

## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Parts 1 and 63

[IB Docket No. 23–119, MD Docket No. 23–134; FCC 23–28; FR ID 143248]

### Review of International Authorizations To Assess Evolving National Security, Law Enforcement, Foreign Policy, and Trade Policy Risks; Amendment of the Schedule of Application Fees

**AGENCY:** Federal Communications Commission.

**ACTION:** Proposed rule.

**SUMMARY:** The Federal Communications Commission (Commission) takes another important step to protect the nation’s telecommunications infrastructure from threats in an evolving national security and law enforcement landscape by proposing comprehensive changes to the Commission’s rules that allow carriers to provide international telecommunications service. The Commission proposes rules that would require carriers to renew, every 10 years, their international authorizations. In the alternative, the Commission seeks comment on adopting rules that would require all international authorization holders to periodically update information enabling the Commission to review the public interest and national security implications of those authorizations based on that updated information. Through these proposals, the Commission seeks to ensure that the Commission is exercising appropriate oversight of international authorization holders to safeguard U.S. telecommunications networks.

**DATES:** Comments are due on or before August 31, 2023; and reply comments are due on or before October 2, 2023. Written comments on the Paperwork Reduction Act proposed information collection requirements must be submitted by the public, Office of Management and Budget (OMB), and other interested parties on or before October 2, 2023.

**ADDRESSES:** You may submit comments, identified by IB Docket No. 23–119 and MD Docket No. 23–134, by any of the following methods:

- *Federal Communications Commission’s Website:* <http://apps.fcc.gov/ecfs/>. Follow the instructions for submitting comments.
- *Mail:* Parties who choose to file by paper must file an original and one copy of each filing.
  - 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 45 L Street NE, Washington, DC 20554.

- *People with Disabilities:* Contact the FCC to request reasonable accommodations (accessible format documents, sign language interpreters, CART, etc.) by email: [FCC504@fcc.gov](mailto:FCC504@fcc.gov) or phone: 202–418–0530 or TTY: 202–418–0432.

For detailed instructions for submitting comments and additional information on the rulemaking process, see the **SUPPLEMENTARY INFORMATION** section of this document.

Find this particular information collection by selecting “Currently under 60-day Review—Open for Public Comments” or by using the search function. Your comment must be submitted into [www.reginfo.gov](http://www.reginfo.gov) per the above instructions for it to be considered. In addition to submitting in [www.reginfo.gov](http://www.reginfo.gov) also send a copy of your comment on the proposed information collection to Cathy Williams, FCC or Nicole Ongele, via email to [PRA@fcc.gov](mailto:PRA@fcc.gov) and to [Cathy.Williams@fcc.gov](mailto:Cathy.Williams@fcc.gov) or [Nicole.Ongele@fcc.gov](mailto:Nicole.Ongele@fcc.gov). Include in the comments the OMB control number 3060–0686.

**FOR FURTHER INFORMATION CONTACT:** Gabrielle Kim, Office of International Affairs, Telecommunications and Analysis Division, at (202) 418–0730 or via email at [Gabrielle.Kim@fcc.gov](mailto:Gabrielle.Kim@fcc.gov). For additional information concerning the Paperwork Reduction Act information collection requirements contained in this document, send an email to [PRA@fcc.gov](mailto:PRA@fcc.gov) or contact Cathy Williams, Office of Managing Director, at (202) 418–2918 or [Cathy.Williams@fcc.gov](mailto:Cathy.Williams@fcc.gov).

**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission’s Notice of Proposed Rulemaking, FCC 23–28, adopted on April 20, 2023, and released on April 25, 2023. The full text of this document is available on the Commission’s website at <https://docs.fcc.gov/public/attachments/FCC-23-28A1.pdf>. This Notice of Proposed Rulemaking is adopted pursuant to sections 4(i), 4(j), 201, 214, 218, 219, 403, and 413 of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 154(j), 201, 214, 218, 219, 403, and 413.

To request materials in accessible formats for people with disabilities, send an email to [FCC504@fcc.gov](mailto:FCC504@fcc.gov) or call the Consumer & Governmental Affairs Bureau at (202) 418–0530 (voice), (202) 418–0432 (TTY).

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 on the first page of 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: <http://apps.fcc.gov/ecfs/>.

- *Paper Filers:* Parties who choose to file by paper must file an original and one copy of each filing.

- 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 45 L Street NE, 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>.

The proceeding this Notice initiates shall be treated as a “permit-but-disclose” proceeding in accordance with the Commission’s *ex parte* rules.<sup>1</sup> 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

<sup>1</sup> 47 CFR 1.1200 *et seq.*

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 rule 1.1206(b). In proceedings governed by rule 1.49(f) 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.

#### Initial Paperwork Reduction Act of 1995 Analysis

This document contains proposed information collection requirements. The Commission, as part of its continuing effort to reduce paperwork burdens, invites the general public and the Office of Management and Budget (OMB) to comment on the information collection requirements contained in this document, as required by the Paperwork Reduction Act of 1995, Public Law 104–13. Public and agency comments are due October 2, 2023.

*Comments should address:* (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimates; (c) ways to enhance the quality, utility, and clarity of the information collected; (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology; and (e) ways to further reduce the information

collection burden on small business concerns with fewer than 25 employees. In addition, pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, see 44 U.S.C. 3506(c)(4), the Commission seeks specific comment on how the Commission might further reduce the information collection burden for small business concerns with fewer than 25 employees.

#### Synopsis

##### I. Notice of Proposed Rulemaking

1. This document seeks comment on proposed rules and possible alternative approaches, including alternatives for small entities, that will further the Commission's goal of ensuring that the Commission continually accounts for evolving public interest considerations associated with international section 214 authorizations following an initial grant of the authority. *First*, the Commission proposes to cancel the authorizations of those international section 214 authorization holders that fail to respond to the one-time collection requirement adopted in the Order. *Second*, the Commission proposes to adopt a 10-year renewal framework for the Commission's reassessment of all authorizations or, in the alternative, seek comment on a formalized periodic review of such authorizations. *Third*, the Commission proposes to adopt a process that prioritizes renewal applications with foreign ownership to regularly reassess any evolving national security, law enforcement, foreign policy, and/or trade policy concerns, as opposed to reviewing international section 214 authorizations only on an *ad hoc* basis. The Commission intends to continue to collaborate with the relevant Executive Branch agencies and to refer matters to the Executive Branch agencies, including the Committee, where warranted. The Commission seeks comment on categorizing applications to minimize burdens on the relevant Executive Branch agencies, including the Committee. *Fourth*, the Commission proposes or seeks comment on new application rules to capture critical information from all applicants with and without reportable foreign ownership not currently collected and to require additional certifications. *Fifth*, to further ensure that carriers' use of their international section 214 authority is in the public interest, the Commission proposes and seeks comment on modifications to related Parts 1 and 63 rules. *Finally*, the Commission invites comment on the

costs and benefits of the proposed rules and any alternatives.

##### A. Failure To Timely Respond to One-Time Information Collection

2. In the Order, the Commission directs each authorization holder to identify its 10% or greater direct or indirect foreign interest holders (reportable foreign ownership), as of thirty (30) days prior to the filing deadline. If an international section 214 authorization holder fails to timely respond to the information collection required in the Order, the Commission proposes to cancel its authorization. The Commission would deem the failure to respond to the Order as presumptive evidence that the authorization holder is no longer in operation. The Commission proposes to publish a list of non-responsive authorization holders in the **Federal Register** and provide an additional 30 days from that publication for those authorization holders to respond to the information collection requirement or surrender the authorization. If an authorization holder has not responded within 30 days of the publication of the notice in the **Federal Register**, the Commission proposes that those authorizations would be automatically cancelled. The Commission notes that authorization holders that fail to comply with the information collection required in the Order are subject to forfeitures in addition to cancellation. The Commission tentatively finds this proposal is reasonable and necessary to ensure the accuracy of the Commission's records regarding international section 214 authorization holders and in consideration of the Commission's need to implement a renewal or, in the alternative, periodic review process with administrative efficiency.

3. The Commission proposes that any authorization holder whose authorization is cancelled for failure to timely respond to the information collection may file a petition for reinstatement *nunc pro tunc* of the authorization. The Commission proposes that a petition for reinstatement will be considered: (1) if it is filed within six months after publication of the **Federal Register** notice; (2) if the petition demonstrates that the authorization holder is currently in operation and has customers; and (3) if the petition demonstrates good cause for the failure to timely respond. The Commission proposes that an authorization holder whose authorization is cancelled under these procedures would be able to file an application for a new international

214 authorization in accordance with the Commission's rules, which would be subject to full review. The Commission seeks comment on the cancellation process generally and if there are any proposals to assist small entities. Should there be any other procedural requirements if an authorization holder does not file a petition for reinstatement within six months after publication of the **Federal Register** notice? The Commission seeks comment whether these procedures would provide non-responsive authorization holders with sufficient due process and notice and opportunity to respond.

### B. International Section 214 Renewal or Periodic Review Requirements

#### 1. Legal Authority

4. *Legal Authority.* As described below, the Commission proposes to adopt a 10-year renewal requirement for all international section 214 authorization holders, whereby those authorization holders must periodically demonstrate that their authorization continues to serve the public interest, and such authorization would expire following appropriate proceedings if the holder fails to meet that burden. In the alternative, the Commission seeks comment on adopting a periodic review process whereby international section 214 authorization holders must periodically submit similar information demonstrating that their authorization continues to serve the public interest, and the Commission or the Office of International Affairs could institute a revocation proceeding if the holder fails to meet that burden. As a threshold matter, the Commission tentatively finds that it has the authority to require the renewal of international section 214 authorizations. The Commission also tentatively concludes that it has the authority to adopt a periodic review process as an exercise of its power to revoke authorizations.

5. The Commission tentatively concludes that it has direct and ancillary authority under sections 4(i), 201(b), and 214 of the Act—individually and collectively—to adopt terms and conditions of service for international section 214 authorizations, including time limits on an authorization, and to cancel an authorization through non-renewal of the international section 214 authority where the Commission determines that the public interest so requires. Section 214 of the Act does not expressly require the renewal of section 214 authorizations unlike section 307(c), which permits the Commission to prescribe license terms by rule,

except that broadcast license terms may not exceed eight years. Although section 214 does not expressly provide for renewal of authorizations, section 214(c) affords the Commission discretion to grant the authority requested or “refuse” to do so, and the Commission may condition any grant on “such terms and conditions as in its judgment the public convenience and necessity may require.” In addition, under section 4(i), the Commission has broad authority to adopt rules, not inconsistent with the Act, “as may be necessary in the execution of its functions.” Under section 201(b) the Commission has broad general grant of rulemaking authority to “prescribe such rules and regulations as may be necessary in the public interest to carry out the provisions of this [Act].”<sup>2</sup>

6. Section 214(a) of the Act prohibits any carrier from constructing, acquiring, or operating any line, and from engaging in transmission through any such line, without first obtaining a certificate from the Commission “that the *present or future* public convenience and necessity require or will require the construction, or operation, or construction and operation, of such . . . line . . . .” Thus, the Act requires the Commission to ensure that not only the “construction” of the line, but also its “operation,” further the public convenience and necessity. In addition, the Act requires the Commission to ensure that not only the present, but also the future operations of a telecommunications carrier authorized to provide service under section 214, further the public convenience and necessity. Promotion of national security is an integral part of the Commission's public interest responsibility, including its administration of section 214 of the Act and one of the core purposes for which Congress created the Commission.<sup>3</sup> In

<sup>2</sup> 47 U.S.C. 201(b). Indeed, in upholding Commission's exercise of ancillary jurisdiction pursuant to section 201(b), the Supreme Court stated in *AT&T v. Iowa Utilities Board* that “[w]e think that the grant in § 201(b) means what it says: The FCC has rulemaking authority to carry out the ‘provisions of this Act.’” 525 U.S. 366, 378 (1999).

<sup>3</sup> Section 1 of the Act provides that Congress created the Commission, among other reasons, “for the purpose of the national defense [and] for the purpose of promoting safety of life and property through the use of wire and radio communications . . . .” 47 U.S.C. 151; see, e.g., *China Telecom Americas Order on Revocation and Termination*, 36 FCC Rcd at 15968, paragraph 3, *aff'd*, *China Telecom (Americas) Corp. v. FCC*; *China Unicom Americas Order on Revocation at \*2*, paragraph 3; *Pacific Networks/ComNet Order on Revocation and Termination at \*2*, paragraph 3; *Protecting Against National Security Threats Order*, 34 FCC Rcd 11423, *aff'd*, *Huawei Technologies USA, Inc. v. FCC*, 2 F.4th 421, 439; *2022 Protecting Against National Security Threats Order*.

recent revocation actions, the Commission has found, given established statutory directives and longstanding Commission determinations, that it has authority to revoke section 214 authority. By the same reasoning, the Commission tentatively finds that it has the authority to require the renewal and/or periodic review of a carrier's international section 214 authority to ensure that the public convenience and necessity continues to be served by the carrier's operations.

7. In addition, section 214(c) of the Act permits the Commission to “attach to the issuance of the [section 214] certificate such terms and conditions as in its judgment the public convenience and necessity may require.” In granting all telecommunications carriers blanket domestic section 214 authority, the Commission found that the “present and future public convenience and necessity require the construction and operation of all domestic new lines pursuant to blanket authority,” subject to the Commission's ability to revoke a carrier's section 214 authority when warranted to protect the public interest.<sup>4</sup> Likewise, when the Commission opened the U.S. telecommunications market to foreign participation in the late 1990s, it delineated a non-exhaustive list of circumstances where it reserved the right to designate for revocation an international section 214 authorization based on public interest considerations and stated that it considers “national security” and “foreign policy” concerns when granting authorizations under section 214 of the Act.<sup>5</sup> Thus, carriers

<sup>4</sup> *China Telecom Americas Order on Revocation and Termination*, 36 FCC Rcd at 15968 through 69, paragraph 4, *aff'd*, *China Telecom (Americas) Corp. v. FCC*; *China Unicom Americas Order on Revocation at \*2*, 9, paragraphs 4, 24; *Pacific Networks/ComNet Order on Revocation and Termination at \*2*, paragraph 4; *Domestic 214 Blanket Authority Order*, 14 FCC Rcd at 11374, paragraph 16. The Commission has explained that it grants blanket section 214 authority, rather than forbearing from application or enforcement of section 214 entirely, in order to remove barriers to entry without relinquishing its ability to protect consumers and the public interest by withdrawing such grants on an individual basis. *Id.* at 11372 through 73, 11374, paragraphs 12 through 14, 16.

<sup>5</sup> *China Telecom Americas Order on Revocation and Termination*, 36 FCC Rcd at 15968 through 99, paragraph 4, *aff'd*, *China Telecom (Americas) Corp. v. FCC*; *China Unicom Americas Order on Revocation at \*2*, 9, paragraphs 4, 24; *Pacific Networks/ComNet Order on Revocation and Termination at \*2*, paragraph 4; *Foreign Participation Order*, 12 FCC Rcd at 23896, 23919 through 20, paragraphs 9, 61 through 63. With regard to revocation of an international section 214 authorization, the Commission in the *Foreign Participation Order* and the *Reconsideration Order* delineated a non-exhaustive list of circumstances where it reserved the right to designate for

are granted a section 214 authorization subject to the Commission's reserved power to revoke those authorizations if later circumstances warrant. Likewise, the Commission tentatively finds that under section 214(c) the Commission has reserved the power to adopt terms and conditions for authorizations granted under section 214 of the Act, such as requiring the renewal or other review of carriers' international section 214 authority, as the public convenience and necessity may require in order to provide the Commission the opportunity to assess whether an authorized telecommunications carrier and its operations raise national security, foreign policy, and/or trade policy concerns.

8. The Commission tentatively finds that section 4(i) of the Act provides further support for the Commission's authority to require renewal, or periodic review, of international section 214 authorizations. Section 4(i) authorizes the Commission to "perform any and all acts, make such rules and regulations, and issue such orders, not inconsistent with this Act, as may be necessary in the execution of its functions." The Commission has long found that section 4(i) "supports revocation authority, as reasonably ancillary to the Commission's authority to authorize common carrier service in the first instance." As the Commission explained, revocation authority "is necessary to ensure not only compliance with the Commission's rules and its requirements for truthfulness, but also that circumstances with serious national security and law enforcement consequences that would have been relevant in determining whether to authorize service remain relevant in light of significant developments since the time of such authorization." For these same reasons, the Commission tentatively finds that the authority to refuse renewal of or require periodic

review of carriers' international section 214 authority is at least "reasonably ancillary" to the performance of the Commission's responsibilities under section 214 of the Act to ensure that a carrier's operations remain consonant with the "public convenience and necessity."

9. The Commission seeks comment on its legal analysis and whether these statutory provisions give the Commission broad flexibility to promulgate regulations—such as a renewal or, in the alternative, a periodic review process for international section 214 authorizations—that may not be expressly identified in precise terms where necessary to carry out the Commission's regulatory responsibilities under section 214 consistent with the purposes of the Act, such as promoting national security.<sup>6</sup> At a minimum, would such rules be "reasonably ancillary to the effective performance of the Commission's various responsibilities . . . ." The Commission also seeks comment on whether other statutory provisions provide a legal basis for adopting the renewal or in the alternative, a periodic review process outlined below. Would the Commission have authority to institute one of the proposals—periodic renewal or periodic review—but not the other?

10. *Due Process and Retroactivity.* As noted below, the Commission seeks comment on whether all international section 214 authorizations regardless of issuance date and ownership should be subject to renewal or, in the alternative, periodic review process. Because the renewal framework the Commission proposes to adopt will affect both existing authorization holders and authorizations held pursuant to applications granted, after the effective date of the renewal rules, the Commission seeks comment on due process and retroactivity concerns—including "primary" versus "secondary" retroactivity—that may arise from this proposal.<sup>8</sup> Specifically, the Commission seeks comment on the

interplay between renewal standards and retroactivity concerns.

11. The courts have established a distinction for rules between "primary" retroactivity and "secondary" retroactivity. A rule is primarily retroactive if it (1) "increase[s] a party's liability for past conduct"; (2) "impair[s] rights a party possessed when he acted"; or (3) "impose[s] new duties with respect to transactions already completed." The standard for primary retroactivity assesses whether a rule has changed the past legal consequences of past actions. In contrast, a rule would be "secondarily" retroactive if it "affects a regulated entity's investment made in reliance on the regulatory status quo before the rule's promulgation." Secondary retroactivity will be upheld "if it is reasonable."

12. The Commission tentatively concludes that the renewal framework the Commission proposes here is not "primarily" retroactive as applied to applications granted after the effective date of any new rules, as the mere adoption of such a requirement would not make past conduct unlawful, alter rights the carrier had at the time an application was granted, or impose new duties with respect to completed transactions. For the same reasons, the Commission does not believe a renewal requirement as applied to existing authorization holders would be primarily retroactive—for example, because the Commission may revoke a section 214 authorization, grant of an application does not confer a permanent authorization. The Commission recognizes, however, that such a requirement could upset the expectations of existing authorization holders. To the extent the Commission's proposed renewal process constitutes "secondary" retroactivity, the Commission tentatively concludes it is reasonable and does not violate the Administrative Procedure Act as, among other things, the proposed renewal framework would simply provide for a more systematic review process that focuses on evolving national security, law enforcement, foreign policy, and/or trade policy concerns. The Commission seeks comment on its tentative conclusions. When and under what circumstances would denial of a renewal application trigger primary or secondary retroactivity concerns? For example, would non-renewal of an international section 214 authorization based on evolving national security, law enforcement, foreign policy, and/or trade policy risks, regardless of that authorization holder's ongoing compliance with the Commission's rules, have primary or secondary

revocation an international section 214 authorization based on public interest considerations. See, e.g., *Foreign Participation Order*, 12 FCC Rcd at 24023, paragraph 295; *Reconsideration Order*, 15 FCC Rcd at 18173, 18175 through 76, paragraphs 28, 35; see also 47 CFR 63.11(g)(2); *2014 Foreign Carrier Entry Order*, 29 FCC Rcd at 4259, 4266, paragraphs 6, 22. In the *Foreign Participation Order*, the Commission also stated it considers "national security" and "foreign policy" concerns when granting authorizations under section 214 of the Act. *Foreign Participation Order*, 12 FCC Rcd at 23919 through 20, paragraphs 61 through 63 (in regulating foreign participation in the U.S. telecom market in the late 1990s, the Commission recommitted to considering "national security" and "foreign policy" concerns when granting licenses under section 310(b)(4) and authorizations under section 214(a) of the Act, stating it would also continue to "accord deference" to expert Executive Branch views on these issues that would inform its "public interest analysis").

<sup>6</sup> See, e.g., *United States v. Southwestern Cable Co.*, 392 U.S. 157, 178 (1968) (upholding the Commission's authority to regulate cable television).

<sup>7</sup> *Southwestern Cable*, 392 U.S. at 178; see also *AT&T v. Iowa Utilities Board*, 525 U.S. at 380 (noting that "'ancillary' jurisdiction . . . could exist even where the Act does not 'apply'") (emphasis in original).

<sup>8</sup> See, e.g., *Mobile Relay Assocs. v. FCC*, 457 F.3d 1, 11 (D.C. Cir. 2006) (non-renewal resulting from a new regulatory framework may "upset[] expectations based on prior law," but that is not primarily retroactive).

retroactive effect? Additionally, would the application of renewal or, in the alternative, periodic review procedures to existing authorization holders require different standards or procedures based on retroactivity, reliance interests, or fair notice concerns?

## 2. Need for International Section 214 Renewal Requirements

13. The Commission's principal goal in this proceeding is to adopt a renewal process or, in the alternative, a formalized periodic review of international section 214 authorizations to assess evolving national security, law enforcement, foreign policy, and/or trade policy risks. As the Senate Subcommittee noted in the PSI Report, "[n]ational security and law enforcement concerns, as well as trade, and foreign policy concerns . . . are ever evolving, meaning that an authorization granted in one year may not continue to serve the public interest years later." The PSI Report stated, "[a]uthorizations effectively exist in perpetuity despite evolving national security implications," yet "[t]he FCC does not require a foreign carrier's authorization to be periodically reassessed to confirm the services continue to serve the public interest."

14. The Commission tentatively concludes that adopting a systemized renewal or, in the alternative, formalized periodic review process for international section 214 authorizations would better enable the Commission to ensure that an authorization, once granted, continues to serve the public interest. While neither the proposed renewal process nor a formalized periodic review process would supplant the Commission's existing authority to conduct *ad hoc* review of whether a carrier's retention of international section 214 authority presents national security, law enforcement, foreign policy, and/or trade policy risks that warrant revocation or termination of its international section 214 authority, this *ad hoc* review based on current information collection requirements does not allow the Commission to systematically and continually account for evolving risks.

15. The Commission tentatively concludes that the proposals in the Notice would help to ensure that the Commission and the Executive Branch agencies can continually account for evolving national security, law enforcement, foreign policy, and/or trade policy risks associated with the authorizations. As discussed above, the Executive Branch agencies may recommend that the Commission modify or revoke an existing

authorization if they at any time identify unacceptable risks to national security, law enforcement, foreign policy, and/or trade policy.<sup>9</sup> For instance, in recent years, the Executive Branch agencies filed a recommendation requesting that the Commission revoke and terminate a carrier's international section 214 authorizations, stating that "[t]his recommendation reflects the substantial and unacceptable national security and law enforcement risks associated with [China Telecom (Americas) Corporation's] continued access to U.S. telecommunications infrastructure pursuant to its international [s]ection 214 authorizations."

