* at 4-5.

<sup>12</sup> *See id.*

applicable federal and state lawful interception statutes and regulations, as well as court orders and legal process.<sup>13</sup> This proposed certification could be interpreted to broaden carriers' obligations beyond these existing laws, for example, by compelling them to take steps beyond what is currently required to assist with breaking security measures on customers' accounts and devices.<sup>14</sup> The Commission should therefore consider carefully the scope and implications of this proposed certification.

And finally, the other certifications proposed in the NTIA Letter are superfluous and it is unclear why they are necessary. For example, telecommunications carriers already are subject to the Communications Assistance for Law Enforcement Act ("CALEA") and establish points of contact under the Commission's CALEA requirements and the Form 499 registration process.<sup>15</sup> Current regulations also require applicants to provide accurate and complete information in their filings and to update that information while an application is pending, subjecting parties to all remedies available to the U.S. government in the event of non-compliance.<sup>16</sup> As the Executive Branch's requests duplicate existing obligations under law, there is no basis to add this layer of certifications as part of the FCC application.

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<sup>13</sup> See, e.g., the Wiretap Act, 18 U.S.C. § 2510 *et seq.*; the Stored Communications Act, 18 U.S.C. § 2701 *et seq.*; the Pen Register and Trap and Trace Statute, 18 U.S.C. § 3121 *et seq.*

<sup>14</sup> The recent dispute between the Federal Bureau of Investigation ("FBI") and Apple in which the government wanted Apple to create new software that would enable the FBI to unlock an encrypted iPhone recovered from one of the shooters in the December 2015 terrorist attack in San Bernardino, California is one example where these types of concerns have been raised.

<sup>15</sup> See 47 C.F.R. §§ 1.20000 *et seq.*, 1.47(h), 64.1195.

<sup>16</sup> See, e.g., 47 C.F.R. §§ 1.17; 1.65, 1.743. Indeed, many application forms already reflect these matters. See, e.g., FCC Form 214, FCC Form 214TC, FCC Form 312 Main Form and Schedule A.

### III. CONCLUSION

CTIA supports the efforts of the Commission and the Executive Branch to make the review of foreign ownership issues in international applications more efficient and transparent, consistent with the comments above.

Respectfully submitted,

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