

APPENDIX D
SAMPLE QUESTIONS REGARDING NATIONAL SECURITY AND
LAW ENFORCEMENT PROVIDED BY NTIA

This questionnaire offers guidance on the type and extent of information that may be requested when submitting applications for licenses under sections 214 and 310 of the Communications Act, as well as applications for submarine cable landing and satellite earth station licenses. These questions would generally cover, to the extent applicable to the particular application, detailed information regarding the business organization and services, network infrastructure, relationships with foreign entities or persons, historical regulatory and penal actions, and capabilities to comply with applicable legal requirements, and would be shared with relevant Executive Branch departments and agencies to assist in the review of public interest factors. These questions are intended to be illustrative and will be subject to further refinement.

CONTENTS OF FCC LICENSE APPLICATION (WITH FOREIGN OWNERSHIP)

I. ALL LICENSE APPLICATIONS SHALL DESCRIBE OR PROVIDE, AS APPLICABLE:

1. Basic information, including:

- a. Full business name;
- b. Any other names used, if applicable;
- c. Address of principal place of business;
- d. Place of incorporation;
- e. Point of contact information;
- f. Website(s);
- g. Description of intended services to be provided under this license;
- h. Description of services being provided under any currently held FCC licenses, if applicable; and
- i. Explanation of the Applicant's intended overall business model for licensed and unlicensed services in the United States for the next five years.

2. Corporate information, including:

- a. The name, address and nationality (including dual citizenship) or place of incorporation of: the immediate parent(s), the ultimate parent(s), and each intermediate parent with 5% or greater ownership.
- b. If applicable, for all 5% or greater individual owners, senior company officers or directors, or employee personnel that control or monitor the network infrastructure under the Applicant's control, who are either non-U.S. citizens or dual citizens, provide the following:
 - i. Full name, including any alternative spellings or any aliases ever used;
 - ii. Date and place of birth;
 - iii. Passport identifying number;
 - iv. US alien number (if applicable);
 - v. All residence and business addresses and phone numbers;
 - vi. Whether the individual has ever been investigated, arraigned, arrested, indicted or convicted of: (1) any of violation of federal U.S. law; (2) any

violation of local, state or federal law in connection with the provision of telecommunications services, equipment and/or products and/or any other practices regulated by the Telecommunications Act of 1996 and/or by state public utility commissions; and/or (3) deceptive sales practices, violations of the Consumer Fraud Act and regulations, and/or other fraud or abuse practices whether pursuant to local, state or federal law; and

- vii. And whether such individual will have access to systems or records from an overseas location.

3. Financial Information (if applicable), including:

- a. The name of any and all financial institutions providing support or other assistance, and
- b. Audited financial statements from the preceding accounting year, or suitable equivalent.

4. Relationships with any foreign entities, or any U.S. subsidiaries or affiliates of foreign entities (if applicable), including:

- a. The identity of the foreign entity, U.S. subsidiaries, or affiliates of foreign entities;
- b. A description of the relationship with these entities, including joint ventures, consortiums, sources of revenue accounting for over 10% of annual revenue, and other significant business relationships;
- c. Whether any of these entities are foreign government-controlled, including the identity of the foreign government exercising control; and
- d. Whether such foreign entity, or U.S. subsidiaries or affiliates thereof, has any known control over the applicant and/or access to any U.S. facility, data, or customer information under the control of the applicant.

5. Regulatory/penal actions (if applicable), including:

- a. Listing of all FCC licenses, including cancelled and/or terminated licenses, and all licenses held by affiliates;
- b. Identification of any prior or ongoing FCC enforcement actions against any and all affiliated entities, including any entities which share one or more owners with the applicant, and if concluded, the result of such actions;
- c. Any other prior or ongoing regulatory enforcement actions against any and all affiliated entities, including any entities which share one or more owners with the applicant, and if concluded, the result of such actions; and
- d. Any other violations of local, state or federal laws by any and all affiliated entities, including any entities which share one or more owners with the applicant.

6. Assistance to Law Enforcement, including:

- a. Present and/or future intended capabilities to comply with CALEA, if applicable;
- b. Present or future anticipated relationships with any trusted third party providers, if applicable;
- c. The identity of any resident U.S. citizen point of contact for law enforcement assistance; and

- d. Whether records may be accessed and/or made available in the U.S. within three business days of receipt of lawful U.S. process.

7. Network Infrastructure (if applicable), including:

- a. A description and location of any and all facilities, whether owned or leased, where any applicant-owned or leased equipment is located; include all carrier transport facilities, telecommunication switching platforms, routers, media gateways, servers, network operations centers, Points of Presence (POPs), and data centers;
- b. A description of how any network infrastructure will be used to deliver current or intended services, including identification of the carrier transport facilities (T1, DS3, Optical Carrier) that will enable customer data flow into and out of owned and/or leased equipment;
- c. A network topology map providing the geographic footprint, including all POPs. To the extent operations are accessed and/or controlled from any overseas locations, please provide the address of such locations and a description of the operations accessed and/or controlled from there;
- d. The identity of any underlying carriers used to furnish services to customers and/or resell any services; and
- e. Storage location(s) of original business records, including
 - i. records of customer data;
 - ii. storage location(s) of copies of such records;
 - iii. the location from where such records are, or will be, accessed; and
 - iv. a description of the types and nature of records to be stored.
- f. A description of network security policies and procedures.

