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**FEDERAL COMMUNICATIONS COMMISSION**

**47 CFR Parts 0, 1, and 63**

**[IB Docket No. 16–155; DA 20-452; FRS 16720]**

**Process Reform for Executive Branch Review of Certain FCC Applications and Petitions Involving Foreign Ownership**

**AGENCY:** Federal Communications Commission.

**ACTION:** Proposed record of proceeding.

**SUMMARY:** In this document, the International Bureau (IB) refreshes the record in Executive Branch Review Process Proceeding, IB Docket 16-155, by adding Executive Order 13913 into the record of the proceeding and seeking comment.

**DATES:** Comments are due on or before **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**, and reply comments are due on or before **[INSERT DATE 44 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

**ADDRESSES:** Pursuant to §§ 1.415 and 1.419 of the Commission’s rules, 47 CFR 1.415, 1.419, interested parties may file comments and reply comments on or before the dates indicated in this document. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS). See *Electronic Filing of Documents in Rulemaking Proceedings*, 63 FR 24121 (1998).

- *Electronic Filers.* Comments may be filed electronically using the Internet by accessing the ECFS: <https://www.fcc.gov/ecfs>.
- *Paper Filers.* Parties who choose to file by paper must file an original and one copy of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, filers must submit two additional copies for each additional docket or rulemaking number.

Filings can be sent by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. All filings must be addressed to the Commission’s Secretary, Office of the Secretary, Federal Communications Commission.

- Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9050 Junction Drive, Annapolis Junction, MD 20701. U.S. Postal Service first-class, Express, and Priority mail must be addressed to 445 12<sup>th</sup> Street, SW, Washington DC 20554.
- Effective March 19, 2020, and until further notice, the Commission no longer accepts any hand or messenger delivered filings. This is a temporary measure taken to help protect the health and safety of individuals, and to mitigate the transmission of COVID-19. See FCC Announces Closure of FCC Headquarters Open Window and Change in Hand-Delivery Policy, Public Notice, DA 20-304 (March 19, 2020). <https://www.fcc.gov/document/fcc-closes-headquarters-open-window-and-changes-hand-delivery-policy>
- *People with Disabilities:* To request materials in accessible formats for people with disabilities (braille, large print, electronic files, audio format), send an email to [fcc504@fcc.gov](mailto:fcc504@fcc.gov) or call the Consumer & Governmental Affairs Bureau at 202-418-0530 (voice) or 202-418-0432 (TTY).

In addition, filers may provide one copy of each filing to each of the following: (1) Arthur Lechtman, Attorney, Telecommunications and Analysis Division, International Bureau, at [Arthur.Lechtman@fcc.gov](mailto:Arthur.Lechtman@fcc.gov), and (2) David Krech, Associate Division Chief, Telecommunications and Analysis Division, International Bureau, at [David.Krech@fcc.gov](mailto:David.Krech@fcc.gov).

**FOR FURTHER INFORMATION CONTACT:** For further information, please contact Arthur Lechtman, Telecommunications and Analysis Division, International Bureau, at [Arthur.Lechtman@fcc.gov](mailto:Arthur.Lechtman@fcc.gov) or (202) 418-1465.

**SUPPLEMENTARY INFORMATION:** The Commission refers certain applications to Executive Branch agencies when there is reportable foreign ownership in the applicant. Specifically, where an applicant has a 10% or greater direct or indirect owner that is not a U.S. citizen, Commission practice has been to refer an application for: (1) international section 214 authority; (2) assignment or transfer of control of domestic or international section 214 authority; (3) a submarine cable landing license; and (4) assignment or transfer of control of a submarine cable landing license. The Commission also refers

petitions seeking authority to exceed the foreign ownership limits in section 310(b) of the Communications Act of 1934, as amended, 47 U.S.C. 310(b), for broadcast and common carrier wireless licensees, including common carrier satellite earth stations.

On June 24, 2016, the Commission adopted a Notice of Proposed Rulemaking (NPRM) to improve the timeliness and transparency of the process involving referral of certain applications with reportable foreign ownership to Executive Branch agencies, including the Team Telecom agencies, for feedback on any national security, law enforcement, foreign policy, or trade policy concerns. *Process Reform for Executive Branch Review of Certain FCC Applications and Petitions Involving Foreign Ownership*, 81 FR 46870 (2016) (*Executive Branch Review Process NPRM*). Specifically, the Commission sought comment on: (1) the types of applications to be referred to the Executive Branch; (2) the information that should be provided by an applicant with reportable foreign ownership in order to facilitate Executive Branch review; (3) certifications to be made by an applicant that it will comply with several mitigation measures; and (4) time frames for Executive Branch review of the applications. The Commission proposed a 90-day review period for applications referred to the Executive Branch, with a one-time additional 90-day extension for circumstances where the Executive Branch required additional review time beyond the initial period.

On April 4, 2020, the President signed Executive Order 13913, Establishing the Committee for the Assessment of Foreign Participation in the United States Telecommunications Services Sector, 85 FR 19643 (April 8, 2020). Importantly, among other things, the Executive Order sets out procedures and timeframes for the Committee's review of applications referred by the Commission.

