

# NTIA Suggests Steps to Expedite Executive Review of Applications for Section 214 and Submarine Cable Act Authority; FCC Seeks Comment

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The “Team Telecom” review process of applications involving foreign ownership has long endured a reputation for excessive length and opacity. It appears change may be on the horizon. The National Telecommunications & Information Administration (NTIA) filed a [letter](#) (NTIA Letter) on May 10, 2016 with the Federal Communications Commission (FCC or Commission) requesting the Commission require applicants for certain authorizations, including international 214 authorizations and transfers, section 310 license ownership rulings, submarine cable landing licenses and satellite earth station authorizations, submit additional information and certifications with their applications. NTIA asserts that submitting this information and certifications upfront will streamline the Executive Branch agency review process. Today, those reviews are undertaken by the Departments of Justice, Homeland Security, Defense, Commerce, State, Federal Bureau of Investigation, and United States Trade Representative (Team Telecom).

In response to the NTIA Letter, the Commission released a [Public Notice](#) late last week seeking comments on NTIA's request. The Commission suggested that any comments received would inform the Commission's planned formal rulemaking proceeding. The FCC seeks comments on or before Monday, May 23, 2016.

As NTIA explains, under the current review process for applications involving reportable foreign ownership under the FCC's rules, the FCC refers the application and seeks input from Team Telecom on national security and law enforcement issues. Typically, when Team Telecom initiates its review, it requests information from the applicant(s) beyond what is required in the FCC applications by issuing its so-called “triage questionnaire.” Team Telecom's initial set of questions typically follows a set model, with some variations in particular circumstances, and responses are submitted under protection of confidentiality.

The NTIA proposal seeks to streamline the initial steps in this supplemental information gathering by requiring that certain information be submitted with the initial application rather than later as part of the Team Telecom triage questionnaire process. NTIA proposes the Commission require applicants to provide certain information about the corporate structure and shareholder information; relationships with foreign entities; financial condition and circumstances; compliance with applicable laws and regulations; and business and operational information, including services to be provided and network infrastructure. While the above categories are among those usually covered in the triage questionnaire, the list does not cover all of the usual triage questionnaire categories.

NTIA also requests that the Commission require applicants to agree to and certify compliance with what NTIA refers to as “routine national security and law enforcement mitigation measures.” NTIA anticipates and suggests this upfront certification could eliminate the need for mitigation - often takes the form of a national security agreement (NSA) or letter of assurance (LOA) - for a significant number of applications. The proposed certifications would address compliance with the Communications Assistance for Law Enforcement Act; would commit applicants to make certain categories of communications and records subject to lawful requests under U.S. law; and commit an applicant to establish a U.S. point of contact for the execution of such lawful requests.

Providers with international or submarine cable authorizations or who plan to seek such authorizations should consider participating in either or both the informal comment process and the future formal rulemaking proceeding. The Administration’s proposed requirements would place extra burdens on carriers’ initial application submissions and require more extensive certifications than currently required, placing the Team Telecom review burden on all qualifying applicants. However, some carriers may appreciate the chance, as a matter of standard procedure, to address sooner rather than later parts of the Team Telecom triage process.

Carriers will want to pay close attention to this proceeding and consider sharing in comments with the Commission exactly what such additional requirements will mean in terms of burden, implementation, and compliance.