16. With regard to the Executive Branch agencies' oversight of all authorization holders with mitigation agreements, the PSI Report nonetheless observed, "older [mitigation] agreements contained few provisions, were broad in scope, and provided little for Team Telecom to verify," and "[w]here Team Telecom did reserve for itself the right to monitor a foreign carrier's operations in the United States, it exercised that authority in an *ad hoc* manner." The PSI Report further noted that although Executive order 13913 "allows [the Committee] to review existing authorizations, it does not *mandate* periodic review or renewal." In view of these concerns, the Commission believes that a renewal or, in the alternative, periodic review process would better enable the Commission and the Executive Branch agencies to reassess and account for evolving national security, law enforcement, foreign policy, and/or trade policy risks presented by international section 214 authorization holders in light of updated information about both the holder and the foregoing risks.

17. While the Commission could simply adopt a basic reporting mechanism for authorization holders to regularly inform the Commission of select information such as their current ownership, the Commission tentatively concludes that a formalized system of renewal or, in the alternative, periodic review would better ensure that the

<sup>9</sup> See Executive Branch Recommendation to the Federal Communications Commission to Revoke and Terminate [China Telecom (Americas) Corporation's] International Section 214 Common Carrier Authorizations, File Nos. ITC-214-20010613-00346, ITC-214-20020716-00371, ITC-T/C-20070725-00285, at 1-2 (filed Apr. 9, 2020) (Executive Branch Recommendation to Revoke and Terminate). The Executive Branch agencies that jointly made this recommendation are DOJ, DHS, DOD, the Departments of State and Commerce, and USTR. *Id.* at 1, n.1. See also *Executive Order 13913*, 85 FR at 19646 (Sec. 9(b)); see also *id.* at 19645 (Sec. 6(a)).

Commission conduct periodic and comprehensive review of all authorizations, including reassessment of any national security, law enforcement, foreign policy, and/or trade policy concerns. The Commission's review would be based on the totality of the circumstances presented by each situation, including additional information as necessary, to determine whether the public interest continues to be served by an authorization holder's international section 214 authority. The Commission's proposed renewal framework would include rule-based conditions as well as any other appropriate conditions, the breach of which could warrant revocation or termination. In addition, a carrier's failure to file a renewal application would cause the authorization to expire automatically. Thus, a renewal framework is more efficient than case-by-case review of periodic reports followed by revocation proceedings where necessary. Additionally, a periodic and systemized reassessment framework is consistent with Commission's practice in other contexts, such as broadcast or wireless license renewals. The Commission tentatively concludes that establishing a similar process will assist the Commission's ongoing efforts to protect the nation's telecommunications infrastructure from potential national security, law enforcement, foreign policy, and/or trade policy threats and ensure that only those individuals or entities with the requisite character qualifications have access to this critical infrastructure.

## 3. Renewal Requirement Applicable to All International Section 214 Authorization Holders

18. The Commission proposes to adopt a renewal framework or, in the alternative, a formalized periodic review process for all international section 214 authorization holders, with or without foreign ownership, to ensure the Commission fully reassesses public interest considerations associated with all authorization holders. Under this proposal, all authorization holders would be subject to a renewal requirement, including authorization holders that have been granted international section 214 authority prior to the effective date of the renewal rules and authorization holders that are granted international section 214 authority after the effective date of the rules. The Commission proposes, as discussed below, to structure the periodic reassessment by prioritizing review of authorization holders with reportable foreign ownership, consistent

with the Commission's long held view that foreign ownership in the U.S. telecommunications sector implicates national security, law enforcement, foreign policy, and/or trade policy considerations. The Commission also recognizes, in view of evolving and heightened threats to U.S. telecommunications infrastructure, that national security, law enforcement, foreign policy, and/or trade policy risks may also be raised irrespective of whether an authorization holder has foreign ownership.

19. In this document, the Commission proposes to capture critical information and require certifications of all applicants for international section 214 authority and modification, assignment, and transfer of control of international section 214 authority. The Commission further proposes to refer to the Executive Branch agencies, including the Committee, matters that may raise national security, law enforcement, foreign policy, and/or trade policy concerns to assist the Commission's public interest determination. The Commission has a continuing interest in ensuring that all authorization holders, not only those with reportable foreign ownership, maintain the requisite character qualifications and continue to comply with the Commission's rules. Furthermore, as discussed above, it is important for the Commission to have complete and accurate information concerning all international section 214 authorization holders, including identification of those authorization holders that no longer exist or provide service under their international section 214 authority. The Commission seeks comment on its proposed approach.

20. The Commission does not address in this proceeding blanket domestic section 214 authority. Applying a renewal or, in the alternative, a periodic review process to domestic section 214 authority at this time would delay the implementation of solutions to the Commission's evolving concerns about international section 214 authorizations given, among other things, that the Commission has granted blanket section 214 authority for domestic service based on policy determinations that are beyond the scope of the Commission's current concerns. The Commission believes the public interest would be better served by implementing a new framework for review of international section 214 authorizations as expeditiously as possible.

21. The Commission seeks comment generally on its proposal to implement a renewal or, in the alternative, periodic review process for international section 214 authorizations and whether the

Commission should exempt certain authorization holders from either framework. What would be the justifications for excluding any authorization holders? Do these justifications outweigh the concerns raised by the Commission, other U.S. government agencies, and Congress regarding threats to the security of U.S. telecommunications infrastructure in an evolving national security and law enforcement environment? Are there any special considerations applicable to small businesses offering services pursuant to international section 214 authority? The Commission also seeks comment on how best to structure a periodic review process to the extent the Commission decides to apply this alternative to some or all authorization holders.

#### 4. 10-Year Renewal Timeframe

22. The Commission proposes to adopt a renewal timeframe of 10 years and seeks comment on this proposal. The Commission tentatively finds that a renewal timeframe of 10 years—in conjunction with the proposal in this Notice to require authorization holders to provide updated ownership information, cross border facilities information, and other information every three years—would ensure that the Commission and the relevant Executive Branch agencies can continually reassess and account for evolving national security, law enforcement, foreign policy, and/or trade policy concerns associated with international section 214 authorizations. The Commission tentatively concludes that a 10-year timeframe is reasonable under the renewal framework that the Commission proposes in this document for structuring a formalized and systemic reassessment of carriers' international section 214 authority. Moreover, a 10-year timeframe minimizes burdens on authorization holders and balances the Commission's policy considerations with administrative efficiency for the Commission and the relevant Executive Branch agencies, including the Committee.

23. The Commission seeks comment on the Commission's proposed 10-year renewal timeframe. Would a different timeframe better enable the Commission to periodically reassess international section 214 authorization holders in consideration of evolving risks and for compliance with the Act and its implementing rules? The Commission notes that wireless and broadcast licensees have various renewal terms. With regard to Miscellaneous Wireless Communications Services (WCS), the

term of a license varies according to different spectrum bands, which results in different license periods such as 10, 12, or 15 years. In the context of broadcast licensing, each license granted for the operation of a broadcasting station is limited to a term not to exceed eight years. Would a renewal timeframe similar to broadcast or wireless license renewals, such as 8, 12, or 15 years be more appropriate, and if so, why? Or would a shorter renewal timeframe, such as 5 years, better enable the Commission to reassess and account for evolving risks? The Commission also seeks comment on whether the 10-year period should reset if an international section 214 authorization holder undergoes a complete review, such as during the review of a substantive assignment or transfer of control application.<sup>10</sup> Commenters should address the burdens that will be placed on authorization holders based on the length of the license term. The Commission also proposes below ongoing reporting requirements in the context of a 10-year renewal timeframe.

24. The Commission also seeks comment on whether it should adopt a rule reserving its discretion to issue a shorter renewal timeframe on a case-by-case basis where the Commission deems it appropriate to require the authorization holder to seek renewal sooner than otherwise would be required, or to adopt conditions on renewal where the Commission determines that renewal otherwise would not be in the public interest.<sup>11</sup>

25. The Commission tentatively affirms that, regardless of the renewal

<sup>10</sup> For example, if an entity that is granted an international section 214 authorization in 2025, so that its 10-year renewal period would be 2035, files a substantive transfer of control application which is granted in 2030, should the 10-year renewal period be reset to 2040?

<sup>11</sup> The Commission notes that its rules expressly preserve the Commission's discretion to grant individual broadcast station licenses for less than the standard license term if the public interest, convenience, and necessity would be served by such action. See 47 CFR 73.1020(a) ("Both radio and TV broadcasting stations will ordinarily be renewed for 8 years. However, if the FCC finds that the public interest, convenience and necessity will be served thereby, it may issue either an initial license or a renewal thereof for a lesser term."); *id.* 74.15(d) ("Lower power TV and TV translator station and FM translator station licenses will ordinarily be renewed for 8 years. However, if the FCC finds that the public interest, convenience or necessity will be served, it may issue either an initial license or a renewal thereof for a lesser term. The FCC may also issue a license renewal for a shorter term if requested by the applicant."); 1997 *Broadcast License Terms Order*, 12 FCC Rcd at 1729, 1739, n.24, Appx. A. See also 47 U.S.C. 309(k)(2) (where applicant fails to meet the standards for renewal, the Commission may grant the application "on terms and conditions as are appropriate, including renewal for a term less than the maximum otherwise permitted.").

timeframe, the Commission would continue to be able to exercise its existing authority, as it deems necessary, to conduct *ad hoc* reviews of international section 214 authorizations at any time during the renewal period. In other words, adoption of renewal rules does not mean that the Commission would only review authorizations at such periodic intervals. For instance, if the Commission were to adopt a renewal timeframe of 10 years, the Commission might still elect to exercise its existing authority to review and, if necessary, revoke authorizations at any time in between the scheduled 10-year renewal proceedings.

26. *Periodic Review Alternative.* In the alternative, the Commission seeks comment on whether it should adopt a three-year formalized system of periodic review. Under this approach, the Commission would systematically and continually review all authorization holders at regular intervals to reassess whether their retention of international section 214 authority continues to serve the public interest or raises concerns that may warrant revocation of the international section 214 authority. To the extent circumstances in any particular situation raised such concerns, the Commission could initiate a revocation proceeding. Thus, in contrast to the renewal framework, an authorization would not be cancelled if the Commission determined that retention of the authorization was not in the public interest. Instead, the authorization would continue by default subject to the Commission instituting a revocation proceeding.

27. The Commission seeks comment generally on this approach and on the appropriate timeframe. The Commission seeks comment on whether it should adopt this approach for all authorization holders, regardless of whether their international section 214 authority is granted prior to or after the effective date of new rules adopted in this proceeding. What other options should the Commission consider with regard to a periodic review process given evolving national security, law enforcement, foreign policy, and/or trade policy risks? As noted with respect to the renewal approach, the Commission also tentatively affirms that it retains discretion to review international section 214 authorizations at any time the Commission deems such action to be necessary in the public interest, regardless of when a carrier's authorization may be scheduled for periodic review.

28. *Bifurcated Process.* The Commission also seeks comment on

whether it should adopt a bifurcated process for authorization holders depending on whether their international section 214 authority is granted prior to or after the effective date of new rules adopted in this proceeding. Specifically, should the Commission adopt a 10-year renewal framework, as proposed above, for authorization holders whose international section 214 application is granted after the effective date of new rules adopted in this proceeding? At the same time, should the Commission adopt a three-year formalized periodic review process for authorization holders whose international section 214 authority was or is granted prior to the effective date of rules adopted in this proceeding?

#### 5. Application of New Framework

29. *Authorizations Granted After Effective Date of Rules.* With respect to authorization holders whose international section 214 authority is granted after the effective date of new rules adopted in this proceeding, the Commission tentatively finds that it may implement a renewal requirement, if adopted, pursuant to its statutory authority under section 214 of the Act to attach terms and conditions to the grant of international section 214 authority. Section 214(c) of the Act permits the Commission to "attach to the issuance of the [section 214] certificate such terms and conditions as in its judgment the public convenience and necessity may require." If the Commission were to adopt a renewal framework, these authorization holders would be subject to a renewal requirement as a condition of their international section 214 authority. The Commission would either grant or deny an application to renew the international section 214 authority. The Commission seeks comment on this proposed approach.

30. *Authorization Holders With Existing Authorizations Before Effective Date of Rules.* With respect to authorization holders whose international section 214 authority was or is granted prior to the effective date of new rules adopted in this proceeding, the Commission tentatively finds that it may apply a similar renewal requirement pursuant to its statutory authority under sections 214, 201, and 4(i) of the Act, but that a denial of an application to renew a carrier's existing international section 214 authority granted prior to the effective date of any new rules would entail the same process that is due in a case of revocation. If the Commission were to apply a renewal requirement to these authorization

holders, the Commission would either grant or deny an application to renew the international section 214 authority. A denial of such renewal application, however, would functionally be a revocation of an authorization holder's existing authority and require the same process that is due in a case of revocation, including notice and opportunity to respond. The Commission seeks comment on this proposed approach.

31. *Other Matters.* The Commission seeks comment on whether an existing authorization that is subject to a substantial and/or *pro forma* assignment or transfer of control should be considered a new authorization for purposes of adopting terms and conditions for that authorization, such as requiring the renewal of the international section 214 authority. The Commission also seeks comment as to whether and/or how a carrier's domestic blanket section 214 authority should be affected if the Commission were to deny the renewal of the carrier's international section 214 authority or revoke the carrier's international section 214 authority.

#### 6. Public Interest Standard

32. *Renewals.* The Commission tentatively concludes that it will apply the same standard of review for applications for renewal of international section 214 authority as that applied to initial applications for international section 214 authority and to applications for modification, assignment, or transfer of control of international section 214 authority. Consistent with the Commission's public interest review of these applications, the Commission's grant of an application for renewal of international section 214 authority will be based on a finding by the Commission that the public interest, convenience, and necessity would be served by the renewal of that authority. The Commission also proposes to codify the same standard of review for initial applications for international section 214 authority and to applications for modification, assignment, or transfer of control of international section 214 authority. As discussed above, the Commission has long found that national security, law enforcement, foreign policy, and trade policy concerns are important to its public interest analysis of international section 214 authority, and these concerns warrant continued consideration of the public interest in view of evolving and heightened threats to the nation's telecommunications infrastructure. Accordingly, the Commission proposes



that it, as part of its public interest analysis, will examine the totality of the circumstances in each renewal application and consider, as its primary concerns, national security, law enforcement, foreign policy, and/or trade policy concerns, including in relation to an applicant's reportable foreign ownership as reflected by the Commission's proposal to structure the renewal process based on reportable foreign ownership.<sup>12</sup> Furthermore, the Commission has found that although a section 214 application from a World Trade Organization (WTO) Member applicant is entitled to a rebuttable presumption that grant of the application is in the public interest on competition grounds, "no such presumption applies to national security and law enforcement concerns, which are separate, independent factors the Commission considers in its public interest analysis." The Commission tentatively finds that consideration of these issues is consistent with its longstanding practice and its ongoing responsibility to evaluate all aspects of the public interest, including any national security, law enforcement, foreign policy, and/or trade policy concerns associated with potential renewal of international section 214 authority. The Commission further proposes that examination of competition and any other relevant issues that come to the Commission's attention is not foreclosed by its continuing assessment of the aforementioned concerns.

33. As with other applications involving international section 214 authority, the Commission proposes that it will also consider whether an applicant seeking renewal of its international section 214 authority has the requisite character qualifications, including whether the applicant has violated the Act, Commission rules, or U.S. antitrust or other competition laws, has engaged in fraudulent conduct before another government agency, has

been convicted of a felony, or has engaged in other non-FCC misconduct the Commission has found to be relevant in assessing the character qualifications of a licensee or authorization holder.<sup>13</sup> The Commission has found that such conduct demonstrates that a carrier may fail to comply with the Commission's rules and policies as well as any conditions on its authorization. The public interest may therefore require, in a particular case, that the Commission denies the application of a carrier that has violated Commission rules, the Act, or other laws that may be indicative of a carrier's truthfulness and reliability. The Commission believes consideration of an authorization holder's regulatory compliance and adherence to other relevant laws is also consistent with the Commission's review of renewal applications in other contexts and is important to the Commission's assessment as to whether the public interest, convenience, and necessity would be served by the renewal of international section 214 authority.

34. The Commission seeks comment on the standard that the Commission proposes to adopt for the renewal of international section 214 authority. Should the Commission consider factors in addition to those identified above, in determining whether to grant or deny a renewal application for international section 214 authority? Should the Commission consider a standard similar to that of broadcast station renewals, that renewal would serve "the public interest, convenience, and necessity" and the renewal applicant has had no serious violations of the Act or the Commission's rules or multiple violations that would constitute a "pattern of abuse"? In the alternative, the Commission seeks comment on whether an applicant seeking renewal of

international section 214 authority should be granted a renewal expectancy in any circumstance as long it can make a specific showing, and if so, what factors should be included in such a showing. The Commission's existing rules provide for any interested party to file a petition to deny an application. The Commission proposes to afford the same opportunity with respect to renewal applications. What showings must an opposing party make in support of its position?

35. *Failure to Meet Public Interest Standard.* The Commission tentatively concludes that it would institute appropriate proceedings to deny an application seeking renewal of international section 214 authority if the Commission determines that an applicant has failed to meet the public interest standard. The Commission proposes that if it denies the renewal of an authorization holder's international section 214 authority, the international section 214 authorization will be treated as expired without further administrative action by the Commission. Should the Commission apply the same approach to authorization holders whose authorization was or is granted prior to the effective date of new rules? The Commission seeks comment on these approaches.

36. *Periodic Review Alternative.* In the event the Commission adopts a periodic review process, the Commission seeks comment on the extent such framework should incorporate the same public interest standards and processes as those proposed herein, or those the Commission might ultimately adopt, for renewal applications. For example, should the public interest standard for determining whether to revoke an authorization be the same as the standard for renewal? Should the Commission apply the same approach to authorization holders whose authorization was or is granted prior to the effective date of new rules?

37. *Failure to Meet Public Interest Standard.* The Commission tentatively concludes that it would institute appropriate proceedings to revoke an international section 214 authorization if the Commission determines that an authorization holder has failed to meet the public interest standard under a periodic review process. The Commission seeks comment on this tentative conclusion.

<sup>12</sup> The Commission finds that none of the proposals in this document, including its proposal to adopt periodic renewal requirements, affects the Committee's review of an authorization holder's section 214 authority. Consistent with the Commission's formal review process, the Commission will refer to the Executive Branch those renewal applications where an applicant has reportable foreign ownership, pursuant to the rules adopted in the *Executive Branch Process Reform Order*. *Executive Branch Process Reform Order*, 35 FCC Rcd at 10934 through 35, paragraph 17; 47 CFR 1.40001. The Commission also proposes in this Notice to routinely refer to the Committee certain renewal applications where the applicant does not have reportable foreign ownership but other aspects of the application may raise national security or law enforcement concerns that require the input of the Committee to assist the Commission's public interest determination.

<sup>13</sup> See generally *Policy Regarding Character Qualifications in Broadcast Licensing*, 102 FCC 2d 1179 (1986) (*Character Qualifications*), modified, 5 FCC Rcd 3252 (1990) (*Character Qualifications Modification*). The term "non-FCC misconduct" refers to misconduct other than a violation of the Rules or the Act. *Character Qualifications*, 102 FCC 2d at 1183 n.11, paragraph 7. The Commission and the courts have recognized that "[t]he FCC relies heavily on the honesty and probity of its licensees in a regulatory system that is largely self-policing." See *Contemporary Media, Inc., v. FCC*, 214 F.3d 187, 193 (D.C. Cir. 2000). Reliability is a key, necessary element to operating a broadcast station in the public interest. See *Character Qualifications*, 102 F.C.C.2d at 1195, paragraph 35. An applicant or licensee's propensity to comply with the law generally is relevant because a willingness to be less than truthful with other government agencies, to violate other laws, and, in particular, to commit felonies, is potentially indicative of whether the applicant or licensee will in the future conform to the Commission's rules or policies. See *Character Qualifications Modification*, 5 FCC Rcd at 3252, paragraph 3.



### C. Renewal Process and Implementation

#### 1. Prioritizing the Renewal Applications and Other National Security and Law Enforcement Concerns

38. The Commission proposes to adopt a renewal schedule that prioritizes the filing and review of renewal applications based on whether the carrier currently has reportable foreign ownership,<sup>14</sup> the length of the time since the Commission's most recent review of the authorization, and whether the authorization is subject to a mitigation agreement. The Commission also proposes to prioritize the filing and review of renewal applications where the authorization holder does not have reportable foreign ownership but the application raises other issues that require coordination with the Executive Branch agencies, including the Committee, to assist the Commission's public interest review, as discussed below. This should simplify the renewal process and minimize administrative burdens while prioritizing the Commission's consideration of those authorizations that most likely raise national security, law enforcement, foreign policy, and/or trade policy concerns. The Commission currently prioritizes the processing of renewal applications for broadcast station licenses and wireless licenses to promote administrative efficiency. For broadcast renewal applications, the filing dates and license expiration dates for radio and television station licenses are based on geographical groupings of states. In the context of wireless licensing, WCS licenses have different license terms based on different spectrum bands, yet all renewal applications must be filed no later than the expiration date of the authorization and no sooner than 90 days prior to the expiration date. Similarly, the Commission seeks to adopt a process in consultation with the Executive Branch agencies, including the Committee, to streamline and simplify the renewal filing procedures. The Commission proposes to apply these same principles to the extent the Commission adopts a periodic review process rather than a renewal framework. The Commission seeks comment on the process described below both as it may apply in a renewal context and in a periodic review context.

<sup>14</sup> The Commission refers here, in Section IV.C.1., to "reportable foreign ownership" to signify the ownership interests that an authorization holder or applicant is required to disclose as part of an application or notification required by § 63.18(h) and/or § 63.24 of the Commission's rules. See 47 CFR 63.18(h), 63.24.

39. *Other National Security, Law Enforcement, and Other Concerns.* As discussed further below, the Commission proposes to routinely refer to the Executive Branch agencies, including the Committee, certain renewal applications or, in the alternative, periodic review submissions, where the authorization holder does not have reportable foreign ownership but other issues associated with the filing may separately raise national security, law enforcement, foreign policy, and/or trade policy concerns that require input from the Executive Branch agencies to assist the Commission's public interest review. This would include, for example, international section 214 authorization holders without reportable foreign ownership that certify that they use or will use foreign-owned MNSPs and/or report cross border facilities that may separately raise national security, law enforcement, foreign policy, and/or trade policy concerns. The Commission seeks comment on this proposal.

40. *Priority Categories—Groups 1 to 5.* Specifically, the Commission proposes to prioritize the renewal applications or any periodic review filings and deadlines based on: (1) reportable foreign ownership, including any reportable foreign interest holder that is a citizen of a foreign adversary country, (2) the year of the oldest to most recent Commission action (*i.e.*, initial grant, modification, assignment, or transfer of control), divided in fixed intervals, and (3) whether or not the authorizations are conditioned on a mitigation agreement. The Commission also proposes to prioritize any filings that raise other national security, law enforcement, or other concerns. The Commission proposes as well to have authorization holders with separate authorizations that fall into more than one group below to file for all their authorizations, perhaps in a single filing, based on the deadline for the highest priority group. The Commission proposes to delegate authority to the Office of International Affairs to establish the deadlines and make necessary modifications, if needed, and to consult with the Executive Branch agencies concerning prioritizing the renewal applications or any periodic review filings.

