UNITED STATES DEPARTMENT OF COMMERCE
The Assistant Secretary for Communications and Information
Washington, D.C. 20230

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Federal Communications Commission
Office of the Secretary

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Re: Information and Certification from Applicants and Petitioners for Certain International Licenses and Other Authorizations

Dear Ms. Dortch:

The National Telecommunications and Information Administration (NTIA), as the President's principal adviser on telecommunications and information policies, respectfully submits on behalf of the Executive Branch this request that the Federal Communications Commission (Commission) obtain certain information and certifications pertaining to the applications and petitions for certain international licenses and other authorizations. The purpose of this request is to streamline the Executive Branch's review of those applications.

Specifically, we request that the Commission require that applicants and petitioners (hereinafter "applicants") seeking international section 214 authorizations (and transfers thereof), section 310 rulings, submarine cable landing licenses, and satellite earth station authorizations (hereinafter "applications"):

(1) provide certain information pertaining to ownership, network operations, and related matters as part of the applications; and
(2) certify that they will comply with applicable law enforcement assistance requirements and respond truthfully and accurately to lawful requests for information and/or legal process.

As discussed more fully below, these steps will improve the ability of the Executive Branch to expeditiously and efficiently review and respond to the applications, in particular with regard to identifying and assessing applications that raise national security or law enforcement concerns. The proposed certification may, in many cases, obviate the need for any national security or law enforcement conditions on the grant of the license or authorization, and therefore should facilitate an expeditious response to the Commission on specific applications.

Background: As the Commission is aware, under the Communications Act of 1934, 47 U.S.C. § 151 *et seq.*, as amended, the Commission must decide whether granting certain applications is in the "public interest."[1] As part of its public interest review for applications

[1] *See, e.g.*, 47 U.S.C. §§ 214(e), 310(b), (d) (2014).

involving reportable foreign ownership, the Commission has a practice of seeking the views of Executive Branch agencies – including the Departments of Defense, Justice, Homeland Security, Commerce, State, and the United States Trade Representative – as to whether an application poses national security, law enforcement, foreign policy, or trade concerns.[2]

When Executive Branch agencies identified concerns about an application, they engaged directly with the applicant. This review and engagement was undertaken by Executive Branch law enforcement and national security agencies – specifically the Departments of Homeland Security, Defense, and Justice (including the Federal Bureau of Investigation). When one or more of these agencies identified national security and/or law enforcement concerns that the agencies agreed could be mitigated to an acceptable level, those agencies negotiated an agreement directly with the applicant to address those concerns and then recommended that the Commission grant the application conditioned on compliance with that agreement. When the applicant could not mitigate the agencies' concerns, the Executive Branch could recommend that the Commission deny a license or disallow proposed foreign ownership because of national security and/or law enforcement concerns.[3]

In conjunction with this request to the Commission to make certain changes to its procedures, the Executive Branch will ensure that reviews of applications by relevant departments and agencies are promptly coordinated in formulating the Executive Branch's recommendation to the Commission. In the event that the Departments of Defense, Justice, and Homeland Security propose non-routine mitigation measures or other actions to address national security or law enforcement concerns raised by an application, those agencies will consult with the broader Executive Branch (including the Departments of State and Commerce, and the United States Trade Representative) to discuss whether there are foreign policy or trade concerns arising from the proposed mitigation measures or other actions.

To facilitate a streamlining of the review process, the Executive Branch requests that the Commission take the following two steps:

Requested Information: In order to evaluate whether an application may raise national security or law enforcement concerns, the Executive Branch must obtain certain basic information regarding the applicant's ownership, business model, and network operations.

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[2] *See* Rules and Policies on Foreign Participation in the U.S. Telecommunications Market, *Report and Order and Order on Reconsideration*, 12 FCC Rcd. 23891, 23919, ¶ 61 (1997); Market Entry and Regulation of Foreign-Affiliated Entities, *Report and Order*, 11 FCC Rcd. 3873, 3955-56, ¶ 219 (1995).

[3] Although the Commission accords deference to the expertise of Executive Branch agencies in identifying and interpreting issues of concern related to national security, law enforcement, and foreign policy, it undertakes an independent analysis of whether grant of a particular application is consistent with the public interest. Rules and Policies on Foreign Participation in the U.S. Telecommunications Market, *Report and Order and Order on Reconsideration*, 12 FCC Rcd. at 23919-20, ¶¶ 62-63. Nothing in this letter is intended to affect that policy.