II. In addition to the questions in item (I), Transfers of Control of 214 Applications and Petitions for Declaratory Ruling will also describe or provide the following:

1. Services to be provided, including:

- a. Description of services currently offered and estimated number of current subscribers;
- b. Description of whether services will be offered as resale or facilities-based or both;
- c. Description of the current and intended customer base, including whether residential, enterprise, carrier, whether sold directly to an end-user, and whether applicant is currently or intends to sell to local, state or federal government entities;
- d. Listing of any current or intended federal, state or local government customers/contracts, if applicable; and
- e. Current or intended underlying, interconnecting and/or peering carrier relationships.

2. Business operations, including:

- a. The total number of current employees;
- b. The total number of employees located within the United States;
- c. The total number of employees located outside the United States and a description of any access by these employees to U.S. facilities and/or data;
- d. Description of personnel screening procedures used by the applicant when hiring employees;
- e. The total number of subscribers;

III. In addition to the questions in item (I), Submarine Cable Landing licenses will also describe or provide the following:

1. A description and location of all cable-related facilities, whether owned or leased, where any applicant-owned or leased equipment is located;
2. A network topology map indicating the geographic footprint. To the extent operations are accessed and/or controlled from any overseas locations, please provide the address of such locations and a description of the operations accessed and/or controlled from there;
3. A description of the expected initial and designed capacity of the cable system, including number of fiber pair, number of wavelengths per pair, and transmission speed per wavelength;
4. If the cable system is to be owned by a consortium, a description of the ownership percentages and capacity rights by owner. To the extent that distinct fiber pair in the cable system will be owned and/or operated by specific members of the consortium, a description of the ownership and operation of each fiber pair in the cable system;
5. A description of the cable system maintenance procedures, including identification of the geographic location of the facility with maintenance authority.
6. All access control/security policies that are in place for the submarine cable network operations;
7. All current and anticipated equipment vendors and managed services providers; and
8. A list of known customers and carriers using, or intending to use, the submarine cable.

IV. In addition to the questions in item (I), Satellite Earth Station licenses will also describe or provide the following:

1. A description and location of all satellite-related facilities, whether owned or leased, where any applicant-owned or leased equipment is located;
2. A network topology map indicating the geographic footprint. To the extent operations are accessed and/or controlled from any overseas locations, please provide the address of such locations and a description of the operations accessed and/or controlled from there;
3. All access control/security policies that are in place for the satellite network operations; and

A list of known customers and carriers using, or intending to use, the satellite's communications.

**STATEMENT OF
CHAIRMAN TOM WHEELER**

Re: Process Reform for Executive Branch Review of Certain FCC Applications and Petitions Involving Foreign Ownership, Notice of Proposed Rulemaking, IB Docket No. 16-155.

One of my first acts as Chairman was to launch a comprehensive review of the agency's operations, with a goal of streamlining processes and modernizing outdated rules. This review generated more than 154 recommendations to improve the way we do business, which have sparked reforms that have dramatically reduced backlogs and accelerated processes across the agency. One of the 154 areas identified for reform was the Commission's coordination with Executive Branch agencies when reviewing applications that involved foreign ownership. Thanks to effective collaboration with other agencies, the Commission is acting today to streamline this process, too.

When making a determination as to whether or not an application meets the public interest standard, applicants that are foreign-owned can raise unique issues. In such cases, the Commission has long sought input from the expert Executive Branch agencies on whether the proposed foreign investment raises national security, law enforcement, foreign policy, or trade policy concerns.

This process is necessary, but it's also flawed. We have received complaints from applicants that it's too hard to find information about the status of applications and that the review process takes too long. I agree.

Completing review of an application referred for Executive Branch review takes, on average, 250 days. Now consider that 250 days ago Kevin McCarthy was expected to become the next speaker of the House; Ben Carson was surging toward the top of the primary polls; and an Alabama Crimson Tide loss had people saying the Nick Saban dynasty was over.

We need to do better than 250 days. That's why, for the last two years, the Commission has been working with the Executive Branch and industry on ways to improve the process. We have identified obvious flaws that could be improved. For example, the national security and law enforcement agencies currently ask applicants a broad set of initial questions *after* the application is filed to help identify any national security and law enforcement concerns. Our review indicates that the analysis could move much faster if the relevant information is provided at the start of the process.

Last month, NTIA submitted a letter to the Commission outlining ideas from the Executive Branch agencies on how to improve coordination. We then issued a Public Notice seeking comment on the letter, and today we launch a rulemaking to implement many of NTIA's recommendations, and some additional ones of our own.

In particular, today's NPRM proposes to make certain questions publicly available on our website and require that applicants, with reportable foreign ownership, file answers to questions on ownership, network operations, and related matters *at the time of filing the application* to increase transparency and speed up the process. We propose having applicants certify to certain mitigation provisions *at the time of filing the application*, which also will expedite review. For instance, if such a certification process had been in place last year, this would have eliminated the need for over 50% of the mitigation agreements negotiated that year.

Going beyond NTIA's recommendations and consistent with responses to our Public Notice, this item proposes to establish a 90-day time frame for Executive Branch review with an additional one-time 90-day extension for circumstances where the Executive Branch requires additional time, provided the Executive Branch demonstrates that issues of complexity warrant an extension and provides a status

update every 30 days. Adopting reasonable time frames for completion of Executive Branch referrals will add certainty to the process.

Should the proposals be adopted, the process will be more predictable and transparent, which will work better for the Commission, for the Executive Branch, for the applicants, and, most important, ensure that new infrastructure and services offerings are made available faster to consumers.

Thank you to the International Bureau for their work on this item. I appreciate especially the interest Commissioner O’Rielly has taken in streamlining this process, and I look forward to working with him, the other Commissioners and with the relevant agencies to advance the goal of a faster, more transparent process.