

O’Rielly Paints Team Telecom As an “Inextricable Black Hole” for Applicants, but Will His Call for Reform Fare Better?

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On October 1, Chairman Wheeler [announced](#) that he has circulated a Notice of Proposed Rulemaking among his fellow Commissioners that would seek comment on simplifying the FCC’s foreign ownership approval process for broadcast licensees “by extending the streamlining rules and procedures that currently apply to other classes of licensees to broadcast licensees.” Certainly, the broadcasting community would welcome an updating of the filing and approval process to allow FCC review of applications to proceed on a more streamlined basis. But, unfortunately, FCC review is only part of the story when there is foreign ownership, and it is quite often the smaller part for many FCC authorization holders, which frustrates, at the end of the day, the Chairman’s goal of better adapting the filing and review process to the current business environment.

Commissioner Michael O’Rielly [recently put his finger](#) on what many foreign investors and foreign corporations find most unnerving, the potentially long suspension of FCC action on applications that must go through the so-called “Team Telecom” review process which is all but automatically triggered by proposed direct and indirect foreign ownership in broadcasters, common carriers and aeronautical licensees as well as submarine cable operators. Applicants requesting approval of foreign ownership must undergo review by not only the Commission but national security and law enforcement review by the collection of federal government agencies commonly referred to as “Team Telecom:” the Department of Justice (including the Federal Bureau of Investigation), Department of Homeland Security and the Department of Defense. (Other agencies, such as the Department of Commerce and the Department of State may also be called upon to provide input to these primary reviewing agencies.) In contrast to the FCC review process, which generally has clearly defined procedures, timeframes, and a public record, the Team Telecom review process often lacks any transparency and has no deadline for completion.

Commissioner O’Rielly acknowledges the importance of Team Telecom review, which is not really

open to debate. But he underscores, as has the Commission itself in liberalizing its standards applicable to foreign ownership in common carrier wireless licenses, that foreign investment “by benign private entities” provides important benefits, and should not be discouraged by how the Team Telecom review is conducted. What’s important about Commissioner O’Rielly’s criticisms is that, after identifying the problems that accompany the Team Telecom review process, he proposes improvements in an effort to limit delays to a final FCC action. But can a public rebuke by an FCC Commissioner instigate cognizable improvements to the currently unpredictably long Team Telecom reviews?

Commissioner O’Rielly identifies three areas ripe for reform:

“Inextricable Black Hole” –Team Telecom fails to provide any information or identify any areas of concern, either to Applicants, or the FCC, during the review, let alone venture a target for completion. As any business or investor that has undergone Team Telecom review knows, the uncertainty and delays may impact service rollouts and result in lost opportunities.

Lack of Precedent –Team Telecom reviews are not subject to any standard of consistency; there are no written “decisions” to guide future applicants in structuring transactions to speed the reviews. Instead, Commissioner O’Rielly asserts, applicants are essentially left to the “whims” of the Team Telecom agencies.

Political Concerns – Commissioner O’Rielly suggests that absent a “transparent and balanced process”, there are no guarantees that Team Telecom’s decisions do not unduly reflect political influences. He raises legitimate concerns that, absent the ability to show this is not the case, the FCC’s standing among its foreign peers is subject to being undermined, frustrating the agency’s long-time goal of an “independent international telecommunications regulatory structure.”

What does the Commissioner suggest as first steps to ameliorating this situation? First, as to broadcasters, notification to Team Telecom of foreign ownership exceeding 80% and broadcast applications proposing foreign ownership should be constructively approved after 30 days unless Team Telecom submits a formal request to the FCC for an additional 90 day review period (which can be extended, once, for another 90 day period). In addition, he suggests Team Telecom should submit any recommendations to the FCC regarding whether an application should be granted or denied based on foreign ownership within strict guidelines and timelines. Commissioner O’Rielly’s suggestions are focused on broadcast applications, but he invites an extension of these or similar remedies to improve Team Telecom’s review of other FCC applications.

While the FCC certainly has no authority to dictate changes to Team Telecom, let alone one Commissioner, it is refreshing to see a senior public official calling for improvements of the sort which the business community would embrace. Perhaps the challenge will provoke a review by those agencies of their practices to reduce the key uncertainty of time faced by almost every common carrier, submarine cable, broadcasting, and aeronautical applicant with proposed new or additional foreign ownership.