- *Group 1: All Authorization Holders with Reportable Foreign Ownership, Including Foreign Ownership from Foreign Adversary Country/No Mitigation Agreement/Authorization Granted over 10 Years Ago/Raises Other National Security, Law Enforcement, or Other Concerns.* The Commission proposes that the filing deadline for Group 1 will apply to

authorizations where the authorization holder: (1) has reportable foreign interest holders, including those that are citizens or government organizations of any foreign adversary country; (2) the authorization is not conditioned on a mitigation agreement with the Executive Branch agencies; and (3) the Commission's most recent review of such authorization (*i.e.*, initial grant, modification, assignment, or transfer of control) occurred over 10 years ago; or (4) for any other national security, law enforcement, or other concerns.

- *Group 2: All Authorization Holders with Reportable Foreign Ownership, Including Foreign Ownership from Foreign Adversary Country/Mitigation Agreement/Authorization Granted over 10 Years Ago.* The Commission proposes that the filing deadline for Group 2 will apply to authorizations where the authorization holder: (1) has reportable foreign ownership; (2) the authorization is conditioned on a mitigation agreement with the Executive Branch agencies; and (3) the Commission's most recent review of such authorization (*i.e.*, initial grant, modification, assignment, or transfer of control) occurred over 10 years ago.

- *Group 3: All Authorization Holders with Reportable Foreign Ownership, Including Foreign Ownership from Foreign Adversary Country/No Mitigation Agreement/Authorization Granted less than 10 Years Ago.* The Commission proposes that the filing deadline for Group 3 will apply to authorizations where the authorization holder: (1) has reportable foreign ownership; (2) the authorization is not conditioned on a mitigation agreement with the Executive Branch agencies; and (3) the Commission's most recent review of such authorization (*i.e.*, initial grant, modification, assignment, or transfer of control) occurred less than 10 years ago.

- *Group 4: All Authorization Holders with Reportable Foreign Ownership, Including Foreign Ownership from Foreign Adversary Country/Mitigation Agreement/Authorization Granted less than 10 Years Ago.* The Commission proposes that the filing deadline for Group 4 will apply to authorizations where the authorization holder: (1) has reportable foreign ownership; (2) the authorization is conditioned on a mitigation agreement with the Executive Branch agencies; and (3) the Commission's most recent review of such authorization (*i.e.*, initial grant, modification, assignment, or transfer of control) occurred less than 10 years ago.

- *Group 5: No Reportable Foreign Ownership/No Other National Security, Law Enforcement, or Other Concerns.* The Commission proposes that the filing

deadline for Group 5 will apply to all other authorizations where: (1) the authorization holder does not currently have reportable foreign ownership; and (2) the authorization does not raise other national security, law enforcement, or other concerns.

41. *FCC's Preliminary Review and Referral to the Executive Branch Agencies of International Section 214 Authorizations.* Based on the Commission's records, the best estimate is that the number of active international section 214 authorization holders is approximately 1,500. The Commission notes that it is also seeking comment below on other new rules, such as proposing to require authorization holders to have only one authorization and seeking comment on decreasing the reportable ownership threshold to 5% that, if adopted, likely would affect the number of filings to be reviewed. The Commission estimates that approximately 375 of the 1,500 authorization holders have reportable foreign ownership.<sup>15</sup> The Commission proposes to prioritize the submission of filings with reportable ownership based on the Commission's preliminary review and refer to the Executive Branch agencies, including the Committee, the first four groupings (Group 1 to Group 4) set out above. In addition, the Commission proposes to process in Group 1 any filings where the authorization holder does not have reportable foreign ownership but the application raises national security, law enforcement, foreign policy, and/or trade policy concerns, such as applications that certify that they use or will use foreign-owned MNSPs and/or report cross border facilities. The filing and review of submissions without reportable foreign ownership (Group 5) would occur after consideration of the priority submissions. The Commission seeks comment on this approach.

42. *Renewal Application or Periodic Review Submission Deadline.* The Commission proposes that, upon approval by the OMB of the information collections under the new rules proposed herein, the Office of International Affairs will establish filing deadlines for Groups 1 to 5 that require the first submissions of renewal applications by authorization holders within six months of OMB approval. The Commission proposes to apply

these same principles to the extent the Commission adopts a periodic review process rather than a renewal framework. The Commission seeks comment generally from applicants and the Executive Branch agencies on the proposed approach for structuring the renewal process or, in the alternative, periodic review process and filing deadlines. The Commission also seeks comment on what filing deadlines would be feasible for applicants and the Executive Branch agencies, including the Committee, in consideration of the recent timeframes and rules adopted in the *Executive Branch Process Reform Order*. The Commission seeks comment on these proposals and what potential burdens, if any, would be imposed upon authorization holders under any of these approaches.

43. The Commission seeks comment on how best to structure the filing and review of renewal applications or, in the alternative, periodic review submissions to prioritize those authorizations most likely to raise current national security, law enforcement, foreign policy, and/or trade policy issues. The Commission believes that carriers' compliance with the one-time information collection required in the Order will be crucial for the Commission's efficient administration of a renewal process or, in the alternative, periodic review process. Through the Commission's assessment of the one-time information collection, the Commission proposes to delegate authority to the Office of International Affairs to (1) identify which authorization holders are existing and active and would undergo the renewal or other periodic review process; (2) identify which authorization holders fail to respond to the Order and thus presumptively are no longer in operation, and cancel their authorizations pursuant to the process proposed above; (3) identify, among the respondents, which authorization holders currently have or do not have reportable foreign ownership or other relevant indicia and designate them accordingly in Groups 1 to 5; and (4) determine which authorization holders in Groups 1 to 5 must file renewal applications or, in the alternative, periodic review submissions by each respective filing deadline based on a 10-year requirement. Therefore, the results of the one-time information collection will inform the Commission's determination of the best processing and timing approach for the renewal process or, in the alternative, periodic review process. In addition, the Office of International Affairs may release the results of the one-time information

collection to improve the comment record or seek further comment based on the results of the one-time information collection, as needed.

44. *Periodic Review Alternative.* The Commission proposes to apply these same principles to the extent the Commission adopts a periodic review process rather than a renewal framework. The Commission proposes, for example, to prioritize the filing of the required information submissions and the review of specific authorizations in the same manner as proposed for a renewal framework. The Commission seeks comment on these proposals and how best to minimize administrative burdens and maximize the effectiveness of the Commission's review. The Commission seeks other suggestions on how best to prioritize and simplify the process. Should the Commission consider other options?

## 2. Processing Procedures

45. *Streamlined Renewal Processing Procedures.* The Commission proposes that it adopt streamlined processing for renewal applications in Group 5 in certain situations. For instance, § 63.12(a) of the Commission's rules provides that, "[e]xcept as provided by paragraph (c) of this section, a complete application seeking authorization under § 63.18 of this part shall be granted by the Commission 14 days after the date of public notice listing the application as accepted for filing." In current practice, once filed, Commission staff review the application for compliance with the Commission's rules and place the application on an Accepted for Filing public notice at that point. The Commission proposes to adopt similar streamlined processing procedures for renewal applications that are in Group 5, where the authorization holder does not currently have reportable foreign ownership and the application does not raise other national security, law enforcement, or other considerations. With regard to those authorization holders in Group 5, the Commission would place the renewal application on streamlined Accepted for Filing public notice and the application would be granted by the Commission 14 days after the date of the public notice if: (1) the Commission does not refer the application to the Executive Branch agencies because the applicant does not have reportable foreign ownership and the application does not raise other national security, law enforcement, or other considerations; (2) the application does not raise other public interest considerations, including regulatory compliance; (3) the Executive Branch agencies do not separately request

<sup>15</sup> This estimate is based on the percentage of applications out of the total international section 214 applications (*i.e.*, applications for international section 214 authority and applications for modification and substantial assignment and transfer of control of international section 214 authority) filed with the Commission where an applicant has reportable foreign ownership.

during the comment period that the Commission defer action and remove the application from streamlined processing; and (4) no objections to the application are timely raised by an opposing party. The Commission seeks comment on this proposal. The Commission believes a streamlined process for renewal applications in Group 5 would decrease the burdens on applicants and ensure a faster review process.

46. *Authorizations Pending Renewal.* As with Title III licensees pursuant to section 307(c) of the Act, and consistent with the Administrative Procedure Act, the Commission proposes that an applicant that has timely applied for renewal of its international section 214 authority may continue providing service(s) under its international section 214 authority while its renewal application is pending review. The Commission seeks comment on this proposal.

47. *Referral of Applications with Reportable Foreign Ownership to the Executive Branch Agencies, Including the Committee.* Consistent with the Commission's formal review process, the Commission proposes to refer to the relevant Executive Branch agencies, including the Committee agencies, those applications for renewal of international section 214 authority where the applicant has reportable foreign ownership. For these referrals, the Commission proposes to apply the same time frames that were adopted in the *Executive Branch Process Reform Order*, a 120-day initial review period followed by a discretionary 90-day secondary assessment. The Commission anticipates that a referral of a renewal application with reportable foreign ownership may result in a mitigation agreement, or modification of an existing mitigation agreement, or a recommendation by the Committee or other relevant Executive Branch agencies to deny the application. The Commission seeks comment on these proposals.

48. *Referral of Certain Applications Without Reportable Foreign Ownership to the Executive Branch Agencies, Including the Committee.* The Commission recognizes, in view of evolving and heightened threats to U.S. telecommunications infrastructure, that national security, law enforcement, foreign policy, and/or trade policy risks may also be associated with an authorization holder irrespective of whether it has foreign ownership. The Commission proposes in this document that all applicants provide information concerning foreign-owned MNSPs. The Commission proposes and seeks

comment on rules that would require applicants to provide information on the facilities they use and/or will use to provide services between the United States and Canada and/or Mexico (cross border), and also propose to require applicants to disclose whether they use equipment or services identified on the Commission's "Covered List." If the Commission adopts such requirements, the Commission would propose to routinely refer to the Executive Branch agencies, including the Committee, to assist the Commission's public interest determination, those applications where an applicant discloses that it:

- uses and/or will use a foreign-owned MNSP;
- has cross border facilities; and/or
- uses equipment or services identified on the Commission's "Covered List" of equipment and services pursuant to the Secure and Trusted Communications Networks Act.

For these referrals, the Commission proposes to apply the same time frames that were adopted in the *Executive Branch Process Reform Order*, a 120-day initial review period followed by a discretionary 90-day secondary assessment. The Commission seeks comment on these proposals. The Commission reaffirms, however, that it retains discretion to determine which applications it will refer to the Executive Branch agencies for review.

49. *Non-Referral of Certain Applications.* As noted above, the Commission is applying the same rules for renewal applications as the Commission has applied to initial applications for international section 214 authority and applications to modify, assign, or transfer control of international section 214 authority. As an example, the Commission's current rules provide that it will generally exclude from referral to the Executive Branch agencies, including the Committee, certain categories of applications that present a low or minimal risk to national security, law enforcement, foreign policy, or trade policy. Here, the Commission similarly seeks comment on whether there are categories of renewal applications where the Commission can leverage prior national security determinations to minimize burdens on the Executive Branch agencies, including the Committee, without sacrificing the ability to conduct comprehensive review. Are there categories of applications that the Commission should not refer to the Executive Branch agencies, including applications concerning which the Commission on its own motion could take action and institute appropriate proceedings

without referral? What prior national security determinations may be relevant to this analysis? For example, can the Commission leverage the list of foreign adversary countries as defined in the Department of Commerce rule, 15 CFR 7.4, in determining which applications to refer to the Executive Branch agencies and which applications it could act on without referral? The Commission seeks comment on these potential categories, the potential benefits and drawbacks of such an approach, as well as the Commission's legal authority to do so.

50. *Failure to Timely File Renewal Applications.* The Commission proposes that if an authorization holder fails to timely file an application for renewal of its international section 214 authority, the Commission will deem the international section 214 authorization expired and cancelled by operation of law. The Commission proposes to delegate authority to the Office of International Affairs to provide notice in advance of the renewal deadline. The Commission has similar procedures where it automatically terminates an earth station license upon the expiration of the license term if a renewal application was not timely filed. In the case of a space station license, the license is "automatically terminated in whole or in part without further notice to the licensee" upon the expiration date unless an application for extension of the license term has been filed with the Commission. The Commission's rules allow the reinstatement of an earth station license or a space station license or authorization that is automatically terminated if the Commission determines that reinstatement would best serve the public interest, convenience and necessity, but a petition for reinstatement will only be considered if, among other things, it explains the failure to file a timely notification or renewal application. When a broadcast licensee fails to file a timely renewal application, the authorization is cancelled pursuant to a public notice issued by the Media Bureau shortly after the expiration date of the license; a renewal application filed after such public notice may be processed provided that the applicant successfully petitions for reinstatement of license and the renewal application is filed within 30 days of the cancellation public notice. The Media Bureau may commence an enforcement action for untimely filing and unauthorized operation. In the wireless radio services context, if a renewal application is not filed in a timely manner, a licensee must request a waiver of the filing deadline, pursuant to § 1.925 of the

Commission's rules, along with its late-filed renewal application. The Commission will grant the waiver and renewal application *nunc pro tunc* if they are filed up to thirty days after the expiration date and if the application is otherwise sufficient, but the licensee may be subject to enforcement action for untimely filing and unauthorized operation. The Commission will grant applications filed after this period under certain circumstances.

51. The Commission seeks comment on this proposed approach. Would this procedure be adequate as applied to international section 214 authorizations in effect as of the effective date of any new rules? The Commission seeks comment on alternative approaches. Would any of the procedures used in the other contexts, such as those discussed above, be appropriate or desirable in the international section 214 context? The Commission proposes that an authorization holder whose authorization expires due to its failure to timely file a renewal application may file an application for a new international section 214 authorization.

52. *Periodic Review Alternative/Processing.* The Commission generally proposes to apply similar processing to the extent the Commission adopts a periodic review process rather than a renewal framework. For instance, the Commission proposes to prioritize review of specific authorizations in the same manner as proposed under a renewal framework. The Commission seeks comment on these proposals and how best to minimize administrative burdens and maximize the effectiveness of the Commission's review under this alternative. The Commission seeks other suggestions on how best to prioritize and simplify the periodic review process. Should the Commission consider other options?

53. *Periodic Review Alternative/Failure to Timely File Required Information.* The Commission proposes that the Office of International Affairs initiate a revocation process against an authorization holder that, absent good cause, fails to timely file periodic review information with the Commission. The Commission seeks comment on this proposed approach. What procedures would ensure that the authorization holder has the opportunity to demonstrate good cause, and what factors should the Commission consider in evaluating a good cause showing? Should the Commission accept late filings instead of initiating revocation proceedings? The Commission further seeks comment on whether and under what circumstances an authorization holder

whose authorization is revoked for its failure to timely file periodic review information be barred from applying for a new international section 214 authorization.

### 3. Due Process and Procedural Requirements

54. *Due Process and Procedural Requirements.* The Commission seeks comment on the procedural measures necessary to ensure the development of an adequate administrative record, including procedures for participation by other interested parties, and on the appropriate procedural safeguards to ensure due process with regard to the Commission's proposed renewal or, in the alternative, a periodic review process. To determine what process is due involves consideration of the *Mathews v. Eldridge* three-part test: (1) "the private interest that will be affected by the official action;" (2) "the risk of an erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards;" and (3) "the Government's interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail." The Commission notes that neither the Act, the Commission's rules, nor the Administrative Procedure Act requires trial-type hearing procedures. Congress has granted the Commission broad authority to "conduct its proceedings in such manner as will best conduce to the proper dispatch of business and to the ends of justice." The Commission has broad discretion to craft its own rules "of procedure and to pursue methods of inquiry capable of permitting them to discharge their multitudinous duties." Furthermore, the Act gives the Commission the power of ruling on facts and policies in the first instance. In exercising that power, the Commission may resolve disputes of fact in an informal hearing proceeding on a written record. In particular, the Commission seeks comment on the extent to which the Commission's proposed renewal or in the alternative, a periodic review process should incorporate the procedures the Commission recently utilized—and which the Court of Appeals for the D.C. Circuit approved—in revoking, and in certain cases terminating, four Chinese government-owned carriers' section 214 authority.

55. The Commission stated in those cases that the Act does not specify any procedures for revoking a section 214 authorization. Nor has the Commission promulgated any regulations setting

forth any such procedures. The Commission explained that although the Commission adopted regulations prescribing certain procedures for the revocation of station licenses and construction permits pursuant to Part 1, Subpart B of its rules, those regulations do not apply to the revocation of a section 214 authorization and that hearing rights for common carriers under section 214 are limited.<sup>16</sup> In the recent revocation proceedings, the Commission exercised its discretion to "resolve disputes of fact in an informal hearing proceeding on a written record," and reasonably determined that the issues raised in those cases could be properly resolved through the presentation and exchange of full written submissions before the Commission itself. The Commission determined, among other things, that the fiscal and administrative burden on the government would be especially heavy in those cases, as a trial before an administrative law judge could require participation by officials from other agencies. More importantly, given the national security issues at stake, any resulting unwarranted delay could be harmful. Accordingly, to provide affected carriers with due process, the Commission allowed them to submit evidence and arguments in writing and determined the need for the revocation and/or termination of 214 authorizations on the basis of a written record. The court of appeals affirmed the Commission's use of these procedures.

56. The Commission seeks comment on the procedures applicable to international section 214 renewal applications and, in the alternative, to the periodic review applications. To the extent the Commission adopts a periodic review process framework under which an order instituting revocation procedures might ensue, the Commission proposes to implement the approach the Commission used in its most recent section 214 revocation proceedings. The Commission has stated that if it is considering revoking an authorization, it will "provide the authorization holder such notice and an opportunity to respond as is required by due process and applicable law, and appropriate in light of the facts and

<sup>16</sup> The hearing requirements applicable to Title III applications do not apply to section 214 applications. *Procedural Streamlining of Administrative Hearings*, Notice of Proposed Rulemaking, 34 FCC Rcd 8341, 8343, paragraph 4 & n.16 (2019); *Oklahoma W. Tel. Co. Order*, 10 FCC Rcd at 2243 through 44, paragraph 6 (finding no substantial public interest questions existed to justify hearing on section 214 application) (citing *ITT World Commc'ns v. FCC*, 595 F.2d 897, 900 through 01 (2d Cir. 1979)).

circumstances.” Is there any reason the Commission should not use the same procedures if it adopts a renewal framework? The Commission notes that the Commission’s Part 1, Subpart B provides procedures for hearings in appropriate circumstances. Those procedures do not automatically apply to section 214 authorizations, but they provide a possible model for incorporating such procedures should the Commission determine they are appropriate in a specific case. Under what circumstances, if any, should any such procedures be incorporated in a renewal or periodic review hearing? If the Commission tentatively determines that renewal might not be warranted, it will provide the authorization holder such notice and an opportunity to respond as is required by due process and applicable law, and appropriate in light of the facts and circumstances. Should the procedures be different for authorization holders whose international section 214 authority was or is granted prior to the effective dates of the new rules, and if so, in what way?

57. *Burden of Proof/Renewal.* The Commission proposes to assign the burden of proof to the applicant seeking renewal of its international section 214 authority. Should the Commission use the same approach where a renewal applicant was or is granted international section 214 authority prior to the effective date of the new rules? Section 63.18 of the Commission’s rules requires that an application for international section 214 authority “include information demonstrating how the grant of the application will serve the public interest, convenience, and necessity.” The Commission has stated that the applicant for an international section 214 authorization bears the burden of demonstrating that grant of its application would serve the public interest in accordance with § 63.18 of the Commission’s rules. The Commission believes the same burden of proof is appropriate with respect to applicants seeking renewal of international section 214 authority. If the Commission adopts a renewal requirement for existing authorization holders that were or are granted international section 214 authority prior to the effective date of new rules, should the applicant or the Commission bear the burden of proof in a proceeding to deny renewal?<sup>17</sup>

<sup>17</sup> For example, in broadcast renewal proceedings, licensees bear the burden of proof in demonstrating that renewal is in the public interest, *see, e.g., Entercom License, LLC*, Hearing Designation Order and Notice of Opportunity for Hearing, 31 FCC Rcd 12196, 12231, paragraph 92 (2016), *subsequent hist. omitted*, whereas in a broadcast revocation

58. *Periodic Review Alternative/Burden of Proof.* If the Commission adopts a periodic review process framework for both existing and new authorization holders, how should the burden of proof be allocated? Should the Commission determine the burden of proof on a case-by-case basis at the time of review?

#### D. Renewal Application Requirements

59. Given the increasing concerns about ensuring the security and integrity of U.S. telecommunications infrastructure, the Commission proposes or seeks comment on new requirements that it anticipates will help it acquire critical information from applicants including additional certifications to create accountability for applicants and to improve the reliability of the information that they provide. The Commission tentatively concludes that the new requirements that the Commission proposes or seeks comment on would improve the Commission’s assessment of evolving public interest risks. The Commission proposes to apply the requirements applicable to initial applications for international section 214 authority to the proposed rules for renewal applications and thus harmonize the application requirements. The Commission notes that, whereas a renewal framework would require the filing of renewal applications, a periodic review process would require the Commission to obtain relevant information in a different manner. The Commission proposes that any periodic review process would require authorization holders to submit the same information as that required for a renewal application. Is there any reason the Commission would not require authorization holders subject to periodic review to file the same information required in a renewal application? The Commission seeks comment on whether the two types of filings should be different in any

proceeding, the Commission bears the burden of proof, 47 U.S.C. 312(d); *see, e.g., Acumen Communications, Licensee of Various Authorizations in the Wireless Radio Services, Applicant for Modification of Various Authorizations in the Wireless Radio Services, Applicant for Renewal of Authorization in the Wireless Radio Services*, Order to Show Cause, Hearing Designation Order and Notice of Opportunity for Hearing, WTB Docket No. 17–17, 32 FCC Rcd 243, 248 through 49, paragraphs 16, 21 (MD–WTB 2017) (stating, among other things, that the burden of proceeding with the introduction of evidence and the burden of proof with regard to revocation of various Wireless Radio Service authorizations shall be on the Commission’s Enforcement Bureau and the burden of proceeding with the introduction of evidence and the burden of proof with regard to various applications, including an application for renewal, shall be on the applicant).

respect, and if so, what purpose such differences would serve.

60. The Commission proposes, as a baseline, to apply the requirements applicable to initial applications for international section 214 authority to the proposed rules for renewal applications. Section 63.18 of the Commission’s rules, which implements section 214 of the Act, requires that an application for international section 214 authority “include information demonstrating how the grant of the application will serve the public interest, convenience, and necessity,” and “[s]uch demonstration shall consist of the following information as applicable.” Specifically, the current application rules provide important information and attestations concerning an applicant’s contact information, the specific type of authority that each applicant seeks, any foreign carrier affiliations, and any competition issues, among other things. The Commission proposes to apply these provisions of § 63.18 to the application rules that the Commission proposes for renewal applicants.<sup>18</sup> The Commission believes these information and certification requirements are necessary for the Commission’s public interest review of applications for renewal of international section 214 authority. Furthermore, the Commission’s proposal would require renewal applicants to provide the same information as applicants for international section 214 authority and the Commission believe such harmonization would advance the public interest. The Commission seeks comment on these proposals and the draft rule provisions in Appendix A.