Because the Commission currently only requires very limited information in these areas,[4] upon receipt of a request to review from the Commission, the reviewing agencies' current practice is to send an applicant a set of initial questions. There is currently no required timeline on the applicant's response to these questions.

In order to enable more efficient review of applications, the Executive Branch requests that the Commission require certain information be included in or with each application in which there is reportable foreign ownership. Doing so would help ensure that the relevant departments and agencies have sufficient information to review an application promptly upon receiving the request for input from the Commission. Similarly, for those applications which require further investigation, relevant departments and agencies would be able to initiate such review promptly upon receiving this information.

Specifically, in addition to the basic information that applicants must provide to the Commission in accordance with sections 63.18,[5] 1.767,[6] and 1.990-1.994[7] of the Commission's Rules, the Executive Branch requests that the Commission require applicants to submit more detailed and comprehensive information in the following areas:

(1) corporate structure and shareholder information;
(2) relationships with foreign entities;
(3) financial condition and circumstances;
(4) compliance with applicable laws and regulations; and
(5) business and operational information, including services to be provided and network infrastructure.

We urge the Commission to adopt requirements that focus on the above categories of information to be collected, while also providing sufficient flexibility for the Commission to prescribe and, as necessary, modify the specific questions posed to applicants. For example, the Commission would be able to propose and seek comment on specific questions through an information collection process consistent with the Paperwork Reduction Act (PRA) overseen by the Office of Management and Budget.[8] By taking this approach, the Commission could retain flexibility to modify the questions through a later PRA process if experience shows that specific questions or wording could be improved.

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[4] *See, e.g.*, 47 C.F.R. § 63.18 (2015) (international section 214 applications).

[5] *Id.*

[6] *Id.* § 1.767 (submarine cable landing license applications).

[7] *Id.* §§ 1.990-1.994 (applications with reportable foreign ownership).

[8] 44 U.S.C. §§ 3501-21 (2014).

The information request will aid the Executive Branch in assessing whether national security or law enforcement concerns arise from an application. Those concerns include but are not limited to the following:

1. *Preventing Abuses of U.S. Communication Systems and Protecting the Confidentiality, Integrity and Availability of U.S. Communications*: The Executive Branch has an interest in preventing foreign governments, organizations, and entities from using the U.S. communications system to, among other things: (1) collect non-public information and intelligence regarding U.S. Government policies, operations, and plans; (2) violate the privacy of individuals within the United States; (3) conduct economic espionage; and (4) be able to harm the availability of U.S. communications resources. Relevant departments and agencies review license applications to ensure that any foreign ownership of such carriers will not jeopardize the confidentiality, integrity, and availability of U.S. communications.

2. *Protecting the National Infrastructure*: Relevant departments and agencies must assess whether proposed interactions between the applicant and the network infrastructure of a U.S. carrier may render such U.S. communications infrastructure vulnerable to attack or exploitation.

3. *Preventing Fraudulent or Otherwise Criminal Activity*: Relevant departments and agencies must evaluate whether applicants or those affiliated with applicants have engaged in criminal activity relevant to consideration of the application to ensure that the requested license will not be used to further illegal activities.

4. *Preserving the Ability to Effectuate Legal Process for Communications Data*: Relevant departments and agencies must consider whether the U.S. Government will be able to promptly and securely effectuate legal process and requests for technical assistance from the applicants.

The Executive Branch recognizes that certain of the above information – which is currently commonly requested by the Executive Branch in reviewing applications for national security and law enforcement concerns – may go beyond the types and scope of information that the Commission currently requires from applicants and petitioners. The Executive Branch believes that requiring this information at the outset of the application process will enable more efficient and expeditious review of whether a particular application raises any national security or law enforcement concerns and, if so, how best to respond to or seek to mitigate those concerns.

Certifications: Toward the same goal of efficiency, we also request that the Commission require applicants to agree and certify to certain conditions as set out in Attachment A. Essentially, the proposed certification requires that all applicants agree to several of the most routine national security and law enforcement mitigation measures in their initial application. Doing so may obviate the need for any mitigation for a significant number of such applications, and thereby advance the shared goal of making the Executive Branch review process as expeditious and efficient as possible.

Specifically, the attached certification proposal would require all applicants to certify that, with respect to the communications services to be provided under the requested license or authorization, they will:

(i) comply with applicable provisions of the Communications Assistance for Law Enforcement Act (CALEA), 47 U.S.C. §§ 1001-10 (2014);

(ii) 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 a lawful request or valid legal process under U.S. law, for services covered under the requested Commission license or authorization; and

(iii) agree to establish a point of contact located in the United States for the execution of lawful requests and/or legal process.

