

# FCC Proposes Rules to Expedite Initial Stages of the Team Telecom Application Review Process

Chip Yorkgitis

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The Federal Communications Commission ("Commission" or "FCC") is looking to jump start the initial steps of the Executive Branch process of reviewing certain applications, including Section 214 and submarine cable-related applications. In a May 2016 [request](#) from the National Telecommunications and Information Administration ("NTIA"), NTIA proposed rule changes designed to facilitate more rapid opening stage review by the Executive Branch agencies known as Team Telecom (which includes the Departments of Justice, Homeland Security, Defense, Commerce, State, Federal Bureau of Investigation, and United States Trade Representative) of certain applications. Toward that end, last Friday, the FCC adopted a [Notice of Proposed Rulemaking](#) ("NPRM") soliciting comments on rules to expand the information required when certain applications are filed. The proposed rules would potentially have broad applicability, including some rules extending to applications lacking traditional levels of reportable foreign ownership. Both domestic and international carriers and submarine cable operators should review the NPRM to determine if participation in the proceeding would advance their interests. Comments and reply comments will be due, respectively, within 30 and 45 days of NPRM publication in the Federal Register.

As we [noted previously](#), NTIA requested the Commission consider adopting new rules to streamline review by Team Telecom. The potentially affected applications include those seeking a grant of or consent to transfer control of or assign international or domestic 214 authority, seeking a grant of or consent to transfer submarine cable licenses or satellite earth station licenses, or requesting a Section 310(b) foreign ownership ruling ("Covered Applications").

The NPRM notes the FCC's anticipation that Team Telecom review would be rare but determined that, from 2013-2015, nearly 20% of applications were referred to Team Telecom. [Chairman Wheeler](#) notes this review takes, on average, 250 days, however, there is great variability as some applications can take well more than a year for Team Telecom to complete its review. As a result, the FCC solicits comment on proposals to improve the timeliness and transparency of the Team

Telecom referral and review process. First, the Commission asks whether applicants with reportable direct or indirect foreign ownership should provide information about ownership and network operations ("Threshold Information") when they file Covered Applications with the Commission. The information is not currently required under the Commission's rules but Team Telecom seeks it in requests issued directly to affected applicants after the Commission refers the application to Team Telecom. The Commission proposes to review responses to these threshold questions for completeness before forwarding to Team Telecom. The idea is that the Commission would, at least in part, render more automatic the current process for obtaining Threshold Information, which is not subject to any particular schedule after an application is referred to Team Telecom.

Second, the Commission proposes that all applicants, even those without any measure of direct or indirect foreign ownership certify at the time they file Covered Applications that they will comply with certain law enforcement requirements (the "Law Enforcement Compliance Certification").

Third, and this would be the most far-reaching of the Commission's proposals, the NPRM proposes a ninety (90) day timeline for Team Telecom to complete its review, with an additional one-time ninety (90) day extension in rare circumstances, provided Team Telecom demonstrates a need for additional time and provides a status update every thirty (30) days.

Some of the NPRM's key proposals and questions include, but are not limited to, the following:

Proposals:

- Provision of Threshold Information would not be presumed confidential as it is when applicants today respond directly to Team Telecom requests; applicants would have to seek confidential treatment of the responses.
- Applicants would have seven (7) days to respond to Team Telecom follow-up questions or a draft mitigation agreement unless an extension of time was granted and any such extension would stop the ninety (90) day review clock.
- An Applicant's failure to provide any Threshold Information, provide a complete Law Enforcement Compliance Certification or respond to follow-up Team Telecom questions in a timely fashion would be grounds for dismissal of the Covered Application with the ability to refile.
- International 214 and submarine cable license applications with foreign ownership that are referred to Team Telecom would be processed on a non-streamlined basis. This would also include any transaction involving joint domestic and international section 214 authority.

Questions:

- Should earth station applications continue to be excluded from referral to Team Telecom unless the applicant also requests a Section 310(b) foreign ownership ruling?
- Do NTIA's proposed categories of Threshold Information exceed the current scope of information collected by Team Telecom?
- Should applicants with existing Letters of Assurance (LOA) or National Security Agreements (NSA) be exempted from some or all of the proposed Threshold Information requirement at the time an application is filed?
- Are there any categories of applications with foreign ownership, *i.e.*, pro forma transactions,

applicants with existing LOAs/NSAs, etc. that should be exempt from referral to Team Telecom?

In another initiative, not directly related to the NTIA request, the FCC proposed to require applicants seeking to obtain or transfer international or domestic 214 authorizations or submarine cable licenses to include voting interest information for all individuals and entities with ten percent (10%) or greater, direct or indirect ownership interest in the applicant. The submarine cable license rules currently require disclosure of voting interest in the cable segments but neither the submarine cable license rules nor the Section 214 licensing rules requires disclosure of voting interest in license applicants. The Commission noted that the licensing rules were established at a time when equity and voting interests were usually the same and that, while some applicants provide voting interest information in their applications, staff often has to contact applicants to request the information. Such applications would also be required to include diagrams identifying all ten percent (10%) or greater direct or indirect voting or equity ownership interest holders.

All FCC licensees or industry participants contemplating actions requiring Covered Applications will want to pay close attention to this proceeding and decide if they want to share their views on whether such proposals will help expedite Team Telecom review or whether the costs of the additional information requirements will outweigh any benefits of the proposed more transparent review process.

We will continue to monitor the proceeding and post updates as developments occur.