61. Specifically, the Commission proposes to require renewal applicants to submit the same application information and certifications that are set out in § 63.18,<sup>19</sup> including:

<sup>18</sup> Specifically, the Commission proposes to apply the requirements of § 63.18(a) through (k), (m) through (o), (q) through (r) to the application rules that the Commission proposes for renewal applicants. *See* 47 CFR 63.18(a) through (k), (m) through (o), (q) through (r). As discussed further below, the Commission proposes or seeks comment on amendments to the current requirements in § 63.18(h) and 63.18(o).

<sup>19</sup> The Commission tentatively concludes that the Commission will not add two provisions of § 63.18 to the proposed rules for renewal applications. The Commission will not add § 63.18(l), as it no longer contains a rule provision. In addition, the Commission will not add § 63.18(p), which requires, “[i]f the applicant desires streamlined processing pursuant to § 63.12, a statement of how the application qualifies for streamlined processing.” 47 CFR 63.18(p) (emphasis added). As discussed in Section IV.C.2, the Commission proposes to adopt streamlined processing procedures for renewal applications in certain circumstances. The Commission proposes to add a new rule specifically for renewal applications that

• *Applicant Information.* Section 63.18(a) through (c) of the rules requires basic information about the applicant and contact information.<sup>20</sup>

• *Type of International Section 214 Authority.* Section 63.18(d) through (f) of the rules requires information pertaining to an applicant's previous receipt of international section 214 authority and the specific authority, either facilities-based and/or resale-based and/or other authorization, that it seeks in the application. An applicant for global facilities-based authority must certify that it will comply with the terms and conditions contained in §§ 63.21 and 63.22. An applicant for global resale authority must certify that it will comply with the terms and conditions contained in §§ 63.21 and 63.22 and 63.23. An applicant for authority to acquire facilities or to provide services not covered by § 63.18(e)(1) and (e)(2) must provide a description of the facilities and services for which it seeks authorization and certify that it will comply with the terms and conditions contained in §§ 63.21 and 63.22 and/or 63.23, as appropriate. An applicant may apply for any or all of the authority provided for in § 63.18(e) of the rules in the same application.<sup>21</sup>

• *Ownership and Interlocking Directorates.* Section 63.18(h) requires that applicants provide information about any person or entity that directly or indirectly holds 10% or greater ownership interest in the applicant and identify any interlocking directorates with a foreign carrier.<sup>22</sup> While the

would address any streamlined processing procedures that the Commission adopts for renewal applications.

<sup>20</sup> Section 63.18(a) requires the "name, address, and telephone number of each applicant." 47 CFR 63.18(a). Section 63.18(b) requires identification of "[t]he Government, State, or Territory under the laws of which each corporate or partnership applicant is organized." *Id.* 63.18(b). Section 63.18(c) requires the "name, title, post office address, and telephone number of the officer and any other contact point, such as legal counsel, to whom correspondence concerning the application is to be addressed." *Id.* 63.18(c). Collecting minimum contact information allows the Commission to communicate with the applicant including to address any questions or concerns that the Commission has.

<sup>21</sup> 47 CFR 63.18(f). An applicant seeking facilities-based authority under § 63.18(e)(3) must provide a statement as to whether an authorization of the facilities is categorically excluded from environmental processing as defined by § 1.1306 of the rules. *Id.* 63.18(g). Section 63.18(g) provides that "[i]f answered affirmatively, an environmental assessment as described in § 1.1311 of this chapter need not be filed with the application." *Id.*

<sup>22</sup> *Id.* 63.18(h). The *Executive Branch Process Reform Order* amended § 63.18(h), as discussed below, and redesignated these requirements as § 63.18(h)(1) through (3). See *Executive Branch Process Reform Order*, 35 FCC Rcd at 10985 through 87, Appx. B; *Order Erratum*, 35 FCC Rcd at 13173 through 74. As discussed below, the Commission

seeks comment on modifying the ownership disclosure requirements from 10% to 5%, as discussed below, the Commission proposes to require renewal applicants to provide ownership information consistent with § 63.18(h) as well as identification of any interlocking directorates with a foreign carrier.

• *Foreign Carrier Affiliation.* Section 63.18(i) through (k) and (m) of the rules requires applicants to provide information and certifications relating to whether an applicant is, or is affiliated with, a foreign carrier. Section 63.18(i) requires an applicant to certify whether it is or is affiliated with a foreign carrier and identify each foreign country in which the applicant is or is affiliated with a foreign carrier. Section 63.18(j) requires an applicant to certify whether it seeks to provide international telecommunications services to any destination country where the applicant is or controls a foreign carrier in that country; or any entity that owns more than 25% of the applicant, or that controls the applicant, controls a foreign carrier in that country; or two or more foreign carriers (or parties that control foreign carriers) own, in the aggregate, more than 25% of the applicant and are parties to, or the beneficiaries of, a contractual relation affecting the provision or marketing of international basic telecommunications services in the United States. If any country identified by the applicant in the certification under § 63.18(j) is not a member of the World Trade Organization (WTO), the applicant must demonstrate whether the foreign carrier has market power or lacks market power. Any applicant that is or is affiliated with a foreign carrier in a country identified in the certification under § 63.18(i), and which seeks to be regulated as non-dominant for the provision of particular international telecommunications services to such country, should demonstrate that it qualifies for non-dominant classification.

• *No Special Concessions.* Section 63.18(n) of the rules requires an applicant to certify that it has not agreed to accept special concessions directly or indirectly from any foreign carrier with respect to any U.S. international route where the foreign carrier possesses market power on the foreign end of the route and will not enter into such agreements in the future.

• *Not Subject to Denial of Federal Benefits.* Section 63.18(o) of the rules requires "[a] certification pursuant to

seeks comment on making changes to the ownership reporting requirements.

§§ 1.2001 through 1.2003 of this chapter that no party to the application is subject to a denial of Federal benefits pursuant to [s]ection 5301 of the Anti-Drug Abuse Act of 1988. See 21 U.S.C. 853a." The Commission proposes to require renewal applicants to provide a certification that is consistent with the amendments the Commission proposes for § 63.18(o), as discussed in Section IV.F.

• *Other Requirements.* Section 63.18(q) of the current rules requires that applicants provide "[a]ny other information that may be necessary to enable the Commission to act on the application."<sup>23</sup> Section 63.18(r) of the current rules requires that applications must be filed electronically through ICFS.<sup>24</sup>

62. The Commission also proposes to apply the application requirements that were adopted in the *Executive Branch Process Reform Order*, with regard to international section 214 authorizations, to renewal applications. The Commission anticipates that these requirements will improve the Commission's assessment of evolving national security, law enforcement, foreign policy, and/or trade policy risks associated with applications for renewal of international section 214 authority.

• *Calculation of Equity Interests Held Indirectly in the Carrier.* The *Executive Branch Process Reform Order* adopted a new subsection (1)(i) in § 63.18(h), which directs that equity interests that are held by an individual or entity indirectly through one or more intervening entities shall be calculated by successive multiplication of the equity percentages for each link in the vertical ownership chain, regardless of whether any particular link in the chain represents a controlling interest in the company positioned in the next lower tier. The new § 63.18(h)(1)(i) includes an example.

<sup>23</sup> 47 CFR 63.18(q). In the *Executive Branch Process Reform Order*, the Commission adopted a new § 63.18(q) and redesignated the current requirements of § 63.18(q) as § 63.18(s). *Executive Branch Process Reform Order*, 35 FCC Rcd at 10985, Appx. B, paragraph 11; *Order Erratum*, 35 FCC Rcd at 13173, paragraph 11. The amended rule is not yet effective.

<sup>24</sup> 47 CFR 63.18(r) ("Subject to the availability of electronic forms, all applications described in this section must be filed electronically through the International Communications Filing System (ICFS). A list of forms that are available for electronic filing can be found on the ICFS homepage. For information on electronic filing requirements, see §§ 1.1000 through 1.10018 of this chapter and the ICFS homepage at <https://www.fcc.gov/icfs>. See also §§ 63.20 and 63.53.") In the *Executive Branch Process Reform Order*, the Commission redesignated the current requirements of § 63.18(r) as § 63.18(t). *Executive Branch Process Reform Order*, 35 FCC Rcd at 10985, Appx. B, paragraph 11; *Order Erratum*, 35 FCC Rcd at 13173, paragraph 11. The amended rule is not yet effective.

• *Calculation of Voting Interests Held Indirectly in the Carrier.* The *Executive Branch Process Reform Order* adopted a new subsection (1)(ii) in § 63.18(h), which directs that voting interests that are held through one or more intervening entities shall be calculated by successive multiplication of the voting percentages for each link in the vertical ownership chain, except that wherever the voting interest for any link in the chain is equal to or exceeds 50% or represents actual control, it shall be treated as if it were a 100% interest.<sup>25</sup> The new § 63.18(h)(1)(ii) includes an example.

• *Ownership Diagram.* The *Executive Branch Process Reform Order* adopted a new subsection (2) in § 63.18(h), which requires applicants to provide an ownership diagram that illustrates the applicant's vertical ownership structure, including the direct and indirect ownership (equity and voting) interests held by the individuals and entities named in response to § 63.18(h)(1).<sup>26</sup> The ownership diagram shall include both the pre-transaction and post-transaction ownership of the authorization holder.

• *Responses to Standard Questions.* The *Executive Branch Process Reform Order* adopted a new § 63.18(p), which requires that each applicant for which an individual or entity that is not a U.S. citizen holds a 10% or greater direct or indirect equity or voting interest, or a controlling interest, in the applicant, must submit responses to Standard Questions, prior to or at the same time the applicant files its application with the Commission, directly to the Committee. While the Commission seeks comment on modifying the ownership disclosure requirements, as discussed below, the Commission proposes to require renewal applicants

<sup>25</sup> See *Order Erratum*, 35 FCC Rcd at 13173 through 74, paragraph 11; see also *Executive Branch Process Reform Order*, 35 FCC Rcd at 10986, Appx. B, paragraph 11. A general partner shall be deemed to hold the same voting interest as the partnership holds in the company situated in the next lower tier of the vertical ownership chain. *Order Erratum*, 35 FCC Rcd at 13173, paragraph 11; see also *Executive Branch Process Reform Order*, 35 FCC Rcd at 10986, Appx. B, paragraph 11. A partner of a limited partnership (other than a general partner) shall be deemed to hold a voting interest in the partnership that is equal to the partner's equity interest. *Order Erratum*, 35 FCC Rcd at 13173, paragraph 11; see also *Executive Branch Process Reform Order*, 35 FCC Rcd at 10986, Appx. B, paragraph 11.

<sup>26</sup> See *Order Erratum*, 35 FCC Rcd at 13174, paragraph 11; see also *Executive Branch Process Reform Order*, 35 FCC Rcd at 10987, Appx. B, paragraph 11. Every individual or entity with ownership shall be depicted and all controlling interests must be identified. *Order Erratum*, 35 FCC Rcd at 13174, paragraph 11; see also *Executive Branch Process Reform Order*, 35 FCC Rcd at 10987, Appx. B, paragraph 11.

to comply with the requirements consistent with the new § 63.18(p), including the amendments on which the Commission seeks comment herein.

• *Certifications.* The *Executive Branch Process Reform Order* adopted a new § 63.18(q) that requires each applicant to make the following certifications by which they agree:

○ (1) to comply with all applicable Communications Assistance for Law Enforcement Act (CALEA) requirements and related rules and regulations;

○ (2) 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;

○ (3) to designate a point of contact who is located in the United States and is a U.S. citizen or lawful U.S. permanent resident, for the execution of lawful requests and as an agent for legal service of process;

○ (4)(A) that the applicant is responsible for the continuing accuracy and completeness of all information submitted, whether at the time of submission of the application or subsequently in response to either the Commission or the Committee's request, as required in § 1.65(a), and that the applicant agrees to inform the Commission and the Committee of any substantial and significant changes while an application is pending;

○ (4)(B) after the application is no longer pending for purposes of § 1.65 of the rules, the applicant must notify the Commission and the Committee of any changes in the authorization holder or licensee information and/or contact information promptly, and in any event within thirty (30) days; and

○ (5) that the applicant understands that if the applicant or authorization holder fails to fulfill any of the conditions and obligations set forth in the certifications set out in § 63.18(q) or in the grant of an application or authorization and/or that if the information provided to the U.S. government is materially false, fictitious, or fraudulent, applicant and authorization holder may be subject to all remedies available to the U.S. government, including but not limited to revocation and/or termination of the Commission's authorization or license, and criminal and civil penalties, including penalties under 18 U.S.C. 1001.

**63. Application Fees.** The Commission proposes to adopt a fee for renewal applications and, in the alternative, a fee for periodic review submissions for international section

214 authority that is consistent with the fee for applications for new international section 214 authorizations.<sup>27</sup> The proposed fee is consistent with the established fee category of "International Service" and will follow the fee calculation methodology adopted by the Commission in the *2020 Application Fee Report and Order*. Currently, the fee for an application for a new international section 214 authorization is \$875.<sup>28</sup> Since the Commission envisions the level of Commission resources required to review a renewal application or periodic review submission will be consistent with review of an application for new international 214 authority, the Commission proposes to adopt a fee of \$875. The Commission seeks comment on the Commission's proposed application fee for a renewal application or periodic review submission.

64. The Commission seeks comment on these proposals and the draft rule provisions in Appendix A. The Commission proposes to incorporate almost all of the application requirements in § 63.18 to the proposed rules for renewal applications or, in the alternative, periodic review submissions. Are there other related provisions of Part 63 that the Commission should require of authorization holders that file a renewal application or periodic review submission? Are there any reasons to modify certain information requirements in Part 63 as applied to renewal applications or periodic review submissions?

<sup>27</sup> See 47 U.S.C. 158(a); 47 CFR 1.1101; 47 CFR 1.1107. Section 8(c) of the Act requires the Commission to, by rule, amend the application fee schedule if the Commission determines that the schedule requires amendment so that: (1) such fees reflect increases or decreases in the costs of processing applications at the Commission or (2) such schedule reflects the consolidation or addition of new categories of applications. 47 U.S.C. 158(c). Section 8(c) of the Act does not mandate a timeframe for making any such amendments under section 8(c). If the Commission determines that the application fee schedule may require an amendment pursuant to section 8(c), the Commission will initiate a rulemaking to seek comment on any proposed amendment(s) to the application fee schedule. The Commission does so here. *Amendment of the Schedule of Application Fees Set Forth in Sections 1.1102 through 1.1109 of the Commission's Rules*, Order, FCC 22-94, 2022 WL 17886514, at n.2 (rel. Dec. 16, 2022) (*2022 Application Fee Order*).

<sup>28</sup> *2022 Application Fee Order* at Appx.; 47 CFR 1.1107. This fee rate became effective on March 2, 2023. See Federal Communications Commission, *Schedule of Application Fees*, 88 FR 6169 (Jan. 31, 2023).



*E. New Application Requirements for All International Section 214 Applicants and Authorization Holders*

65. The Commission proposes or seeks comment on adopting new application requirements to improve the Commission's assessment of evolving national security, law enforcement, foreign policy, and/or trade policy risks following a grant of international section 214 authority. The Commission seeks comment on whether to adopt a new 5% ownership reporting threshold for all initial applications for international section 214 authority and applications for modification, assignment, transfer of control, and renewal of international section 214 authority for certain cases.<sup>29</sup> The Commission also proposes to require each applicant to provide information about its services, geographic markets, and facilities crossing the United States' borders with Canada and Mexico (cross border facilities), and certify that their facilities-based equipment meets certain requirements.<sup>30</sup> Prior to the current global international section 214 licensing scheme, the Commission granted authorizations on a country-by-country basis and collected facilities

<sup>29</sup>The Commission notes that § 63.04(b) of the Commission's rules, pertaining to applications for transfer of control of domestic section 214 authorizations, permits joint international and domestic section 214 transfer of control filings and requires applicants filing such joint applications to satisfy the requirements in both §§ 63.04 and 63.18 addressing ownership. See 47 CFR 63.04(b), 63.18. This document does not propose to modify § 63.04(a)(4), which addresses ownership information required to be disclosed for domestic-only section 214 transfer of control applications. If the Commission adopts a 5% reporting requirement for international section 214 authorizations, the Commission proposes to require that applicants filing a joint international and domestic section 214 transfer of control application must continue to submit information that satisfies the requirements in both §§ 63.04 and 63.18, including ownership information that would be required by § 63.18(h) under the proposed 5% ownership reporting threshold.

<sup>30</sup>Unless indicated otherwise, the Commission refers to "applicant" or "applicants" in this subsection, Section IV.E., to refer to (1) applicants that file an initial application for international section 214 authority or an application for modification, assignment, transfer of control, or renewal of international section 214 authority, and (2) authorization holders that file a notification of *pro forma* assignment or transfer of control. See 47 CFR 63.18; *id.* 63.24(e) ("Applications for substantial transactions"); *id.* 63.24(f) ("Notifications for non-substantial or *pro forma* transactions"). Unless indicated otherwise, the Commission refers to "application" or "applications" in this subsection, Section IV.E., to refer to applications for international section 214 authority; applications for modifications, assignments, transfers of control, and renewals of international section 214 authority; and *pro forma* notifications of assignments and transfers of control of international section 214 authority.

information.<sup>31</sup> That was over 25 years ago. Since that time, the Commission has not collected and does not have any information on critical infrastructure that is used by international section 214 authorization holders to provide services under their international section 214 authority. Additionally, the Commission proposes or seeks comment on requiring all authorization holders to report their reportable ownership and other information on an ongoing basis, starting every three years after grant of a renewal application. The Commission tentatively concludes that these requirements that the Commission proposes or seeks comment on are important and necessary for informing the Commission's evaluation of an applicant's request for international section 214 authority or the modification, assignment, transfer of control, or renewal thereof and would serve the public interest given evolving risks identified by the Commission and the Executive Branch.

1. Five (5) Percent Threshold for Reportable Interests

66. The Commission seeks comment on whether to adopt a new ownership reporting threshold that would require disclosure of certain 5% or greater direct and indirect equity and/or voting interests with respect to applications for international section 214 authority and modification, assignment, transfer of control, and renewal of international section 214 authority. Over twenty years ago, the Commission found that a 10% reporting threshold would assist the Commission in determining whether a particular international section 214 application raises issues of national security, foreign policy, or law enforcement risks. The national security and law enforcement environment, however, has changed dramatically during this timeframe. The current 10% reporting threshold may not capture all foreign interests that may present national security, law enforcement, foreign policy, and/or trade policy concerns. In the *2021 Standard Questions Order*, the Commission noted, with respect to the Standard Questions, the views of Committee staff that "5% threshold is appropriate because in some instances a less-than-

<sup>31</sup>The Commission adopted global facilities-based international section 214 authorizations in 1996. *1996 Streamlining Order*, 11 FCC Rcd at 12888 through 94, paragraphs 9–20. Prior to the *1996 Streamlining Order*, the Commission's rules required that applications for international section 214 authority specify the geographic market (*i.e.*, the country) to be served, the particular services to be provided, and the facilities to be used. See *1995 Streamlining NPRM*, 10 FCC Rcd at 13481, paragraph 8.

ten percent foreign ownership interest—or a collection of such interests—may pose a national security or law enforcement risk." The Commission further noted, "[t]he Committee staff states that a group of foreign entities or persons, each owning nine percent and working together, could easily reach a controlling interest in a company without having to disclose any of their interests to the Committee for certain FCC application types."

67. In furtherance of the Commission's objective in this proceeding, and as the Commission reviews the current rules and their applicability to the proposed renewal or, in the alternative, periodic review process, the Commission seeks comment on whether a 5% reporting threshold would better capture foreign interests, including and especially any such interests that are associated—either individually or in the collective—with a foreign adversary country. The Commission seeks comment whether the 5% reporting threshold as described would improve the Commission's assessment of evolving public interest risks. In the alternative, the Commission seeks comment whether the Commission should only require disclosure of foreign ownership at the 5% level by citizens, entities, and government organizations from foreign adversary countries, as defined in the Department of Commerce's rule, 15 CFR 7.4.

68. The Commission seeks comment on whether to apply the 5% reporting threshold to encompass all equity and voting interests, regardless whether the interest holder is a domestic or foreign individual or entity. The Commission notes that in the context of foreign ownership rulings under section 310(b) of the Act, the Commission does not require the identification of certain foreign investors if their investment meets insulation criteria set out in the Commission's rules.<sup>32</sup> The Commission seeks comment on whether the Commission should adopt such an approach for identifying ownership in international section 214 authorizations. In other words, should the Commission require reporting only where the 5% or greater ownership interest is not passive or otherwise insulated? The Commission notes the potential for

<sup>32</sup>See 47 CFR 1.5001. The insulation criteria are set out in 47 CFR 1.5003. See Letter from Andrew D. Lipman, Ulises Pin, and Patricia Cave, Counsel to DigitalBridge Group, Inc., Morgan, Lewis & Bockius LLP, and Matthew Brill and Elizabeth Park, Counsel to Searchlight Capital Partners, Latham & Watkins LLP, to Marlene H. Dortch, Secretary, FCC, IB Docket No. 23–119 and MD Docket No. 20–270, at 3 (filed Apr. 12, 2023) (DigitalBridge and Searchlight Apr. 12, 2013 *Ex Parte* Letter).

certain ownership of U.S. entities by foreign adversaries may pose unique national security and/or law enforcement risks. In light of these concerns, the Commission seeks comment on whether applicants that include ownership of 5% or greater by an entity or citizen of a foreign adversary country should be required to disclose those holdings regardless of whether they are passive or insulated or not. In the *Executive Branch Process Reform Order*, the Commission rejected arguments to seek, for purposes of the Standard Questions, only information regarding foreign investors with 5% or greater interests, noting, “the Executive Agencies’ review extends beyond just foreign policy considerations; the review process also involves national security and law enforcement issues as well, which could be implicated regardless of whether the equity interest holder is a domestic or foreign entity.”

69. Currently, the ownership reporting threshold in § 63.18(h) of the Commission’s rules requires applicants for international section 214 authority to disclose the name, address, citizenship, and principal businesses of any person or entity that directly or indirectly owns at least 10% of the equity of the applicant, and the percentage of equity owned by each of those entities (to the nearest 1%).<sup>33</sup> Applicants seeking an assignment or transfer of control of an international section 214 authorization are also subject to the ownership disclosure requirement in § 63.18(h) pursuant to § 63.24 of the Commission’s rules. If the Commission adopts a 5% threshold, the Commission proposes to amend the ownership disclosure requirement in § 63.18(h) of the rules to require that all applicants that file an application or notification required by § 63.18 and/or § 63.24 of the Commission’s rules must disclose all individuals and entities with 5% or greater direct and/or indirect equity and/or voting interest in the applicant, as specified in each rule. Where no individual or entity directly or indirectly owns 5% or more of the equity interests and/or voting interests, or a controlling interest, of the applicant, the Commission proposes

that the application must include a statement to that effect.