This proposed certification essentially reflects current laws and obligations applicable to applicants, but would ensure that the applicants focus on those laws and obligations at the outset of the application process. The certification would continue to require applicants to declare that all information submitted is complete, up-to-date, and truthful, and that they understand that a failure to fulfill the obligations contained in the certification could result in the revocation or termination of the requested license or authorization, as well as criminal and civil penalties.

Historically, application reviews frequently require time to negotiate assurances from applicants to comply with applicable law enforcement assistance requirements, and to draft and negotiate individualized letters of assurance upon which the Executive Branch has relied to address national security and law enforcement concerns. The attached proposed certification would simplify and expedite the review process. Moreover, by requiring applicants to certify that they will abide by existing legal requirements to comply with CALEA (if applicable to the applicant's proposed and future services) and to provide communications and records thereof upon lawful request, the proposed certification would ensure that applicants consider and address these law enforcement needs prior to submitting their license application. Finally, the certification would also strengthen compliance with Executive Branch mitigation measures by making applicants certify their understanding that a failure to fulfill the obligations in the certification, or providing false, fictitious, or fraudulent information, may result in revocation or termination of the license. Should an applicant later fail to meet the legal requirements to which it knowingly consented, the certification would be a basis upon which the Commission may revoke or terminate the license.

We sincerely appreciate the Commission's consideration of these requests. Should the Commission require any additional information, please do not hesitate to contact me.

Respectfully submitted,

Lawrence E. Strickling

Lawrence E. Strickling

ATTACHMENT A

Certification Proposal

The undersigned Applicant/Petitioner for a Submarine Cable Landing License, Authorization for an International Section 214, or Authorization to exceed the foreign ownership benchmarks under Section 310(b) of the Communications Act of 1934, as amended, hereby certifies and agrees to the following:

1. If the application/petition results in the obtaining of a license or authorization, Applicant agrees to comply with all applicable Communications Assistance to Law Enforcement Act (CALEA) requirements and related rules and regulations, including any and all FCC orders and opinions governing the application of CALEA and assistance to law enforcement (*see, e.g.*, the May 3, 2006 Second Report, Memorandum Opinion and Order, and subsequent orders).

2. With regard to the services covered under the requested FCC license or authorization, applicant agrees to 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 a valid and lawful request or legal process in accordance with U.S. law, including but not limited to: (1) the Wiretap Act, 18 U.S.C. § 2510 *et seq.*; (2) the Stored Communications Act, 18 U.S.C. § 2701 *et seq.*; (3) the Pen Register and Trap and Trace Statute, 18 U.S.C. § 3121 *et seq.*, and (4) other court orders, subpoenas or other legal process. Such process includes but is not limited to requests to obtain: (1) information listed in 18 U.S.C. § 2703(c)(2) for users of Applicant's U.S. services, (2) call-identifying information as defined in 47 U.S.C. § 1001(2) relating to communications to, from, or within the United States, and (3) interception of wire, electronic, or oral communications as defined in 18 U.S.C. § 2510 to, from, or within the United States.

3. If the application/petition results in the obtaining of a license or an authorization, Applicant agrees to designate a point of contact located in the United States and who is a U.S. citizen or lawful permanent resident, for (1) the service of the requests and/or valid legal process described in paragraph 2; and (2) the receipt of other communications from the U.S. government.

4. Applicant certifies that all information submitted, whether at the time of submission of the application/petition or subsequently in response to either FCC or Executive Branch agency request, is accurate and complete to the best of Applicant's knowledge. While the application/petition is pending Applicant agrees to promptly inform the FCC and, if Applicant originally submitted the information in response to the request of another Executive Branch agency, that agency, if the information in the application is no longer substantially accurate and complete in all significant respects.

5. Applicant understands that if the Applicant fails to fulfill the obligations contained herein and/or the information provided to the United States Government is materially false, fictitious, or fraudulent, the Applicant may be subject to all remedies available to

the United States Government, including but not limited to revocation or termination of the applicant's FCC authorization, and criminal and civil penalties, including penalties under 18 U.S.C. § 1001.

I declare that the foregoing is true and complete to the best of my knowledge.

Executed this day of , year of .

Applicant's/Petitioner's Name and Title:

(Applicant's Signature)