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# FCC Adopts Rules Codifying Foreign Investment Process

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On September 30, the Federal Communications Commission (“FCC”) unanimously [adopted](#) an order (“Order”) formalizing the “Team Telecom” process by which executive branch agencies review foreign investments in U.S. telecommunications, broadcast, and submarine cable licensees. The Order concludes a rulemaking process that began in 2016 to formalize the previously *ad hoc* Team Telecom review process.

The FCC’s decision responds to the April 4, 2020 Executive Order that revised the Team Telecom process, [about which we previously wrote](#). The FCC’s new rules largely align with the Executive Order and provide important guidance for investors in FCC-regulated entities, including specifics on which applications will be referred to the new Committee for the Assessment of Foreign Participation in the United States Telecommunications Services Sector and prescribed timelines for Team Telecom’s review.

Under the new rules, national security reviews will largely follow the same pattern as under the previous *ad hoc* Team Telecom process. Applications for telecommunications, broadcast, and submarine cable licenses disclosing 10% or greater foreign ownership will trigger a national security review by Team Telecom. As before, this process may result in the FCC denying the application or conditioning approval on compliance with mitigation measures agreed to by Team Telecom and the applicants. Nonetheless, the addition of timeframes, expanded initial information requests, and other changes do provide some clarity and predictability for applicants—a meaningful improvement over a previously *ad hoc* and unpredictable process.

## Applications Subject to Team Telecom Review

Under the new rules, the FCC retains its existing practice of referring applications for submarine cable landing licenses and international Section 214 authorizations to Team Telecom when they involve direct or indirect foreign ownership of 10% or more of the licensee. Applications to transfer control of, assign, or modify these licenses will be referred to Team Telecom in the same way as applications for new licenses. Petitions to exceed the 25% foreign ownership limitation in Section 310(b)(4) of the Communications Act (including those related to broadcast licenses) will also automatically be referred.

In a change from current practice, the FCC will no longer automatically refer applications for transfer or assignment of standalone domestic Section 214 authorizations, recognizing that Team Telecom has not historically pursued mitigation for applications of this type. The FCC retains discretion to refer these applications on its own initiative, but will no longer do so routinely. Under the new rules, certain types of applications are also presumptively excluded from Team Telecom review, including:

- **Pro Forma.** Applications or notifications of *pro forma* changes, which do not result in a change in actual control of the entity;
- **Holding Companies.** Applications and petitions where the only involved foreign ownership is through “wholly owned intermediate holding companies and the ultimate ownership and control is held by U.S. citizens or entities”;
- **Pre-Existing Mitigation Agreements.** International Section 214 applications submitted by an applicant who is already subject to a mitigation agreement with Team Telecom, provided that the applicant has no new “reportable” foreign owners and agrees to abide by the terms of the existing agreement; and
- **Approval Within Last 18 Months.** International Section 214 applications where the applicant received Team Telecom clearance within the past 18 months without the imposition of any mitigation requirements, and where there is no new reportable foreign ownership since that review.

### New Information Submission Requirements

The FCC directed its International Bureau to develop standard questions for applicants, which will require applicants to provide information at the time of application to assist in Team Telecom review. Responses to these questions will be required to be filed with Team Telecom prior to, or concurrent with, the submission of covered applications. While the Bureau has 90 days to finalize those questions, they are required to cover “(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 by network infrastructure.” The Bureau is expected to work quickly to finalize these questions, including submitting a draft set of questions for public comment prior to their finalization. Because the additional questions will entail a revision of public information collections, it is also likely that the Bureau will need to obtain approval from the Office of Management and Budget prior to putting the revised forms into use.

The FCC imposed a new certification requirement covering five topics, required of all Section 214 and submarine cable applicants (including those seeking assignment, transfer of control, or modification of such authorizations). Broadcast applications must make only the last three certifications. Applicants will be required to certify that they will:

- Comply with the Communications Assistance for Law Enforcement Act (“CALEA”);
- Make communications to, from, or within the U.S., and records of the same, available to U.S. law enforcement officials;
- Designate a U.S. citizen or permanent U.S. resident as a point of contact for lawful requests, and designate an agent for service of process;
- Confirm the accuracy of all information in the applications and commit to keeping it up to date; and
- Verify the applicant’s understanding that failure to fulfill any condition of a grant of an application can result in license revocation or termination and criminal or civil penalties.

These certifications are consistent with common requirements in mitigation agreements, and are intended to help expedite the process and ensure the Executive Branch agencies have up-to-date information.

The FCC also modified its existing application requirements. Applicants are now explicitly required to disclose **voting interests** constituting 10% or greater direct or indirect control. In practice, the Commission has required the disclosure of both voting and equity interests, and the change is designed to streamline the process. Similarly, ownership diagrams are now required to be filed with FCC applications—while it was customary to include such diagrams, they were not previously required. Finally, underwater cable licensees will be required to meet certain reporting requirements regardless of whether or not the destination country is a WTO member.

These requirements, crucially, do not supplant Team Telecom’s ability to request additional information on any topic(s) it deems relevant. It is possible and in some cases likely that the agencies will ask additional questions, and the FCC’s action expressly contemplates that in some circumstances Team Telecom will ask additional questions tailored to a particular application’s circumstances.

### Timing

The rules establish a 120-day period for initial review by Team Telecom, with an optional 90-day secondary review at Team Telecom’s discretion. While the FCC imposed a number of status update requirements on Team Telecom to provide greater transparency, the FCC stopped short of stating conclusively that it would act on applications in the event these timeframes expire without Team Telecom’s input, instead noting only that the agency *may* act at such a time. Critically, these time periods are calculated from when Team Telecom determines that an applicant’s responses are complete. As we noted previously, the Executive Order did little to mitigate timing risk given its flexible shot clock timelines—and the FCC’s rules are similarly flexible and review may take in excess of 120 days from filing for simpler reviews or, in cases of secondary review, 210 days.

### The Road Ahead

While the new rules provide a great deal of clarity, they ultimately stop short of providing certainty to applicants as to the timeframes and scope of Team Telecom review. If the Executive Branch process slows down or stalls, it is not certain that the FCC will necessarily act. Nor is it clear how the agency will respond to Team Telecom interventions driven, as expressly contemplated by the Executive Order, by trade or foreign policy concerns, rather than security and law enforcement interests.

In addition, while the timeframes provide a mental anchor for review participants, both Team Telecom and the FCC have the flexibility to extend those deadlines. Depending upon the extent to which Team Telecom ultimately broadens the scope or depth of an inquiry, the FCC’s new rules may not provide additional certainty on information required to be filed. Supplemental questions from Team Telecom may also undercut any time efficiency by requiring multiple rounds of responses, notwithstanding the significantly expanded information that applicants will now provide at the time of application.

To learn more about the new FCC foreign investment review process, its impact on pending and forthcoming transactions, and the FCC’s next steps in response, contact Sherrese Smith, whose contact information appears below.

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*If you have any questions concerning these developing issues, please do not hesitate to contact the following Paul Hastings Washington, D.C. lawyer:*

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