70. The Commission seeks comment on the burdens that would be placed on applicants to report direct and indirect equity and/or voting ownership at a 5% threshold. A reporting threshold of 5% would be consistent with other similar relevant federal reporting requirements. A reporting threshold of 5% would be consistent with the ownership threshold used by the Committee in its review of applications that are referred by the Commission, to obtain information from applicants concerning their 5% or greater owners. Are there relevant differences between the FCC’s section 214 review process and the Committee’s processes that the Commission should take into account? In the *Executive Branch Process Reform Order*, the Commission declined to add to its application forms additional questions regarding an applicant’s investors with 5% or more equity that were suggested by NTIA, given “they are inconsistent with the Commission’s ownership disclosure requirements” for applications concerning international section 214 authorizations, among other applications.<sup>34</sup> In light of the Commission’s goal in this proceeding to establish a formalized and systemized process by which the Commission can reassess and continually account for evolving public interest risks, the Commission takes this opportunity to review the current ownership disclosure requirement for such applications and tentatively find that an ownership reporting threshold of 5% is consistent with the views previously expressed by the Committee and would better inform the Commission’s foreign ownership analysis.

71. A reporting threshold of 5% is also consistent with information that U.S. public companies and their shareholders provide to the SEC. The Exchange Act Rule 13d–1 requires a person or “group” that becomes, directly or indirectly, the “beneficial owner” of more than 5% of a class of equity securities registered under Section 12 of the Exchange Act to report the acquisition to the SEC.<sup>35</sup> The

Commission further notes that various SEC forms filed by issuers, including their annual reports (or proxy statements) and quarterly reports, require the issuer to include a beneficial ownership table that contains, *inter alia*, the name and address of any individual or entity, or “group,” who is known to the issuer to be the beneficial owner of more than 5% of any class of the issuer’s voting securities.

72. In addition, a reporting threshold of 5% is consistent with information that the Committee on Foreign Investment in the United States (CFIUS)<sup>36</sup> requires of parties to a voluntary notice filed with CFIUS. Specifically, CFIUS regulations require that if an ultimate parent of a foreign person that is a party to the transaction is a public company, the parties to the transaction must provide in the voluntary notice, the name, address, and nationality (for individuals) or place of incorporation or other legal organization (for entities) of “any shareholder with an interest of greater than five percent in such parent.”<sup>37</sup> Thus, the

Exchange Act Rule 13d–1, Exchange Act Rule 13d–3(a) defines a beneficial owner of a security to include any person who, directly or indirectly, through any contract, arrangement, understanding, relationship, or otherwise has or shares voting power, which includes the power to vote, or to direct the voting of, such security; and/or investment power, which includes the power to dispose, or to direct the disposition of, such security. *Id.* at n.128; 17 CFR 240.13d–3(a). Exchange Act Rule 13d–1(i) defines the term “equity security” as any equity security of a class which is registered pursuant to section 12 of that Act as well as certain equity securities of insurance companies and equity securities issued by closed-end investment companies registered under the Investment Company Act of 1940. *2016 Foreign Ownership Report and Order*, 31 FCC Rcd at 11293, n.128; 17 CFR 240.13d–1(i).

<sup>36</sup> CFIUS is “an interagency committee authorized to review certain transactions involving foreign investment in the United States and certain real estate transactions by foreign persons, in order to determine the effect of such transactions on the national security of the United States.” U.S. Department of Treasury, *The Committee on Foreign Investment in the United States (CFIUS)*, <https://home.treasury.gov/policy-issues/international/the-committee-on-foreign-investment-in-the-united-states-cfius> (last visited Apr. 12, 2023); see U.S. Department of Treasury, *CFIUS Overview*, <https://home.treasury.gov/policy-issues/international/the-committee-on-foreign-investment-in-the-united-states-cfius/cfius-overview> (last visited Apr. 12, 2023).

<sup>37</sup> 31 CFR 800.502(c)(1)(v)(C), 802.502(b)(1)(vi)(C). Additionally, CFIUS regulations require that a voluntary notice filed under 31 CFR 800.501 must provide, with respect to the foreign person engaged in the transaction and its parents, the following information for any individual that has “an ownership interest of five percent or more in the acquiring foreign person engaged in the transaction and in the foreign person’s ultimate parent”: (1) a “curriculum vitae or similar professional synopsis,” and (2) “personal identifier information,” including full name, date of birth, and place of birth, among other things. *Id.* 800.502(c)(5)(vi); see also *id.* 802.502(b)(3)(vi).

<sup>33</sup> 47 CFR 63.18(h). In the *2020 Executive Branch Process Reform Order*, the Commission amended its rules to require that applicants for domestic section 214 transactions, international section 214 authorizations, and submarine cable licenses must identify the voting interests, in addition to the equity interests, of individuals or entities with 10% or greater direct or indirect ownership in the applicant. *2020 Executive Branch Process Reform Order*, 35 FCC Rcd at 10963 through 64, paragraph 95; *Order Erratum*, 35 FCC Rcd at 13173, paragraph 11. The amended rule is not yet effective.

<sup>34</sup> *Executive Branch Process Reform Order*, 35 FCC Rcd at 10945, paragraph 47 (noting, however, that they are part of the sample triage questions that the Commission will use as a basis for the Standard Questions); see, e.g., *2021 Standard Questions Order*, 36 FCC Rcd at 14855 through 57, 14833 through 96, 14897 through 911, paragraphs 14, 16 through 17, Attach. A (Standard Questions for an International Section 214 Authorization Application), Attach. B (Standard Questions for an Application for Assignment or Transfer of Control of an International Section 214 Authorization).

<sup>35</sup> *2016 Foreign Ownership Report and Order*, 31 FCC Rcd at 11293, paragraph 45. For purposes of

Commission tentatively concludes that the Commission's proposal to adopt a reporting threshold of 5% would be consistent with other federal agencies and impose minimal burdens on applicants. The Commission seeks comment on what, if any, potential burdens would be imposed on applicants under the 5% equity and/or voting interest reporting threshold that the Commission seeks comment on here.

73. The Commission seeks comment on whether a reporting threshold of 5% equity and/or voting interest as described here adequately captures the relationship, association, and/or extent of influence that a foreign investor, including foreign governments, may have with respect to an applicant and/or other individuals or entities in the applicant's chain of ownership. For instance, would a reporting threshold of 5% equity and/or voting interest sufficiently account for circumstances where a foreign government interest holder with comparatively smaller ownership interests may have a disproportionately significant influence on the applicant and its operations, such as through "golden shares"? Should the Commission require additional information about an applicant's reportable interest holders? For example, should the Commission require applicants to identify other types of interests or interest holders in addition to equity interests and voting interests, such as management agreements? Is there any other information the Commission could require to fully capture interest holders that are either foreign governments or foreign state-owned entities? What additional ownership information would fully inform and assist the Commission's assessment of national security, law enforcement, foreign policy, and trade policy risks raised by such interest holders?

74. The Commission seeks comment on minimizing burdens on all applicants generally, including small entities, if the Commission adopts a 5% ownership reporting threshold. For instance, if the Commission adopts a 5% reporting threshold, the Commission seeks comment on whether the Commission should treat the disclosure of certain ownership interests of 5% and up to less than 10% as presumptively confidential,<sup>38</sup> without

<sup>38</sup> Other Commission requirements, such as supply chain annual reporting, provide for a checkbox certification and the submission of information that is presumptively confidential. *2020 Protecting Against National Security Threats Order*, 35 FCC Rcd at 14369 through 70, paragraph 214 ("We believe that the public interest in

requiring the authorization holder to file a request for confidentiality. The Commission notes that the information must be not publicly available elsewhere either in this country or another in order for us to make it confidential. Alternatively, should the Commission limit the public disclosure of ownership interests of 5% and up to less than 10% to only those interest holders that are citizens, entities, or government organizations of foreign adversary countries, as defined in the Department of Commerce's rule, 15 CFR 7.4? Since the Commission's ability to guarantee confidentiality may also be limited by other legal requirements, should the Commission allow relevant information about the identities of 5–10% foreign interests to be omitted from filings with the Commission and instead filed directly with the Committee?

## 2. Services and Geographic Markets

75. The Commission proposes to adopt rules requiring applicants to include in all initial applications for international section 214 authority and applications for modification, assignment, transfer of control, and renewal of international section 214 authority, information about their current and/or expected future services and the geographic markets where the authorization holder offers service in the United States under its international section 214 authority. The Commission's rules currently only require an applicant for international section 214 authority to indicate whether it seeks facilities-based authority, resale authority, and/or authority to acquire facilities or to provide services not covered by § 63.18(e)(1) or (e)(2) of the rules. The Commission's rules for modifications, assignments, and transfers of control of international section 214 authority only require that the applicant state "whether the applicant previously received authority under Section 214 of the Act and, if so, a general description of the categories of facilities and services authorized." The current rules do not require applicants to provide the Commission with specific information about the services they provide and/or will provide under the international section 214 authority, the facilities they use and/or will use, or other

knowing whether providers have covered equipment and services in their networks outweighs any interest the carrier may have in keeping such information confidential . . . . Other information, such as location of the equipment and services; removal or replacement plans that include sensitive information; the specific type of equipment or service; and any other provider specific information will be presumptively confidential."

information related to their operations in the United States and abroad.

76. This information will further help the Commission to properly assess evolving national security, law enforcement, foreign policy, and/or trade policy risks associated with an applicant. In recent revocation actions, the Commission specifically assessed the risks associated with the particular services offered pursuant to international section 214 authority. In addition, the Commission notes that the Executive Branch agencies seek "detailed and comprehensive information" from applicants with reportable foreign ownership, including services to be provided.<sup>39</sup> The Commission believes information about an applicant's current and/or planned future services would be important for the Commission's review of applicants to meaningfully assess national security, law enforcement, and other considerations.

77. Specifically, the Commission proposes to require applicants to provide the following information with respect to services they provide and/or expect to provide using the international section 214 authority: (1) identification and description of the specific services they provide and/or will provide using the international section 214 authority; (2) types of customers that are and/or will be served; (3) whether the services will be provided through the facilities for which the applicant has an ownership, indefeasible-right-of use or leasehold interest or through the resale of other companies' services; and (4) identification of where they currently and/or in the future expect to market, offer, and/or provide services using the particular international section 214 authority, such as a U.S. state or territory and/or U.S.-international route or globally. The Commission notes that the Office of International Affairs retains the authority to request additional information during the course of its review and, as discussed above, the Commission proposes to adopt a similar rule for the Commission's review of renewal applications. The Commission seeks comment on these proposals and the potential burdens on applicants. The Commission seeks comment on whether

<sup>39</sup> See e.g., *Executive Branch Process Reform Order*, 35 FCC Rcd at 10943, paragraph 42; *id.* at 10981, Appx. C, paragraph 7; *Order Erratum*, 35 FCC Rcd at 13170, paragraph 7; *2021 Standard Questions Order*, 36 FCC Rcd at 14883 through 96, 14897 through 911, Attach. A (Standard Questions for an International Section 214 Authorization Application), Attach. B (Standard Questions for an Application for Assignment or Transfer of Control of an International Section 214 Authorization). The Standard Questions are not yet effective.

the Commission should instead require authorization holders to provide this information on an as-needed basis.

### 3. Foreign-Owned Managed Network Service Providers

78. In this proceeding, the Commission considers managed network service providers (MNSPs) to be third parties with access to telecommunications network, systems, or records to provide Managed Services that support core domestic and international telecommunications services, functions, or operations. The Commission relies on international section 214 authorization holders to protect U.S. records, such as customer proprietary network information (CPNI), and ensure the security and reliability of U.S. telecommunications networks. In October 2021, the Commission adopted an Order that will require certain applicants and petitioners with reportable foreign ownership—including applicants seeking international section 214 authority or modification, assignment, or transfer of control of international section 214 authority—to provide answers to a set of standardized national security and law enforcement questions (Standard Questions). The Standard Questions will require an applicant, prior to or at the same time the applicant files its application with the Commission, to submit answers to those Questions directly to the Committee, including whether “any third-party Individual or Entity [has] Remote Access to the Applicant’s network, systems, or records to provide Managed Services.” Those applicants without reportable foreign ownership are not routinely referred to the Committee or to other relevant Executive Branch agencies. Such applicants, however, also may reach contractual agreements or have other arrangements with foreign-owned MNSPs, thereby granting such foreign-owned MNSPs access to U.S. networks and potentially allowing them to take actions in ways that are contrary to U.S. interests, without the Committee ever being informed.

79. Given the potential vulnerabilities raised by a foreign-owned entity’s access to critical telecommunications infrastructure in the United States, the Commission proposes to require all applicants, including those without reportable foreign ownership, to identify in their application whether or not they use and/or will use foreign-owned MNSPs. The Commission also proposes to adopt this requirement for applicants seeking international section 214 authority and modification, assignment,

transfer of control, and renewal of international section 214 authority.

80. The Commission proposes that any applicant with or without foreign ownership that indicates it uses and/or will use foreign-owned MNSPs will need to answer Standard Questions and those applications would be routinely referred to the Executive Branch agencies, including the Committee. Should the Commission ask additional questions, such as requiring applicants to provide ownership information with respect to each foreign-owned MNSP that they use and/or will use? Should the Commission require applicants to identify all entities and/or individuals that hold 5% or greater direct or indirect equity and/or voting interests in the foreign-owned MNSP? Should an MNSP be considered “foreign-owned” only if it is majority-owned and/or controlled by one or more non-U.S. individual(s) or entity(ies)? Should the Commission require applicants to explain in detail the foreign individuals’ or entities’ involvement and management roles in the foreign-owned MNSP? How best can the Commission obtain additional information with regard to these arrangements for purposes of this proceeding? For instance, should the Commission conduct a one-time collection targeted to the use of foreign-owned MNSPs?

81. The Commission seeks comment on whether the Commission should evaluate the character qualifications of foreign-owned MNSPs using the same standards that the Commission proposes herein to rely on for the Commission’s assessment of applicants seeking international section 214 authority or modification, assignment, transfer of control, or renewal of international section 214 authority. Because MNSPs are not seeking Commission authorizations, and the Commission’s character policy is meant to ensure that the Commission can rely on regulated entities to deal truthfully with the Commission and comply with the Act and the Commission’s rules, should the Commission be concerned about different types of past misconduct when the Commission assesses an authorization holder’s relationship with a foreign-owned MNSP?<sup>40</sup> Should the

<sup>40</sup> Examples of past misconduct by an MNSP the Commission might consider relevant to the Commission’s assessment include deceptive sales practices, violations of consumer protection statutes and any regulations, and/or other fraud or abuse practices in violation of federal, state, and/or local law; and violations of federal, state, or local 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 public utility commissions in the United States. See

Commission require applicants, similar to the questions set out in the Standard Questions as applied to applicants, to identify whether or not the foreign-owned MNSP or any entity and/or individual with any ownership or controlling interest in such MNSP has “been investigated, arraigned, arrested, indicted, or convicted” of criminal violations that are indicative of a propensity to engage in behavior that may jeopardize the security and reliability of U.S. telecommunications networks?<sup>41</sup> Should the Commission limit any information requirement regarding MNSPs to a specific prior period of time?

82. Are there other considerations regarding MNSPs that should factor into the Commission’s analysis? For example, to what extent do applicants, both facilities-based and resale-based authorization holders, contract with foreign-owned MNSPs? Should the Commission collect information on authorization holders’ use of MNSPs in any other context? Should applicants identify in their application whether they use and/or will use a non-foreign-owned MNSP(s), or an MNSP with foreign ownership that is less than a reportable threshold, if that MNSP routes or manages traffic using facilities outside of the United States? Wireless carriers with international section 214 authorizations may provide international services to their customers. Are there any special concerns raised by use of foreign-owned MNSPs by wireless carriers, including by CMRS providers?

83. If the Commission adopts such requirements, the Commission would propose to routinely refer to the Executive Branch agencies, including the Committee agencies, to assist the Commission’s public interest determination, an application for a new international section 214 authorization as well as an application to modify,

<sup>41</sup> 2021 Standard Questions Order, 36 FCC Rcd at 14883 through 96, Attach. A (Standard Questions for an International Section 214 Authorization Application).

<sup>41</sup> Such criminal violations of U.S. law would include violations of the Espionage Act (18 U.S.C. 792 *et seq.*), the International Traffic in Arms Regulations (22 CFR parts 120 through 130), and/or the Export Administration Regulations (15 CFR part 730 *et seq.*). See 2021 Standard Questions Order, 36 FCC Rcd at 14889, Attach. A, Standard Questions for an International Section 214 Authorization Application (“Has the Applicant or any Individual or Entity with an Ownership Interest in the Applicant, or any of their Corporate Officers, Senior Officers, Directors ever been investigated, arraigned, arrested, indicted, or convicted of any of the following: (a) Criminal violations of U.S. law, including espionage-related acts or criminal violations of the International Trade in Arms Regulations (ITAR) or the Export Administration Regulations (EAR) . . . .”).

assign, transfer control of, or renew the international section 214 authority where an applicant discloses that it uses and/or will use a foreign-owned MNSP. Similar to the Commission's current practice, the Commission proposes to delegate to the Office of International Affairs the authority to develop Standard Questions, to modify and harmonize existing questions on MNSPs and other matters, and to require applicants to submit answers to the Standard Questions, including personally identifiable information (PII), directly to the Committee prior to or at the same time the applicant files its application with the Commission. The Commission seeks comment on these proposals.

#### 4. Cross Border Facilities Information

84. The Commission proposes to collect from current international section 214 authorization holders information on critical infrastructure that is used by authorization holders to provide service crossing the U.S.-Mexico and U.S.-Canada borders, including the location, ownership, and type of facilities, and to require authorization holders to continue to update this information as part of the ongoing three-year reporting requirement proposed below. The Commission also proposes to share this information with relevant Executive Branch agencies, including the Committee agencies. The Commission currently receives this information for submarine cables that land in the United States pursuant to its rules. With this proposed new information collection, the Commission would then have an understanding of not only submarine fiber cable connections to U.S. facilities, but also facilities information for terrestrial fiber cables that cross the U.S.-Mexico and U.S.-Canada borders. Below, the Commission also proposes to conduct a one-time information collection concerning cross border facilities and proposes to require updates in the ongoing reports as well as sharing this information with the Commission's federal partners. The proposed rules would ensure that the Commission has knowledge of the critical infrastructure at the nation's borders. The Commission seeks comment on this proposal.

85. Congress created the Commission, among other reasons, "for the purpose of the national defense [and] for the purpose of promoting safety of life and property through the use of wire and radio communications . . . ." Throughout the past decade, Congress and the Executive Branch have repeatedly stressed the importance of

identifying and eliminating potential security vulnerabilities in U.S. communications networks and supply chains. Recently, the Commission has taken a number of targeted steps as part of its ongoing efforts to protect the security of the networks that provide telecommunications services. The Commission has taken significant steps by blocking access to U.S. communications networks, pursuant to its authority under section 214 of the Act, to providers posing a substantial and serious security threat to U.S. communications networks, and continues its efforts to identify and eliminate potential security vulnerabilities in U.S. telecommunications networks and supply chains.

86. The security of physical telecommunications facilities is essential to maintaining resilient infrastructure, not only for its role in ensuring that people can communicate but also because it enables all other critical infrastructure sectors, especially the energy, information technology, financial services, emergency services, and transportation systems sectors. The Presidential Policy Directive on Critical Infrastructure Security and Resilience (Directive), released in 2013, called for the federal government to strengthen the security and resilience of critical infrastructure in an "integrated, holistic manner to reflect this infrastructure's interconnectedness and interdependency." The Directive also highlighted the federal government's plan to engage with international partners to protect U.S. critical infrastructure. Recent guidance by the DHS Cybersecurity & Infrastructure Security Agency (CISA) on the convergence between cybersecurity and physical security warns against siloing information/cybersecurity and physical security, instead recommending integrated threat management. In addition, with respect to applicants with reportable foreign ownership, the Standard Questions adopted in the 2021 *Standard Questions Order* include questions about the "present and anticipated physical locations" concerning applicants' network equipment, data centers, and infrastructure, whether applicants' network equipment, data centers, and infrastructure is owned or leased; descriptions of equipment used; network architecture diagrams, if the applicant will be operating any physical and/or virtual telecommunications switching platforms; and whether any entities, including foreign-based

entities, will be able to control the infrastructure.

87. The Commission has emphasized the importance of security and sensitivity of physical infrastructure relating to carriers' provision of telecommunications service in view of significant national security and law enforcement risks. For example, in the *China Unicom Americas Order on Revocation*, the Commission stated that China Unicom (Americas) Operations Limited's physical Points of Presence (PoPs) in the United States "are highly relevant to its ability to access, monitor, store, disrupt, and/or misroute communications to the detriment of U.S. national security and law enforcement." In the *China Telecom Americas Order on Revocation and Termination*, the Commission addressed concerns, among other things, that China Telecom (Americas) Corporation's (CTA) PoPs in the United States "are highly relevant to the national security and law enforcement risks associated with CTA" and that "CTA, like any similarly situated provider, can have both physical and remote access to its customers' equipment." In the *Pacific Networks and ComNet Order on Revocation and Termination*, the Commission stated that the physical location of Pacific Networks Corp.'s and ComNet (USA) LLC's operations with respect to their points of presence in the United States "is relevant to identified national security and law enforcement risks." Given the potential vulnerabilities associated with carriers' physical presence and proximity to U.S. communications networks, the Commission seeks to collect information and better understand cross border facilities, bringing it in line with information that the Commission already collects in the context of submarine cable landing licenses.

88. Additionally, collecting more information on cross border facilities would assist the Commission and its partners in the federal government in understanding potential vulnerabilities in U.S. telecommunications networks involving traffic rerouting. The Commission is especially concerned about the ability of service providers to move traffic outside of the United States when normal internet Protocol (IP) routing protocols would not normally take such traffic outside of the United States (for example, when the origination and destination points are both located within the country). The Commission notes that misrouting of traffic outside of the United States can be done without the authorization and knowledge of the customer, and may

result in traffic that is sent to locations that are not under U.S. legal protection. Cross border facilities are particularly significant because of potential threats raised by U.S.-inbound traffic, such as possible disruption to U.S. telecommunications service through bad actors inserting malware into U.S. networks or inbound denial of service attacks. Improved awareness of these facilities would provide needed insight into the international upstream networks sending traffic into the United States.

89. Based on the Commission's concerns above, the Commission proposes to require all applicants for facilities-based international section 214 authority to identify in their initial application for international section 214 authority and the application for renewal of their international section 214 authority, the facilities, services, and other information concerning the facilities that they use and/or will use to provide services under their international section 214 authority from the United States into Canada and/or Mexico. The Commission proposes to require the same information in applications for modifications, assignments, or transfers of control of facilities-based international section 214 authorizations. Similarly, the Commission proposes to require all applicants for resale-based international section 214 authority to identify in their initial application for international section 214 authority and the renewal application, the facilities they lease and/or will lease to provide services under their international section 214 authority from the United States into Canada and/or Mexico. The Commission proposes to require the same information in applications for modifications, assignments, or transfers of control of resale-based international section 214 authorizations.

90. Specifically, the Commission proposes requiring the collection of the following information from applicants for international section 214 authority, regardless of whether they seek facilities-based or resale-based authorizations, and applicants for modification, assignment, transfer of control, and renewal of international section 214 authority:

- Location of each cross border facility (street address and coordinates);
- Name, street address, email address, and telephone number of the owner(s) of each cross border facility, including the Government, State, or Territory under the laws of which the facility owner is organized;
- Identification of the equipment to be used in the cross border facilities,

including equipment used for transmission, as well as servers and other equipment used for storage of information and signaling in support of telecommunications;

- Identification of all IP prefixes and autonomous system domain numbers used by the facilities that have been acquired from the American Registry for Internet Numbers (ARIN); and
- Identification of any services that are and/or will be provided by an applicant through these facilities pursuant to international section 214 authority.