The Executive Order establishes the Committee to review applications referred by the Commission. The Committee may also review existing licenses to identify any additional or new risks to national security or law enforcement interests of the United States, where the Commission previously has referred the application for the license to the Committee or its predecessor agencies for review. The Committee is comprised of the Secretary of Defense; the Secretary of Homeland Security; and the Attorney General, who serves as Chair (together, the Committee Members). The President may also appoint the head of any other department or agency, or any Assistant to the President, to be a member of

the Committee. The Executive Order also provides for Committee Advisors. Within 90 days of the signing of the Executive Order, the Committee Members and the Director of National Intelligence shall enter into a Memorandum of Understanding (MOU) on the process to implement the Executive Order.

The Executive Order sets out the following time frames for the Committee's review of an application for a "license" or transfer of a license referred by the Commission: 120 days for an initial review and a 90-day secondary assessment of an application if the Committee determines that the risk to national security or law enforcement interests cannot be mitigated by standard mitigation measures. The Executive Order defines a "license" as any license, certificate of public interest, or other authorization issued or granted by the Federal Communications Commission after referral of an application by the Commission to the Committee or its predecessor group of agencies. It defines an "application" as any application, petition, or other request for a license or authorization, or the transfer of a license or authorization, referred by the Commission to the Committee or its predecessor group of agencies. At the conclusion of its review, the Committee may advise the Commission that the Committee has no objection to grant of the application; recommends that the Commission deny the application due to the risk to the national security or law enforcement interests of the United States; or recommends that the Commission condition grant on the applicant's compliance with standard or non-standard mitigation measures. In cases where the Committee Members and Committee Advisors cannot reach consensus on recommendations to deny or condition on non-standard mitigation, they shall submit a recommendation to the President.

The Committee may seek information from an applicant in furtherance of its review and assessments of the application, and the 120-day time frame for review begins when the Committee Chair determines that the applicant's responses are complete. The MOU will delineate questions and requests for applicants and licensees that may be needed to acquire information necessary to conduct the reviews and assessments and define the standard mitigation measures.

By this Public Notice, the Commission enters the Executive Order into the record of IB Docket No. 16-155 and seeks comment on the effect of the Executive Order on the Commission's proposed rules and procedures.

*Request for Comments:* The Commission seeks comment on the effect of Executive Order 13913 on the proposals in the *Executive Branch Review Process NPRM* for Executive Branch review of Commission applications with reportable foreign ownership. Commenters should address how the Executive Order affects the specific proposals and issues raised in the *Executive Branch Review Process NPRM*. The Commission seeks comment generally on whether the Executive Order warrants any further or different rules to improve timeliness and transparency.

In particular, the Commission invites the Executive Branch to provide its view on the effect of the Executive Order in this proceeding and on the following issues. Will the Committee make publicly available a standard set of questions and requests to applicants? If so, how will applicants be able to access them? Would the Committee expect an applicant's responses to such questions to be submitted to the Committee at the time the application is filed? Does the Executive Branch continue to propose that certain certifications be made by applicants as part of the application process? If so, are there any changes to the proposed certifications? And does the Executive Branch continue to propose that all applicants make the certifications, or that such certifications apply solely to those applicants with reportable foreign ownership?

Interested parties also may take this opportunity to refresh the record of this proceeding with new facts or circumstances that have occurred since the NPRM's comment period closed in 2016. For example, how does the passage of the Clarifying Lawful Overseas Use of Data (CLOUD) Act, 18 U.S.C. 2713, affect the proposed certification on access to communications and records? The Commission sought comment of requiring an applicant to certify that it will "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 lawful request or valid legal process under U.S. law, for services covered under the requested Commission license or authorization."

*Ex Parte Information:* This proceeding shall be treated as a "permit-but-disclose" proceeding in accordance with the Commission's ex parte rules. 47 CFR 1.1200. Persons making ex parte presentations must file a copy of any written presentation or a memorandum summarizing any oral presentation within two business days after the presentation (unless a different deadline applicable to the

Sunshine period applies). Persons making oral ex parte presentations are reminded that memoranda summarizing the presentation must (1) list all persons attending or otherwise participating in the meeting at which the ex parte presentation was made, and (2) summarize all data presented and arguments made during the presentation. If the presentation consisted in whole or in part of the presentation of data or arguments already reflected in the presenter's written comments, memoranda, or other filings in the proceeding, the presenter may provide citations to such data or arguments in his or her prior comments, memoranda, or other filings (specifying the relevant page and/or paragraph numbers where such data or arguments can be found) in lieu of summarizing them in the memorandum. Documents shown or given to Commission staff during ex parte meetings are deemed to be written ex parte presentations and must be filed consistent with § 1.1206(b) of the Commission's rules. In proceedings governed by § 1.49(f) of the Commission's rules or for which the Commission has made available a method of electronic filing, written ex parte presentations and memoranda summarizing oral ex parte presentations, and all attachments thereto, must be filed through the electronic comment filing system available for that proceeding, and must be filed in their native format (e.g., .doc, .xml, .ppt, searchable .pdf). Participants in this proceeding should familiarize themselves with the Commission's ex parte rules.

Federal Communications Commission

Denise Coca,  
Chief, Telecommunications & Analysis Division, International Bureau.  
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