91. Would the public interest be served by requiring less or more specific information? The Commission encourages parties to address whether this information would enhance the Commission's ability to protect U.S. telecommunications infrastructure. Should the Commission share this information with, for example, state and local governments? Are there other sources of information for infrastructure at the U.S.-Canada and U.S.-Mexico borders? What other ways can the Commission ensure that it has information about all critical infrastructure facilities that are used by international section 214 authorization holders to provide services, under their international section 214 authority, crossing the U.S.-Canada and U.S.-Mexico borders?

92. The Commission recognizes that non-common carrier facilities located across the U.S.-Canada and U.S.-Mexico borders are an important component of cross border infrastructure security. The Commission proposes to require applicants to also provide the information set out above about their non-common carrier facilities offered across the U.S.-Canada and U.S.-Mexico borders. The security and safety of telecommunications network is critical and if the Commission grants an international section 214 authorization, it is essential for the Commission and its federal partners to also receive non-common carrier information to assist in the goals of this proceeding. The Commission currently assesses fees on international non-common carrier circuits. The Commission seeks comment generally on this proposal, including the nature and extent of any burdens on applicants and authorization holders. The Commission asks commenters to address whether this would ensure the collection of almost all facilities at the borders. Are there less burdensome alternatives that would achieve the Commission's national security objectives?

93. Finally, if the Commission adopts such requirements, it would propose to

routinely refer to the Executive Branch agencies, including the Committee, an application for a new international section 214 authorization as well as an application to modify, assign, transfer control of, or renew those authorizations where an applicant reports cross border facilities. These applications may separately raise national security, law enforcement, and other concerns that require input from the Executive Branch agencies to assist the Commission's public interest review. The Commission seeks comment on this proposal.

94. *Cross Border Facilities—Initial Information Collection and Updates in the Ongoing Reports.* The Commission proposes requiring all current international section 214 authorization holders to report the information specified above sixty (60) days after the effective date of the rule, following OMB approval. The Commission further proposes to require all current and future international section 214 authorization holders to report this information to the Commission as part of the ongoing reporting process discussed further below.

95. *Sharing with Federal Agencies.* The Commission anticipates sharing the information gathered on cross border facilities with the Executive Branch agencies and other federal agencies to improve the Commission's understanding of the information and to augment the Executive Branch's understanding of cross border telecommunications security issues. To the extent that any of the information is confidential, the Commission notes that its existing rules already provide for the sharing of business confidential information with Executive Branch agencies, including the Committee, in the context of reviews within the scope of the Executive order. The rules also provide for sharing of confidential information with other federal agencies upon notice to the party seeking confidential treatment of the information. The Commission seeks comment on whether sharing of the confidential information with other federal agencies should be subject to the same provisions regarding sharing confidential information with the Committee.<sup>42</sup> Disclosure of this information to other federal agencies, if adopted, may require modifications to

<sup>42</sup> The Commission will, to the extent required, modify the applicable System of Records Notice under the Privacy Act to account for, among other things, the collection of new information types (e.g., information regarding cross border facilities) or new disclosures (e.g., to new federal partners) as discussed throughout this Notice. See Federal Communications Commission, *Privacy Act of 1974; System of Records, IB-1, International Bureau Filing System*, 86 FR 43237 (Aug. 6, 2021).

the applicable System of Record Notice's routine uses.

96. *Updated Facilities Information.* The Commission seeks comment on requiring all authorization holders to notify the Commission within thirty (30) days after commencing service in the new facility or commencing service with an underlying facilities provider. The Commission also seeks comment on whether it should require applicants for initial international section 214 authority and modification, assignment, transfer of control, and renewal of international section 214 authority to report, within thirty (30) days, pursuant to § 1.65(a), any changes that occur during the pendency of an application relating to the cross border information that was provided in the application with respect to existing facilities, as specified above, and/or new facilities they are using or will use to provide services, under their international section 214 authority, crossing the U.S.-Canada and U.S.-Mexico borders.<sup>43</sup>

97. The Commission believes collecting updated timely information would promote equitable compliance for all entities subject to this requirement. In light of evolving national security, law enforcement, foreign policy, and trade policy threats, it is important for the Commission to collect this information as soon as practicable to ensure that the Commission and its federal partners have the most up-to-date information for their continued efforts to protect this nation's telecommunications infrastructure.

98. The Commission seeks comment on this information collection generally. For example, the Commission seeks comment as to whether other information should be submitted. The Commission seeks comment on whether subsequent updates by carriers concerning facilities equipment should be limited to identifying changes in or new additions to the types of equipment (e.g., next generation firewalls) and manufacturers, instead of a detailed list of equipment. Given the broad scope of the Commission's proposed approach, should the Commission instead narrow the information collection and how? As discussed below, should the Commission require authorization holders to report updated information in ongoing reports required every three years instead of requiring it within 30 days after commencing service in the new facility or commencing service

with an underlying facilities provider? The Commission seeks comment on whether it should reserve the right to request detailed lists of equipment at the time of the Commission's choosing.

#### 5. Facilities-Based Equipment, Resellers, and Service Certification

99. *Facilities Cybersecurity Certification.* The Commission proposes to require applicants for international section 214 authority and modification, assignment, transfer of control, and renewal of international section 214 authority to certify in the application that they will undertake to implement and adhere to baseline cybersecurity standards based on universally recognized standards such as those provided by CISA or the Department of Commerce's National Institute of Standards and Technology (NIST). The Commission tentatively concludes that baseline security requirements would help mitigate national security and law enforcement concerns associated with threats to the security of U.S. communications infrastructure. The Commission seeks comment on this proposal.

100. Other federal government agencies, namely CISA and NIST, have put forward cross-sector security standards. The Commission seeks comment on whether there are other universally recognized baseline cybersecurity standards comparable to the security standards provided by CISA and NIST, and whether applicants should be allowed to certify instead that they will adopt those alternative cybersecurity standards. The Commission seeks comment on whether the proposed certification requirement should take into account the size of the applicant and its operations. For example, should the Commission allow large facilities-based providers and small resellers to certify adherence to different baseline security standards? The Commission seeks comment on these proposals and the potential burdens, if any, that would be imposed upon applicants.

101. *Facilities "Covered List" Certification.* The Commission proposes to require applicants for international section 214 authority and modification, assignment, transfer of control, and renewal of international section 214 authority to certify in the application as to whether or not they use equipment or services identified on the Commission's "Covered List" of equipment and services deemed pursuant to the Secure and Trusted Communications Networks Act to pose an unacceptable risk to the national security of the United States or the security and safety of United States

persons. The Commission proposes that this certification would apply to covered equipment or services purchased, rented, leased, or otherwise obtained on or after August 14, 2018 (in the case of Huawei, ZTE, Hikvision, Dahua, and Hytera), or on or after 60 days after the date that any equipment or service is placed on the Covered List. The Commission seeks comment on whether applicants must provide notification to the Commission within 30 days prior to implementing any plan to add new vendors to provide equipment or services that are on the Covered List or plan to add/remove such services for existing or new customers. The Commission also seeks comment on whether applicants must provide notification to the Commission within 30 days after they add new vendors to provide equipment or services that are on the Covered List or add/remove such services for existing or new customers.

102. The Commission proposes to require applicants for international section 214 authority and modification, assignment, transfer of control, and renewal of international section 214 authority to certify that they will not purchase and/or use equipment made by entities (and their subsidiaries and affiliates) on the "Covered List" as a condition of the potential grant of the application. The Commission seeks comment on these proposals and generally on what other certifications the Commission should adopt concerning the "Covered List."

103. Finally, if the Commission adopts such requirements, the Commission would propose to routinely refer to the Executive Branch agencies, including the Committee agencies, applications for new international section 214 authorizations as well as applications to modify, assign, transfer control of, or renew those authorizations where an applicant certifies that it uses equipment or services identified on the Commission's "Covered List" of equipment and services pursuant to the Secure and Trusted Communications Networks Act. These applications may separately raise national security, law enforcement, foreign policy, and trade policy concerns that require input from the Executive Branch agencies to assist the Commission's public interest review. The Commission seeks comment on this proposal.

#### 6. Regulatory Compliance Certification

104. The Commission proposes that all applicants seeking international section 214 authority or modification, assignment, transfer of control, or renewal of international section 214

<sup>43</sup> Any change to an applicant's cross border facilities information as discussed herein would be deemed substantial and significant, including deactivation of facilities.



authority must certify in the applications whether or not they are in compliance with the Commission's rules and regulations, the Act, and other laws. The Commission proposes to consider whether an applicant that files any application involving international section 214 authority has the requisite character qualifications. Specifically, the Commission proposes to require each applicant to certify in its application whether or not the applicant has violated the Act, Commission rules, or U.S. antitrust or other competition laws, has engaged in fraudulent conduct before another government agency, has been convicted of a felony, or has engaged in other non-FCC misconduct the Commission has found to be relevant in assessing the character qualifications of a licensee or authorization holder. The Commission seeks comment on these proposals. The Commission also seeks comment on whether it should require applicants to disclose any pending FCC investigations, including any pending Notice of Apparent Liability, and any adjudicated findings of non-FCC misconduct.

#### F. Other Changes to Part 63 Rules

105. The Commission proposes additional changes to its rules concerning international section 214 authorizations to ensure that the Commission has current and accurate information about which authorization holders are providing service under their international section 214 authority. As discussed above, although the Commission's records indicate there are approximately 7,000 international 214 authorization holders, the Commission estimates the more accurate number is closer to approximately 1,500 active authorization holders. The Commission tentatively concludes that a substantial majority of international section 214 authorizations are in disuse, including those that may have never commenced use. Without accurate information about who is providing U.S.-international service and how that service is being provided, it is difficult for the Commission to ensure that such service does not raise national security, law enforcement, foreign policy, and/or trade policy concerns. The Commission seeks comment on a number of proposals to improve the information that the Commission has about authorization holders that provide service under their international section 214 authority and the service that they are providing. The Commission also seeks comment on whether there are specific rules in Part 63 where the benefits do not outweigh the burdens

and whether the Commission should eliminate or modify such rules.

#### 1. Permissible Number of Authorizations

106. The Commission proposes to adopt a rule that would allow an authorization holder to hold only one international section 214 authorization except in certain limited circumstances. The Commission proposes that, if an authorization holder currently has more than one international section 214 authorization, that carrier must surrender the excess authorization(s). As explained below, an authorization holder may have acquired different types of authorizations and under different circumstances. The Commission's records indicate that approximately 3% of authorization holders hold more than one authorization. Under the Commission's current rules, there may be various circumstances through which an authorization holder acquired more than one authorization. An authorization holder may have acquired multiple authorizations as a result of an assignment or transfer of control. Or, an authorization holder may have obtained different types of authorizations, such as global facilities-based authority, global resale authority, and/or other authorization pursuant to § 63.18(e)(1)–(3) of the Commission's rules. The Commission's concern is that carriers may have duplicative authorizations that are not required for them to provide U.S.-international service. The Commission recognizes that in certain limited circumstances, a carrier may need more than one authorization, such as authority for overseas cable construction for a common carrier submarine cable or if the carrier is affiliated with a foreign carrier with market power on a U.S.-international route. However, the Commission tentatively finds that in most circumstances, a carrier only requires one international section 214 authorization to provide service(s) under that authority.

107. The Commission seeks comment on this proposal. How should the Commission consider for these purposes multiple authorizations held by commonly controlled entities? Should carriers be allowed to hold more than one authorization in certain circumstances? If so, commenters should explain in detail why carriers should hold more than one authorization. Would a carrier need a different authorization for each type of authority enumerated in § 63.18(e)(1)–(3)? The Commission seeks comment on any additional exceptions that it should

consider. Should the Commission replace multiple authorizations held by a carrier with a single, consolidated authorization that includes all of the authority and conditions enumerated in each of the multiple authorizations? The Commission seeks comment on whether such a proposed measure is feasible under the Commission's current rules, and the reasons therefor.

#### 2. Commence Service Within One Year

108. Currently an entity can obtain an international section 214 authorization and never provide U.S.-international service pursuant to the authorization. This may occur because business plans change or the entity goes out of business, and this has led to a large number of authorizations in the Commission's records where the authorization is not being used to provide service. The Commission notes that it has requirements for other licensees of regulated services where the licensee must begin providing service within a set period of time or its license is cancelled. The Commission proposes to adopt similar requirements for international section 214 authorization holders. This proposed requirement would also provide the Commission with more accurate information as to who is actually providing U.S.-international service and improve the administration of the Commission's rules.<sup>44</sup>

109. The Commission tentatively concludes that authorization holders should retain their authorization only if service is being provided to the public under that authorization. Consequently, the Commission proposes to adopt a rule requiring an international section 214 authorization holder to commence service under its international section 214 authority within one year following the grant. Under this proposal, an authorization holder will be required to file a notification with the Commission through ICFS within 30 days of the date when it begins to offer service but in no case later than one year following the grant of international section 214 authority. The Commission proposes that the commencement of service notification must include: (1) a

<sup>44</sup> See also 1996 Streamlining Order, 11 FCC Rcd at 12894, paragraph 20. In the 1996 Streamlining Order, the Commission amended § 63.05 of the rules "so that international common carriers need not commence providing service within a specified time after the Section 214 authorization date." *Id.* The Commission stated that "[i]nternational carriers need to obtain operating agreements from foreign carriers" and "[o]btaining such agreements may be delayed by events outside U.S. carriers' control," adding that, "[c]arriers' traffic reports will advise the Commission of the year that carriers actually initiate service to individual countries." *Id.*

certification by an officer or other authorized representative of the authorization holder that the authorization holder has met the commencement of service requirement; (2) the date that the authorization holder commenced service; (3) a certification that the information is true and accurate upon penalty of perjury; and (4) the name, title, address, telephone number, and association with the authorization holder of the officer or other authorized representative who executed the certifications. The Commission proposes that an authorization holder may obtain a waiver of the one-year time period if it can show good cause why it is unable to commence service within one year following the grant of its authorization and identify an alternative reasonable timeframe when it can commence service. If an authorization holder does not notify the Commission of the commencement of service or file a request for a waiver within one year following the grant of international section 214 authority, the Commission proposes to cancel the authorization.

110. The Commission seeks comment on these proposals, including whether one year is sufficient time to initiate U.S.-international service or if another time period is appropriate in certain situations, such as where an international section 214 authorization is acquired in association with a common carrier submarine cable. The Commission seeks comment on the Commission's proposal that authorization holders may seek a waiver of the one-year requirement. The Commission's rules provide in other contexts that licensees may seek a waiver of certain rules. If an authorization holder seeks a waiver of the one-year time period, what facts would establish good cause to extend the time period for commencing U.S.-international service pursuant to its international section 214 authority? The Commission also seeks comment on whether the Commission should require authorization holders with authorizations that were or are granted prior to the effective date of the new rules to file with the Commission a commencement of service notification within one year of the effective date of the rules.

### 3. Changes to the Discontinuance Rule

111. The Commission proposes to amend § 63.19 of the Commission's rules to require that all authorization holders that permanently discontinue service under their international section 214 authority must file with the Commission a notification of the

discontinuance and surrender the authorization.<sup>45</sup> Currently, the discontinuance procedures set out in § 63.19 only apply when an authorization holder discontinues the service for which it has customers. Section 63.19 requires that the carrier notify affected customers of the planned discontinuance, reduction, or impairment of service at least 30 days prior to its planned action.<sup>46</sup> When the Commission last revised the discontinuance rules in 2007, the Commission did not address the particular situation where an international section 214 authorization holder does not have customers. As a result, an authorization holder may retain indefinitely an authorization that has never been used or is no longer being used. An authorization holder that ceases to provide international service or goes out of business altogether is not

<sup>45</sup> In 2007, the Commission amended its rules "to reduce the notification period for a non-dominant carrier's discontinuance of international service from 60 days to 30 days, to be more consistent with the minimum period generally allowed before a non-dominant carrier can receive authority to discontinue domestic service." *2007 Amendment of Parts 1 & 63 Order*, 22 FCC Rcd at 11402, paragraph 10. The Commission found that "the further increase in the number of carriers and competition in the U.S. international telecommunications marketplace since 1996 justifies a further reduction in our discontinuance notice period for international services." *Id.* at paragraph 12. The Commission also modified its rules to require international carriers to file a copy of the discontinuance notification with the Commission at the same time they provide notification to their affected customers. *Id.* at 11402, 11403, paragraphs 10, 13. The Order did not address a situation where discontinuance of international service occurred where an authorized carrier had no customers.

<sup>46</sup> 47 CFR. 63.19(a). Section 63.19(a) requires that "any international carrier that seeks to discontinue, reduce, or impair service, including the retiring of international facilities, dismantling or removing of international trunk lines," must: (1) "notify all affected customers of the planned discontinuance, reduction, or impairment at least 30 days prior to its planned action," and (2) file with the Commission "a copy of the notification on the date on which notice has been given to all affected customers." *Id.* 63.19(a)(1)–(2). The notification must "be in writing to each affected customer unless the Commission authorizes in advance, for good cause shown, another form of notice." *Id.* 63.19(a)(1). Section 63.19(b) contains procedural requirements for any international carrier that the Commission has classified as dominant in the provision of a particular international service because the carrier possesses market power in the provision of that service on the U.S. end of the route. *Id.* 63.19(b). Any such carrier that seeks to retire international facilities, dismantle, or remove international trunk lines, but does not discontinue, reduce, or impair the dominant services being provided through these facilities, shall only be subject to the notification requirements of section 63.19(a). *Id.* If such carrier discontinues, reduces, or impairs the dominant service, or retires facilities that impair or reduce the service, the carrier shall file an application pursuant to §§ 63.62 and 63.500. *Id.* Commercial Mobile Radio Service (CMRS) carriers, "as defined in section 20.9 of the Commission's rules, are not subject to the provisions of" § 63.19. *Id.* 63.19(c).

currently required to notify the Commission and surrender the authorization. This makes it difficult to effectively administer international section 214 authorizations given that the Commission's records indicate that many of the authorizations are no longer being used to provide U.S.-international service.

112. *Permanent Discontinuance of Service.* The Commission proposes to modify § 63.19 by adding a requirement that an authorization holder that permanently discontinues service under its international section 214 authority must surrender the authorization. The Commission proposes to define permanent discontinuance of service as a period of three consecutive months during which an authorization holder does not provide any service under its international section 214 authority. The Commission will continue to require that an authorization holder with existing customers must comply with the requirements of § 63.19(a) to notify all affected customers prior to discontinuance. If a carrier will discontinue part but not all of its U.S.-international services—for example, by discontinuing service only on a particular U.S.-international route—and will continue to provide other U.S.-international service(s) under its international section 214 authority, it must comply with the requirements of § 63.19(a) to notify affected customers prior to discontinuance of those services.

113. The Commission proposes that, if an authorization holder has permanently discontinued service provided pursuant to its international section 214 authority, it must surrender its authorization and file with the Commission a notification that contains the following information: (1) the name, address, and telephone number of the authorization holder; (2) the initial date as of when the authorization holder did not provide service under its international section 214 authority; (3) a statement as to whether any customers were affected, and if so, whether the authorization holder complied with § 63.19(a) of the Commission's rules; (4) whether or not the carrier is also surrendering any ISPCs; and (5) a request to surrender the authorization. The Commission proposes that if an authorization holder has permanently discontinued service provided pursuant to its international section 214 authority, the authorization holder must file this notification with the Commission within 30 days after the discontinuance. This proposed requirement applies to authorization holders regardless of whether or not

they discontinued service with or without customers. The Commission believes this information will give the Commission and the public sufficient information concerning when the discontinuance occurred and whether customers were affected by the discontinuance. The Commission proposes to require authorization holders to file this notification in the ICFS file number associated with their authorization.

114. The Commission seeks comment on its proposed framework regarding permanent discontinuance of service and the costs and benefits to the public, authorization holders, and the Commission. The Commission seeks comment on whether an alternative length of time should be used to define permanent discontinuance of service. The Commission also seeks comment on what may constitute good cause for waiver of these proposed rules.

115. *Additional Changes to § 63.19.* The Commission proposes to modify § 63.19(a) by providing clear and consistent requirements concerning the notification that an authorization holder must provide to affected customers of its planned discontinuance, reduction, or impairment of service. In contrast to the notification requirements that apply to discontinuance, reduction, or impairment of domestic services, § 63.19(a)(1) currently does not specify what an authorization holder must include in a notification to affected customers of its planned discontinuance, reduction, or impairment of service under its international section 214 authority. The Commission proposes to require that an authorization holder that seeks to discontinue, reduce, or impair service under its international section 214 authority must include the following information in the notification to affected customers:

- Name and address of carrier;
- Date of planned service discontinuance, reduction, or impairment;
- Points of geographic areas of service affected (inside of the United States and U.S.-international routes);
- Brief description of type of service(s) affected; and
- Brief explanation as to whether the service(s) will be discontinued, reduced, or impaired.

116. These proposed requirements are similar to the notification requirements that apply to discontinuance, reduction, or impairment of domestic services. The Commission seeks comment on this proposal and whether carriers should include any additional information in

the notification of planned discontinuance to affected customers.

117. The Commission proposes to modify § 63.19(a) to allow an authorization holder to provide notice by email to affected customers of its planned discontinuance, reduction, or impairment of service, if the authorization holder has the email addresses of those affected customers. The Commission's rules concerning discontinuance, reduction, or impairment of domestic service, provide that notice by email constitutes notice in writing. The Commission seeks comment on whether it is appropriate to similarly allow an authorization holder to provide notice by email to affected customers of its planned discontinuance, reduction, or impairment of service under its international section 214 authority. Alternatively, are there reasons to require different approaches for notifying affected customers of the planned discontinuance, reduction, or impairment of U.S.-international service and domestic service? The Commission also seeks comment on whether the Commission should further amend § 63.19 to allow an authorization holder that seeks to discontinue, reduce, or impair any pre-paid calling service that is provided under its international section 214 authority to provide notice by recorded message when a customer makes a call. Would this approach provide sufficient notice for affected customers of pre-paid calling services, or should the Commission also require the authorization holder to provide notice by email and/or letter to affected customers?

118. If the Commission modifies § 63.19(a)(1) to provide that notice by email to affected customers of planned discontinuance, reduction, or impairment of service constitutes notice in writing for purposes of § 63.19, the Commission proposes to require that an authorization holder must also comply with the following requirements:

- The carrier must have previously obtained express, verifiable, prior approval from customers to send notices via email regarding their service in general, or planned discontinuance, reduction, or impairment in particular;
- The carrier must ensure that the subject line of the message clearly and accurately identifies the subject matter of the email; and
- Any email notice returned to the carrier as undeliverable will not constitute the provision of notice to the customer.

119. These proposed requirements are similar to the requirements that apply to discontinuance of domestic services.

The Commission seeks comment on these proposals and whether an authorization holder should comply with any additional requirements if the Commission were to modify § 63.19(a) to allow an authorization holder to provide notice by email to affected customers of its planned discontinuance, reduction, or impairment of service, subject to the requirements proposed herein.

120. The Commission proposes to modify § 63.19(a)(2) to require an authorization holder to provide the Commission with a copy of the notification to affected customers through ICFS rather than by letter to the Office of the Secretary. Section 63.19(a)(2) provides that this filing with the Commission "shall identify the geographic areas of the planned discontinuance, reduction or impairment and the authorization(s) pursuant to which the carrier provides service." The Commission proposes to require an authorization holder to also include the following information in a filing accompanying the copy of the notification to affected customers: (1) brief description of the dates and methods of notice to all affected customers; (2) whether or not the authorization holder is surrendering any ISPCs; and (3) any other information that the Commission may require. The Commission proposes to require that an authorization holder must file a copy of the notification to affected customers and the accompanying filing proposed herein in the ICFS file number associated with its authorization. The Commission seeks comment on these proposals.

121. The Commission proposes to make conforming edits to § 63.19(c) to specifically state that CMRS carriers are not subject to the provisions of paragraphs (a) and (b) of the section as modified. Section 63.19(c) states, "Commercial Mobile Radio Service (CMRS) carriers, as defined in § 20.9 of this chapter, are not subject to the provisions of this section."<sup>47</sup>

122. *Implementation.* The Commission proposes that these rule changes become effective at the same time for all authorization holders. The Commission also proposes to require that applicants seeking renewal of their international section 214 authority must specifically certify in the renewal

<sup>47</sup> 47 CFR 63.19(c). As discussed further below, the Commission proposes to delete the citation to § 20.9, consistent with the Commission's removal of this provision from the rules, and replace the citation with a citation to § 20.3, which defines "Commercial mobile radio service." The proposed amendments to § 63.19, including the addition of paragraphs (d) and (e), are reflected in Appendix A.

application whether or not they discontinued service for three consecutive months at any time during the preceding renewal timeframe, in addition to certifying whether or not they are in compliance with the Commission's rules and regulations, the Act, and other laws as proposed in this document. The Commission tentatively concludes that requiring authorization holders to affirmatively report on their provision of service for the preceding renewal timeframe would help to ensure that authorization holders are in compliance with these proposed requirements concerning the discontinuance, reduction, or impairment of service. The Commission seeks comment on these proposals.

#### 4. Ongoing Reporting Requirements

123. The Commission proposes to require authorization holders to provide updated ownership information and other information every three years following the grant of a renewal application filed with the Commission, until the next grant of a renewal application. The Commission further proposes to establish a three-year reporting requirement that would commence as of the date that the Commission grants an application for international section 214 authority or modification, assignment, or transfer of control. The Commission proposes that an authorization holder must file the required report every three years based on the date of such grant, until and unless the Commission grants a subsequent application filed by the authorization holder, at which point the three-year reporting cycle would commence anew as of the date of the new grant. The Commission proposes that these reports must contain information that is current as of thirty (30) days prior to the date of the submission. The Commission notes that Commission staff may require any information prior to the three-year reporting deadline. The Commission seeks comment on these proposals and whether the Commission should adopt a longer or shorter reporting cycle, instead of three years. Should the Commission instead require authorization holders to submit the reports starting three years after the effective date of the new rules? If so, the Commission would propose to require international section 214 authorization holders to continue to file the reports while its renewal application or other international section 214 application is pending with the Commission. The Commission seeks comment on the potential burdens of a periodic reporting requirement as part of a renewal

framework on authorization holders, including small businesses. The Commission proposes that these reports must contain information that is current as of thirty (30) days prior to the date of the submission.

124. The Commission seeks comment on the nature and extent of the potential burdens of this requirement. Does any information the Commission addresses below involve confidential business information or other confidential, proprietary, or private information? As an alternative to this ongoing reporting requirement, should carriers instead provide updated information only when there is a material change in ownership or other relevant information? If so, how should the Commission define what are material changes and relevant information? Are there any other alternatives that would allow for the provision of adequate information on a periodic basis with fewer burdens?

125. The Commission's proposed ongoing reporting requirements will help ensure that the Commission and the Executive Branch agencies have the information necessary to continually account for ownership changes for purposes of assessing any evolving national security, law enforcement, foreign policy, and/or trade policy risks and compliance with the Commission's rules. The Commission proposes to require that all authorization holders must file a report every three years providing current and accurate information about their reportable ownership, consistent with the ownership disclosure requirements on which the Commission seeks comment in this proceeding.

126. *Five (5) Percent Reportable Interest Update.* Specifically, the Commission seeks comment on whether the authorization holder should provide updated information concerning those who hold 5% or greater direct and indirect equity and/or voting interests, or a controlling interest, in the authorization holder. In the alternative, if the Commission does not adopt an ongoing reporting requirement at a 5% threshold, the Commission would propose that the authorization holder must provide updated information concerning those who hold 10% or greater direct and indirect equity and/or voting interests, or a controlling interest, in the authorization holder.<sup>48</sup> The Commission proposes that the reports be submitted through ICFS, or its successor system, and that authorization holders with reportable foreign

ownership as of thirty (30) days prior to the date of the submission must also file a copy directly with the Committee. The Commission seeks comment on whether an ongoing reporting requirement every three years should be broader and include additional information about ownership, control, and/or influence by foreign governments or foreign state-owned entities. Additionally, the Commission proposes that failure to submit timely, consistent, accurate, and complete information would constitute grounds for enforcement action against the authorization holder, up to and including cancellation or revocation of the authorization.

127. *Cross-Border Facilities Information.* The Commission proposes to require international section 214 authorization holders to file updated information on their cross border facilities in their three-year reports. The Commission seeks comment on whether it should require this information in these reports or whether an alternative reporting framework for providing updated information to the Commission would be preferable, and the reasons therefor.

128. *Current Services/Geographic Market.* The Commission proposes to require international section 214 authorization holders to include in their three-year reports updated information concerning the services they currently provide to customers using their international section 214 authority and the geographic markets where they currently market, offer, and/or provide services using the particular international section 214 authority, consistent with the changes the Commission proposes to the application requirements. The Commission proposes to require authorization holders to disclose whether or not they have discontinued service as of the most recent renewal process or the most recent report.

129. *Facilities-Based Equipment, Resellers, and Service Certification.* The Commission proposes to require international section 214 authorization holders to make certifications in the three-year reports. First, the Commission proposes to require authorization holders to certify in the report that they will undertake to implement and adhere to baseline cybersecurity standards based on universally recognized standards such as those provided by the CISA or the NIST. Second, the Commission seeks comment on whether to require authorization holders to certify in the report as to whether or not they use equipment or services identified on the Commission's "Covered List."

<sup>48</sup> The Commission's current rules require disclosure of 10% or greater interests. 47 CFR 63.18(h).

130. *Regulatory Compliance and Character Qualifications.* The Commission proposes in Section IV.E.6. that all applicants seeking international section 214 authority or modification, assignment, transfer of control, or renewal of international section 214 authority must certify in the applications whether or not they are in compliance with the Commission's rules and regulations, the Act, and other laws. The Commission proposes to require each applicant to certify in its application as to whether or not the applicant has violated the Act, Commission rules, or U.S. antitrust or other competition laws, has engaged in fraudulent conduct before another government agency, has been convicted of a felony, or has engaged in other non-FCC misconduct the Commission has found to be relevant in assessing the character qualifications of a licensee or authorization holder. The Commission proposes to require authorization holders to also certify as to their compliance in the three-year reports. The Commission seeks comment on this proposal.

131. *Data Storage Information.* Serious national security, law enforcement, foreign policy, and/or trade policy concerns are presented where a foreign government may have access to U.S. telecommunications records through data stored in that foreign country or through the routing of data through such country. The Commission seeks comment on whether, as part of their three-year reporting requirement, authorization holders should report, with respect to services provided pursuant to their international section 214 authority, the current location(s) of their data storage facilities; the foreign countries where they currently store U.S. records; the foreign countries from which their infrastructure in the United States is currently and/or can be accessed, controlled, and/or owned; and the countries in which their employees, subsidiaries, and/or offices are currently located. The Commission seeks comment on whether authorization holders should also disclose the equipment such as the hardware and software that they currently use to store U.S. records for services provided pursuant to their international section 214 authority. The Commission seeks comment on whether it should require applicants to provide any of this information in the initial application for international section 214 authority and the renewal application or, in the alternative, periodic review submission.

132. *Other Information.* The Commission seeks comment on what

other information the Commission should require generally for all applicants so that the Commission can address evolving national security, law enforcement, foreign policy, and/or trade policy risks. The Commission seeks comment on the types of ongoing information that the Commission should refer to the Executive Branch agencies for review. For example, should the Commission require authorization holders to periodically notify the Commission of any criminal convictions involving the authorization holder? The Commission notes that a similar requirement applies to broadcast licensees.

#### 5. International Signaling Point Codes (ISPCs)

133. The Commission proposes to adopt a rule requiring that applicants seeking to assign or transfer control of their authorization must identify in their application any ISPCs that they hold and whether the ISPC will be subject to the assignment or transfer of control. As the Commission previously stated, "ISPCs are a scarce resource that are used by international Signaling System 7 (SS7) gateways as addresses for routing domestic voice traffic to an international provider."<sup>49</sup> The Commission is the Administrator of ISPCs for SS7 networks for the United States consistent with the ITU-T Recommendation Q.708. Anyone seeking an ISPC assignment is required by rule to file an application with the Commission.<sup>50</sup>

<sup>49</sup> *China Telecom (Americas) Corporation*, GN Docket No. 20-109, File Nos. ITC-214-20010613-00346, ITC-214-20020716-00371, ITC-T/C-20070725-00285, Order Instituting Proceedings on Revocation and Termination and Memorandum Opinion and Order, 35 FCC Rcd 15006, 15040, paragraph 58 (2020); *China Telecom Americas Order on Revocation and Termination*, 36 FCC Rcd at 16054, paragraph 135, *aff'd*, *China Telecom (Americas) Corp. v. FCC*; see *China Unicom Americas Order on Revocation* at \*50, paragraph 121; *Reporting Requirements for U.S. Providers of International Telecommunications Services—Amendment of Part 43 of the Commission's Rules*, IB Docket No. 04-112, Notice of Proposed Rulemaking, 19 FCC Rcd 6460, 6474, paragraph 36, n.83 (2004). ITU-T Recommendation Q.708 defines a signaling point code as a "code with a unique 14-bit format used at the international level for [signaling] message routing and identification of [signaling] points involved." See International Telecommunication Union, ITU-T Recommendation Q.708 (03/99), Series Q: Switching and Signalling, Specifications of Signalling System No. 7—Message Transfer Part (MTP), Assignment procedures for international signalling point codes, at 1, <https://www.itu.int/rec/recommendation.asp?lang=en&parent=T-REC-Q.708-199903-I> (ITU-T Recommendation Q.708).

<sup>50</sup> ITU-T Recommendation Q.708. The Commission has adopted rules requiring applicants to submit ISPC applications electronically via the International Communications Filing System (ICFS) and stating that the Commission will take action on

134. In its letters provisionally assigning the ISPCs to carriers, the Office of International Affairs imposes conditions that require carriers to be in compliance with the ITU-T Recommendation Q.708. Notably, the ITU also advises that ISPCs "may not be transferred, except in the case of a merger, acquisition, divestiture, or joint venture" and that "[t]he Administrator(s) shall be notified of any such transfer by the signalling point operators." Based on the Commission's experience, carriers may have assigned or transferred control of their ISPCs to other carriers without filing with the Commission the requisite notification of such assignment or transfer of control. In fact, on June 1, 2020, China Unicom (Americas) Operations Limited admitted that it had failed to notify the Commission of the transfer of ISPC 3-194-2 from China Netcom (USA) Operations Limited to China Unicom USA Corporation in August 2009. The ISPC authorization holders must comply with the ITU guidelines, which clearly require ISPC operators to inform the Commission of any transfers. Currently, the Commission asks carriers informally. The Commission believes, however, that a rule would help to ensure that the carrier provides the required notice if an ISPC is also being transferred in a transaction. The Commission believes this proposal would ensure the Commission has accurate information about current ISPC holders. The Commission seeks comment on this proposal and what potential burdens, if any, would be imposed on carriers.

#### 6. Enforcement of International Section 214 Authorization Rules

135. The Commission proposes that even if an authorization holder fails to file a notification of discontinuance and surrender the authorization, an authorization will be cancelled if the Commission determines that the authorization holder has permanently discontinued service under the international section 214 authority.<sup>51</sup> The Commission seeks comment on what facts would warrant cancellation

ISPC applications via a letter issued to the applicant. See 47 CFR 1.10007(a), 1.10014(h).

<sup>51</sup> For instance, with respect to Wireless Radio Service licenses, the Commission's rules provide that "[a]n authorization will automatically terminate, without specific Commission action, if service or operations are permanently discontinued as defined in this section, even if a licensee fails to file the required form requesting license cancellation." 47 CFR 1.953(f); 47 CFR 1.953(a) ("A licensee's authorization will automatically terminate, without specific Commission action, if the licensee permanently discontinues service or operations under the license during the license term.").

and the process for such cancellation. For example, if an authorization holder fails to respond to Commission requests, and has not otherwise interacted with the Commission during the same time period, could the Commission conclude that the entity is no longer in business and cancel the authorization? How should the Commission notify the authorization holder of its intent to cancel the authorization and how much time should the Commission afford to such authorization holder for any response?

136. The Commission also proposes that the authorizations of authorization holders that fail to comply with other reporting requirements should be subject to cancellation under similar circumstances, *i.e.*, where there are no other indications that the carrier remains in business. Should the Commission adopt a rule that conditions international section 214 authorizations on an authorization holder's compliance with the three-year reporting requirements or cross border reporting requirements proposed herein, whereupon failure to file timely and sufficient ongoing reports is grounds for termination?

137. The Commission proposes to direct the Office of International Affairs to release an informative public notice announcing the proposed cancellation of the authorization. The authorization holder would have 30 days to respond and explain why the authorization should not be cancelled. If the authorization holder does not respond, the authorization would be automatically cancelled at the end of the 30-day period.<sup>52</sup> The Commission proposes that an international section 214 authorization holder whose authorization is cancelled for the foregoing reasons may file an application for a new international section 214 authorization. The Commission notes that authorization holders that fail to comply with reporting and notification requirements are subject to forfeitures in addition to cancellation. The Commission seeks comment on this process.

#### 7. Other Administrative Modifications

138. *Section 214(b) of the Act.* The Commission proposes to clarify the requirements of § 1.763(b) of the rules, which implements section 214(b) of the Act, and to amend § 63.18 to incorporate the requirements of § 1.763. Section 214(b) of the Act requires, “[u]pon

receipt of an application for any such certificate, the Commission shall cause notice thereof to be given to, and shall cause a copy of such application to be filed with, the Secretary of Defense, the Secretary of State (with respect to such applications involving service to foreign points), and the Governor of each State in which such line is proposed to be constructed, . . . acquired, or operated . . . .” Section 1.763(b) in turn states, “[i]n cases under this section requiring a certificate, notice is given to and a copy of the application is filed with the Secretary of Defense, the Secretary of State (with respect to such applications involving service to foreign points), and the Governor of each State involved. Hearing is held if any of these persons desires to be heard or if the Commission determines that a hearing should be held. Copies of applications for certificates are filed with the regulatory agencies of the States involved.” The Commission proposes to amend § 1.763(b) to clarify that an applicant must give notice and file a copy of the application with the Secretary of Defense, the Secretary of State, and the Governor of each State involved, and must file copies of applications for certificates with the regulatory agencies of the State involved.

139. The Commission also proposes to amend § 63.18 of the rules by adding a subsection that expressly references the requirement in § 1.763(b) and requires applicants for international section 214 authority to certify service to the Secretary of Defense, the Secretary of State, and the Governor of each State involved on a service list attached to the application or other filing. The Commission seeks comment on these proposals.

140. *Anti-Drug Abuse Act Certification.* The Commission proposes to amend § 63.18(o) of the Commission's rules to reflect changes in underlying rule and statutory provisions referenced in § 63.18(o). Section 63.18(o) requires “[a] certification pursuant to §§ 1.2001 through 1.2003 of this chapter that no party to the application is subject to a denial of Federal benefits pursuant to Section 5301 of the Anti-Drug Abuse Act of 1988. See 21 U.S.C. 853a.” Specifically, the Commission proposes to delete the citation to § 1.2003, consistent with the Commission's removal of this provision from the rules. In addition, the Commission proposes to replace the citation to 21 U.S.C. 853a with a citation to 21 U.S.C. 862, consistent with the redesignation of section 5301 of the Anti-Drug Abuse Act of 1988 as section 421 of the Controlled Substances Act.

141. *Section 63.19(c).* The Commission proposes to amend § 63.19(c) of the Commission's rules to reflect changes in an underlying rule referenced in § 63.19(c). Section 63.19(c) states, “Commercial Mobile Radio Service (CMRS) carriers, as defined in § 20.9 of this chapter, are not subject to the provisions of this section.” Section 20.9 no longer contains a rule provision. The Commission proposes to delete the citation to § 20.9, consistent with the Commission's removal of this provision from the rules, and replace the citation with a citation to § 20.3, which defines “Commercial mobile radio service.”

142. *Applications for Substantial Transactions.* The Commission proposes to make an administrative correction to § 63.24(e)(1) of the Commission's rules by removing the word “shall,” which was previously included in the rule in error. Section 63.24(e)(1) states, “[i]n the case of an assignment or transfer of control shall of an international section 214 authorization that is not pro forma, the proposed assignee or transferee must apply to the Commission for authority prior to consummation of the proposed assignment or transfer of control.”

143. *Transfers of Control.* The Commission proposes to make an administrative correction to § 63.24(c) of the Commission's rules. The Commission also proposes to move existing notes into regulatory text as necessary to conform with the Office of **Federal Register** requirements. This may entail the creation of new subsections. Section 63.24(c) describes what constitutes a transfer of control and states, in part, “[i]n all other situations, whether the interest being transferred is controlling must be determined on a case-by-case basis with reference to the factors listed in Note to paragraph (c).” The Commission proposes to amend the reference to Note to paragraph (c) given that § 63.24 no longer contains a Note to paragraph (c). Specifically, the Commission proposes to change the citation to paragraph (d) and thus replace the reference to “Note to paragraph (c)” with a reference to what is currently reflected as “Note 1 to paragraph (d).” This reference to Note 1 to paragraph (d) would be consistent with a similar reference set forth in § 63.24(d) of the rules, which describes what constitutes a *pro forma* assignment or transfer of control and includes the statement, “[w]hether there has been a change in the actual controlling party must be determined on a case-by-case basis with reference to the factors listed in Note 1 to this paragraph (d).” Note 1 to paragraph (d) states, “[b]ecause the issue of control inherently involves

<sup>52</sup> Under the Commission's rules, the authorization holder would have 30 days to file a petition for reconsideration of this action. 47 CFR 1.106.

issues of fact, it must be determined on a case-by-case basis and may vary with the circumstances presented by each case. The factors relevant to a determination of control in addition to equity ownership include, but are not limited to the following: power to constitute or appoint more than fifty percent of the board of directors or partnership management committee; authority to appoint, promote, demote and fire senior executives that control the day-to-day activities of the licensee; ability to play an integral role in major management decisions of the licensee; authority to pay financial obligations, including expenses arising out of operations; ability to receive monies and profits from the facility's operations; and unfettered use of all facilities and equipment." As discussed below, and reflected in Appendix A, the Commission proposes to further convert Notes into respective subsections. The Commission seeks comment on these proposed amendments to § 63.24(c) of the rules.

144. *Section 63.24(f)*. Consistent with the proposal in this document, the Commission proposes to make conforming edits to § 63.24(f) to state that a single notification may be filed for an assignment or transfer of control of more than one authorization if each authorization is identified by the file number under which it was granted, subject to the Commission's proposed requirement that each authorization holder may hold only one authorization except in certain limited circumstances.

145. *Section 63.18(q)*. The Commission proposes to amend the current § 63.18(q) to clarify that an application must include any other information that "the Commission or Commission staff have advised will" be necessary to enable the Commission to act on the application. Section 63.18(q) states, "[a]ny other information that may be necessary to enable the Commission to act on the application."

146. *Section 63.21(g)*. The Commission proposes to amend § 63.21(g) of the rules to state that the Commission reserves the right to review a carrier's authorization "at any time" and to impose additional requirements on U.S. international carriers "where national security, law enforcement, foreign policy, trade policy, and/or other public interest concerns are raised by the U.S. international carrier's international section 214 authority." Section 63.21 states, "[t]he Commission reserves the right to review a carrier's authorization, and, if warranted, impose additional requirements on U.S. international carriers in circumstances where it appears that harm to

competition is occurring on one or more U.S. international routes."

147. *Other Administrative Changes*. Throughout Appendix A, the Commission has proposed various ministerial, non-substantive changes not individually discussed in this document. These changes include, among other things, the conversion of Notes into respective subsections for consistency with the Office of **Federal Register** requirements; the inclusion of references to a successor system in relation to ICFS; and corrections to errors in spelling.

148. *Conforming Changes*. The Commission proposes to adopt or seek comment on conforming changes to rules that were adopted in the *Executive Branch Process Reform Order* if the Commission adopts the rule changes proposed in this document.<sup>53</sup>

• *Section 63.12(c)*. The *Executive Branch Process Reform Order* amends § 63.12(c) of the rules by adding a new subsection (c)(3), which provides that the streamlining processing procedures provided by § 63.12(a) and (b) shall not apply where "[a]n individual or entity that is not a U.S. citizen holds a ten percent or greater direct or indirect equity or voting interest, or a controlling interest, in any applicant." The Commission seeks comment on further amending § 63.12(c) by changing "ten percent or greater" to "five percent or greater," consistent with the Commission's request for comment on changing the ownership reporting threshold for international section 214 applications from 10% to 5%.

• *Section 63.18(p)*. The *Executive Branch Process Reform Order* amends § 63.18 of the rules by adding a new § 63.18(p), which requires that "[e]ach applicant for which an individual or entity that is not a U.S. citizen holds a ten percent or greater direct or indirect equity or voting interest, or a controlling interest, in the applicant, must submit": (1) responses to standard questions, prior to or at the same time the applicant files its application with the Commission, pursuant to Part 1, Subpart CC, directly to the Committee, and (2) a complete and unredacted copy of its FCC application(s) to the Committee within three (3) business days of filing it with the Commission. The Commission seeks comment on further amending § 63.18(p) by changing "ten percent or greater" to "five percent or greater," consistent with the Commission's request for comment on changing the ownership reporting

threshold for international section 214 applications from 10% to 5%.

• *Section 1.40001(a)(1)*. The *Executive Branch Process Reform Order* adds a new § 1.40001(a)(1), which provides that "[t]he Commission will generally refer to the executive branch applications filed for an international section 214 authorization and submarine cable landing license as well as an application to assign, transfer control of, or modify those authorizations and licenses where the applicant has reportable foreign ownership . . . pursuant to §§ 1.767, 63.18 and 63.24 of this chapter, and 1.5000 through 1.5004." The Commission proposes to amend § 1.40001(a)(1) by adding applications to renew international section 214 authority where the applicant has reportable foreign ownership to the types of applications that the Commission will generally refer to the Executive Branch. The Commission also proposes to amend § 1.40001(a)(1) to include that the Commission will generally refer applications for renewal of cable landing licenses.

• The Commission further proposes, to the extent the Commission adopts a periodic review process, to amend the foregoing section to state that periodic review process submissions where the filer has reportable foreign ownership generally will be referred to the Executive Branch, unless the only reportable foreign ownership is through wholly owned intermediate holding companies and the ultimate ownership and control is held by U.S. citizens or entities.

• *Section 1.40001(a)(2)(ii)*. The *Executive Branch Process Reform Order* adds a new § 1.40001(a)(2)(ii), which provides that the Commission will generally exclude from referral to the Executive Branch, when the applicant makes a specific showing in its application, "[a]pplications filed pursuant to §§ 1.767 and 63.18 and 63.24 of this chapter if the applicant has reportable foreign ownership and petitions filed pursuant to §§ 1.5000 through 1.5004 where the only reportable foreign ownership is through wholly owned intermediate holding companies and the ultimate ownership and control is held by U.S. citizens or entities." The Commission proposes to amend § 1.40001(a)(2)(ii) by adding a reference to § 63.27 where the Commission proposes to codify the renewal requirements adopted in this proceeding.

• *Section 1.40001(a)(2)(iii)*. The *Executive Branch Process Reform Order* adds a new § 1.40001(a)(2)(iii), which provides that when the applicant makes

<sup>53</sup> Some of the rule changes adopted in the *Executive Branch Process Reform Order* have not gone into effect yet.



a specific showing in its application, the Commission will generally exclude from referral to the Executive Branch “[a]pplications filed pursuant to §§ 63.18 and 63.24 of this chapter where the applicant has an existing international section 214 authorization that is conditioned on compliance with an agreement with an executive branch agency concerning national security and/or law enforcement, there are no new reportable foreign owners of the applicant since the effective date of the agreement, and the applicant agrees to continue to comply with the terms of that agreement.” The Commission proposes to amend the new § 1.40001(a)(2)(iii) by adding a reference to § 63.27 where the Commission proposes to codify the renewal application requirements adopted in this proceeding. The Commission notes, however, that all applications filed pursuant to §§ 63.18 and 63.24 and the new renewal rules will be subject to a new ownership reporting threshold of 5%, if adopted, upon the effective date of the proposed rules.

- *Section 1.40001(a)(2)(iv)*. The *Executive Branch Process Reform Order* adds a new § 1.40001(a)(2)(iv), which provides that when the applicant makes a specific showing in its application, the Commission will generally exclude from referral to the Executive Branch “[a]pplications filed pursuant to §§ 63.18 and 63.24 of this chapter where the applicant was reviewed by the executive branch within 18 months of the filing of the application and the executive branch had not previously requested that the Commission conditions the applicant’s international section 214 authorization on compliance with an agreement with an executive branch agency concerning national security and/or law enforcement and there are no new reportable foreign owners of the applicant since that review.” The Commission proposes to amend the new § 1.40001(a)(2)(iv) by adding a reference to § 63.27 where the Commission proposes to codify the renewal application requirements adopted in this proceeding.

- *Section 1.40001(d)*. The *Executive Branch Process Reform Order* adds a new § 1.40001(d), which provides that “[a]s used in this subpart, ‘reportable foreign ownership’ for applications filed pursuant to §§ 1.767 and 63.18 and 63.24 of this chapter means any foreign owner of the applicant that must be disclosed in the application pursuant to § 63.18(h) . . . .” The Commission proposes to amend § 1.40001(d) by adding a reference to § 63.27 where the Commission proposes to codify the

renewal requirements adopted in this proceeding, including a reference to the provision, if adopted, that would require renewal applicants to disclose individuals or entities with a 5% or greater direct and/or indirect equity and/or voting interest in the applicant. The Commission also seeks comment on amending § 1.40001(d) to distinguish between “reportable foreign ownership” as it would be applied to international section 214 applications under the new reporting threshold, if adopted, and submarine cable landing license applications.

- The Commission also proposes conforming changes to § 63.18(h)(1), as adopted in the *Executive Branch Process Reform Order*, which requires, “[t]he name, address, citizenship, and principal businesses of any individual or entity that directly or indirectly owns ten percent or more of the equity interests and/or voting interests, or a controlling interest, of the applicant, and the percentage of equity and/or voting interest owned by each of those entities (to the nearest one percent). Where no individual or entity directly or indirectly owns ten percent or more of the equity interests and/or voting interests, or a controlling interest, of the applicant, a statement to that effect.” The Commission proposes to include the word “individuals and” in the first sentence to state, “the percentage of equity and/or voting interest owned by each of those individuals and entities” for consistency within that subsection.

149. *Submarine Cable Reportable Ownership*. The Commission notes that the Commission’s rule regarding the ownership information required in submarine cable landing license applications refers to the requirement set out in § 63.18(h). The Commission seeks comment on changing the requirement in § 63.18(h) to disclose individuals or entities with a 5% or greater direct and/or indirect equity and/or voting interest in the applicant. This document does not address the Commission’s cable landing license rules. The Commission seeks comment on amending § 1.767(a)(8)(i) of the rules to remove the reference to § 63.18(h) and retain the current 10% reporting threshold for submarine cable landing license applications.<sup>54</sup> The Commission seeks comment on incorporating into § 1.767(a)(8)(i) the language that is reflected in § 63.18(h)(1)–(3) as adopted

<sup>54</sup> The Commission refers in this paragraph to “submarine cable landing license applications” to include applications for a new cable landing license or modification, assignment, transfer of control, or renewal of a cable landing license, and notifications of *pro forma* assignment or transfer of control of a cable landing license.

in the *Executive Branch Process Reform Order* with an administrative change discussed above.

150. Consistent with this approach, the Commission also seeks comment on amending § 1.40001(d), which provides that, “[a]s used in this subpart, ‘reportable foreign ownership’ for applications filed pursuant to §§ 1.767 and 63.18 and 63.24 of this chapter means any foreign owner of the applicant that must be disclosed in the application pursuant to § 63.18(h) . . . .” Specifically, the Commission seeks comment on removing the reference to § 1.767 in association with § 63.18(h), and including a separate statement that “reportable foreign ownership” for applications filed pursuant to § 1.767 means any foreign owner of the applicant that must be disclosed in the application pursuant to § 1.767(a)(8)(i).

#### G. Costs and Benefits

151. The Commission seeks comment on the potential benefits and costs of the proposals addressed in this document. The rule changes identified in the document would advance U.S. national security, law enforcement, foreign policy, and trade policy interests. As discussed above, the Commission proposes to adopt a 10-year renewal requirement for all international section 214 authorization holders or, in the alternative, adopt a periodic review process. The Commission proposes or seeks comment on other improvements to the Commission’s rules applicable to applications for international section 214 authority and modification, assignment, transfer of control, and renewal of international section 214 authority. The Commission also proposes other changes to Parts 1 and 63 of the Commission’s rules that include requiring applicants to: (1) provide information about their current and/or expected future services and geographic markets; (2) identify the facilities that they use and/or will use to provide services under their international section 214 authority from the United States into Canada and/or Mexico; (3) certify in their application that they will undertake to implement and adhere to baseline cybersecurity standards based on universally recognized standards; (4) hold only one international section 214 authorization except in certain limited circumstances; and (5) provide updated information every three years. The Commission expects that the resulting changes would improve the Commission’s oversight of international section 214 authorizations and ensure that a carrier’s authorization continues to serve the public interest, as the Act

intended. While the Commission tentatively finds that a renewal process is a critical component of protecting U.S. national security, law enforcement, foreign policy, and trade policy interests against evolving threats, the Commission acknowledges that such a renewal process or other proposals in the document may create economic burdens for international section 214 authorization holders.

152. The Commission recognizes that the benefits of protecting U.S. national security, law enforcement, foreign policy, and trade policy interests are difficult to quantify in monetary terms. The difficulty in quantifying these benefits does not, however, diminish their importance. The Commission believes that a formalized system of periodically reassessing international section 214 authorizations would better ensure that international section 214 authorizations, once granted, continue to serve the public interest. These benefits include improved consistency in the Commission's consideration of evolving public interest risks, completeness of the Commission's information regarding international section 214 authorization holders, and timely Commission attention to issues that warrant heightened scrutiny. Additional benefits include more consistent and complete referral of relevant evolving issues to the Executive Branch agencies, including the Committee, for their review and ultimately, improved protection of U.S. telecommunications infrastructure.<sup>55</sup> These benefits cannot be achieved with *ad hoc* reviews alone. Thus, adopting a periodic and systemized review of international section 214 authorizations is necessary to help ensure that the Commission and the Executive Branch agencies have the necessary information to address evolving national security, law enforcement, foreign policy, and/or trade policy risks on a continuing basis.

153. In addition to the benefits to national security, law enforcement, foreign policy, and trade policy interests, the Commission tentatively finds that its proposed rule changes would provide clear regulatory

guidance, which generally benefits the efficient operation of markets. For example, it is important that the Commission has accurate and timely records about all authorization holders, including which authorization holders are active and which no longer exist or utilize their international section 214 authority. In this regard, the Commission proposes to amend § 63.19 of the Commission's rules to require all authorization holders that permanently discontinue service provided pursuant to their international section 214 authority, to file a notification of the discontinuance and surrender the authorization. This information would help the Commission to better understand the size, scope, and structure of this market, all of which provide valuable input for the public interest considerations of the regulatory process. Further, the ongoing reporting requirements that the Commission proposes or seeks comment on with respect to ownership and other information every three years would be beneficial, as it is possible that certain foreign-owned applicants or other applicants might pose national security, law enforcement, foreign policy, trade policy, and/or competition concerns.

154. Thus, the benefits of the Commission's proposed rule changes include significant contributions to U.S. national security, law enforcement, foreign policy, and trade policy interests, better protection of U.S. telecommunications and sensitive U.S. customer information, as well as administrative efficiencies that improve the regulatory process and safeguard against financial or other manipulation of competitive markets. While it is difficult to quantify these economic benefits, the Commission believes the benefits are far greater than the costs of the proposed renewal process and other proposed rules discussed in the document.

155. The Commission's estimate of costs includes all expected ongoing costs that would be incurred as a result of the rules proposed above.<sup>56</sup> The Commission's estimate of costs is intentionally focused on the higher end of potential outcomes, thus making an overestimate likely. By taking this approach, the Commission can have additional confidence that the costs of the rules being proposed would be less than the benefits as outlined above. The Commission estimates that the annual aggregate cost of the proposed rules

described above could vary, depending on parameters established such as frequency of renewal, filing fees charged, and other factors, but these costs should not exceed approximately \$2,555,000 annually for each of the first 10 years, and approximately \$1,946,000 for each year thereafter. The Commission tentatively concludes that the benefits of establishing the proposed renewal process—which include providing the Commission with critical information that allows it to carry out its role in protecting the nation's telecommunications infrastructure from national security, law enforcement, foreign policy, and trade policy threats—will be well in excess of these costs.

156. The Commission bases its cost estimate on the Commission's records, as described above, that indicate there are nearly 7,400 international section 214 authorizations, held by approximately 7,000 international section 214 authorization holders. The Commission estimates that the number of active international section 214 authorization holders is approximately 1,500—or roughly a fifth of the approximately 7,000 international section 214 authorization holders listed in ICFS. For purposes of the Commission's analysis here, the Commission assumes that 1,500 international section 214 authorization holders would be impacted by the proposed rules. The Commission further assumes that out of approximately 1,500 international section 214 authorization holders, 375 authorization holders have reportable foreign ownership as discussed herein.

157. The Commission's cost estimate assumes that approximately 1,500 authorization holders will undergo the renewal process as described above, each falling into one of multiple groups, over 10 years, resulting, for example, in an average of 150 authorization holders filing renewal applications each year for the first 10 years. The Commission estimates the costs to authorization holders related to applying for renewal of international section 214 authority, would include tasks such as review by legal and support staff of the authorization holder's ownership, current and/or expected future services and geographic markets, compliance with cybersecurity standards, and review of any cross border facilities. The Commission notes that the amount of work associated with preparing an initial renewal application likely will be greater than the work associated with preparing a subsequent renewal application following the initial 10-year timeframe, given that much of the

<sup>55</sup> For reference, the digital economy accounted for \$3.31 trillion of the U.S. economy in 2021, and so preventing a disruption of even 0.000001 (a millionth) of that amount annually would mean that benefits outweigh costs by a wide margin. See Tina Highfill & Christopher Surfield, Bureau of Economic Analysis, U.S. Department of Commerce, *New and Revised Statistics of the U.S. Digital Economy, 2005–2020* (May 2022), <https://www.bea.gov/system/files/2022-05/New%20and%20Revised%20Statistics%20of%20the%20U.S.%20Digital%20Economy%202005-2020.pdf>. See also *Protecting Against National Security Threats Order*, 34 FCC Rcd at 11465, paragraph 109, *aff'd*, *Huawei Technologies USA v. FCC*, 2 F.4th 421.

<sup>56</sup> The Commission notes that this estimate does not include the one-time foreign ownership information collection, as established by the Order herein. That one-time collection is not a rule, and it will not impose ongoing costs.

information already will have been collected by the authorization holder. Additionally, the authorization holder would be required to provide the Commission with updated information every three years.<sup>57</sup> The Commission estimates that the preparation of the initial renewal application by each authorization holder will require 20 hours of work by attorneys and 20 hours of work by support staff, at a cost of \$6,800 per initial renewal application.<sup>58</sup> To this cost, the Commission adds the \$875 administrative fee charged for renewal to obtain a total estimate of this burden at \$7,675 per renewal application (*i.e.*, the first time an authorization holder must apply for renewal of its international section 214 authority). The Commission then multiplies the sum by 150 to produce a total estimate of approximately \$1,152,000 per year for the first 10-year period over which approximately 1,500 authorization holders will undergo the renewal process.<sup>59</sup>

<sup>57</sup> The Commission's cost estimates for both renewal applications prepared in the initial 10-year timeframe and for future renewal applications are based on the rules proposed in the document. The Commission recognizes, however, that the information that authorization holders are required to provide could change in a future order adopted in this proceeding, such that these costs are subject to change.

<sup>58</sup> The Commission's cost data on wages for attorneys are based on the Commission's estimates of labor costs as represented in previous Paperwork Reduction Act (PRA) statements. *International Section 214 Process and Tariff Requirements—47 CFR 63.10, 63.11, 63.13, 63.18, 63.19, 63.21, 63.24, 63.25, and 1.1311*, OMB Control No. 3060–0686 Paperwork Reduction Act (PRA) Supporting Statement at 13 (Mar. 25, 2021), [https://www.reginfo.gov/public/do/PRAViewDocument?ref\\_nbr=202103-3060-012](https://www.reginfo.gov/public/do/PRAViewDocument?ref_nbr=202103-3060-012) (March 2021 Supporting Statement); *International Section 214 Process and Tariff Requirements—47 CFR 63.10, 63.11, 63.13, 63.18, 63.19, 63.21, 63.24, 63.25, and 1.1311*, OMB Control No. 3060–0686 Paperwork Reduction Act (PRA) Supporting Statement at 14 (Nov. 28, 2017), [https://www.reginfo.gov/public/do/PRAViewDocument?ref\\_nbr=201711-3060-029](https://www.reginfo.gov/public/do/PRAViewDocument?ref_nbr=201711-3060-029) (November 2017 Supporting Statement). Consistent with the Commission's calculations in the PRA statements, the Commission estimates the median hourly wage for attorneys as \$300 for outside counsel. *Id.* The Commission assumes that this wage reasonably represents an average for all attorney labor, across a range of authorization holders with different sizes and business models, used to comply with the rules proposed in the Notice. Also, consistent with the Commission's calculations in PRA statements, the Commission estimates the median hourly wage for support staff (paralegals and legal assistants) as \$40. *Id.* This signifies that, 20 hours of work by attorneys would cost \$6,000.00 and 20 hours of work by support staff would cost \$800.00, for a total of \$6,800.00 per initial renewal application.

<sup>59</sup> Specifically,  $\$6,800.00 + \$875.00 = \$7,675.00$  per authorization holder. With 150 authorization holders filing renewal applications each year, the Commission estimates  $\$7,675.00 \times 150 = \$1,151,250.00$ , which the Commission rounds up to \$1,152,000.00 to avoid giving the false impression of precision.

158. The Commission assumes that after an authorization holder prepares and submits an initial renewal application, upon grant of such application, subsequent preparation of renewal applications (*i.e.*, following the initial 10-year timeframe) will be less financially burdensome. The Commission estimates the tasks related to subsequent renewal applications represent eight hours of work by attorneys and eight hours by support staff per renewal application, for a cost of \$2,720 per renewal application.<sup>60</sup> To this cost, the Commission adds the \$875 administrative fee, to obtain a total estimate of this burden for ongoing renewal applications at \$3,595. The Commission then multiplies the sum by 150 to produce a total estimate of approximately \$540,000 per year after the first 10 years.<sup>61</sup>

159. The Commission further assumes that the Commission will receive applications for new international section 214 authorizations on an ongoing basis.<sup>62</sup> Based on applications filed within the last three years, the Commission estimates that on average approximately 35 new applicants per year will seek a new international section 214 authorization.<sup>63</sup> The Commission notes that these entities will incur costs that are identical to the costs associated with an initial renewal application as described above excluding the \$875 administrative fee.<sup>64</sup> The Commission estimates the aggregate total cost for these 35 new applicants in

<sup>60</sup> Specifically, the Commission estimates eight hours of attorney labor at \$2,400 ( $8 \times \$300$ ) and eight hours of support staff labor at \$320 ( $8 \times \$40$ ), and the sum of this combined labor is \$2,720.00.

<sup>61</sup> The estimated annual cost of 150 renewal applications at this point, after the initial 10-year period, would be \$539,250 ( $\$3,595 \times 150$ ), which the Commission rounds up to \$540,000 to avoid giving the false impression of precision.

<sup>62</sup> The Commission expects that the costs associated with other proposed rules—such as allowing an authorization holder to hold only one international section 214 authorization except in certain limited circumstances, requiring an authorization holder to commence service within one year following the grant, requiring an authorization holder that permanently discontinues service provided pursuant to its international section 214 authority to file a notification of the discontinuance and surrender the authorization, and requiring an authorization holder to identify in its application any ISPCs that it holds and whether the ISPC will be subject to the assignment or transfer of control—are *de minimis* and not separately calculated here. The Commission seeks comment on this assessment.

<sup>63</sup> These estimates are based on the Commission's records as of April 14, 2023. FCC, *MyIBFS*, <https://licensing.fcc.gov/myibfs/welcome.do>.

<sup>64</sup> Applicants for new international section 214 authorizations are already subject to the \$875 fee, which is not subject to change as a result of the rules being proposed herein.

a given year at \$238,000 per year.<sup>65</sup> As above, the Commission assumes that subsequent preparation of renewal applications (*i.e.*, following the initial 10-year timeframe) will be less financially burdensome for these new applicants at renewal. The Commission estimates the aggregate total cost for these 35 new applicants at renewal for each year after the first 10 years to be \$126,000 per year.<sup>66</sup>

160. Based on applications filed within the last three years, the Commission estimates that on average approximately 150 applications per year will be filed for modification, assignment, or transfer of control of an international section 214 authorization.<sup>67</sup> The Commission assumes that these applicants will incur the less burdensome cost that follows the initial 10-year timeframe excluding the \$875 administrative fee.<sup>68</sup> The Commission estimates the aggregate

<sup>65</sup> As described above, the estimated cost to the authorization holder for preparing an initial renewal application is \$6,800 ( $\$7,675 - \$875$ ). Assuming 35 new applicants file applications for a new international section 214 authorization each year,  $\$6,800.00 \times 35 = \$238,000$ .

<sup>66</sup> As described above, the estimated cost to the authorization holder for subsequent renewal application is \$3,595, which includes the proposed \$875 fee. Accounting for 35 new applicants yields,  $\$3,595.00 \times 35 = \$125,825.00$ , which the Commission rounds up to \$126,000 to avoid giving the false impression of precision. The Commission notes that whereas the application fee is not new, in this document, the Commission proposes all future applicants to subsequently apply for renewal of their international section 214 authority on a 10-year basis necessitating future payment of the \$875 application fee.

<sup>67</sup> These estimates are based on the Commission's records as of April 14, 2023. FCC, *MyIBFS*, <https://licensing.fcc.gov/myibfs/welcome.do>.

<sup>68</sup> For the initial 10-year period, the Commission's reasoning is as follows: any applicant for a modification, assignment, or transfer of control of an international section 214 authorization that has already submitted a renewal application should find it less financially burdensome to provide additional information for the aforementioned applications pursuant to the rules that the Commission proposes. Any applicant for a modification, assignment, or transfer of control of an international section 214 authorization that had not yet submitted a renewal application would find doing so more burdensome (with burdens consisting of 20 hours of work each by attorneys and support staff, as discussed above), but would then face a lighter burden (consisting of 8 hours of work each by attorneys and support staff) following an initial renewal application. Because the Commission has already assumed that an applicant would face the higher burden in preparing an initial renewal application, the Commission assumes that an applicant would face a lighter burden when applying for a modification, assignment, or transfer of control of the international section 214 authorization thereafter. Additionally, because the fee that must be paid by applicants for a modification, assignment, or transfer of control of an international section 214 authorization, is not subject to change, the Commission excludes it from the Commission's calculations.

total cost for these 150 applications in a given year at \$408,000 per year.<sup>69</sup>

161. The Commission similarly estimates the number of authorization holders that will need to report cross border facilities pursuant to the ongoing three-year reporting requirement.<sup>70</sup> The Commission expects that 10% of all authorization holders (out of approximately 1,500 authorization holders) have cross border facilities, which represents 150 authorization holders, and must report cross border facilities information every three years. The Commission notes that this would involve an ongoing reporting requirement every three years, and the Commission assumes an average of 50 authorization holders would file cross border facilities information. The Commission estimates the collection of this information consists of three hours of attorney and three hours of support staff time at a cost of approximately \$1,100 per authorization holder. The Commission expects that the effort to comply with this reporting requirement will be low because the Commission is requiring authorization holders to report only information that they routinely have. The Commission calculates that 50 authorization holders, with a cost of \$1,100 per filing, will incur approximately \$55,000 in total costs related to reporting cross border facilities information in a given reporting year.<sup>71</sup>

162. In addition to the tasks described above, the Commission estimates that authorization holders and new applicants for international section 214 authority will pay an additional cost associated with the Commission's proposal to certify compliance to baseline cybersecurity standards. Previously, the Commission had estimated a cost of drafting a cybersecurity risk management plan and submitting a certification as \$820, and the Commission proposes to use this estimate here for individual authorization holders and new applicants for international section 214

<sup>69</sup> Specifically, at \$2,720 (\$3,595 – \$875) per filing, the Commission estimates \$408,000 (\$2,720 × 150) total annual cost related to applications for modification, assignment, or transfer of control.

<sup>70</sup> The other ongoing three-year proposed reporting requirements, such as providing updated information concerning services and geographic markets, certifying compliance with cybersecurity standards, and certifying compliance with the Commission's rules and regulations, the Act, and other laws as well as the Commission's character qualifications, are *de minimis* and not calculated here. The Commission seeks comment on this assessment.

<sup>71</sup> Specifically, at \$1,100 per filing, the Commission estimates \$55,000 (\$1,100 × 50) total annual cost related to cross border filings.

authority.<sup>72</sup> The Commission seeks comment on this estimate. The Commission assumes that during the initial 10-year timeframe, each year, 150 authorization holders will certify compliance as part of initially undertaking the renewal process. Additionally, 35 new applicants for international section 214 authority will need to certify compliance each year, including beyond the initial 10-year timeframe. As such, the Commission calculates a total annual cost of \$152,000 for the initial 10-year timeframe and annual costs \$29,000 thereafter.<sup>73</sup>

163. In this document, the Commission also seeks comment on whether an authorization holder should provide updated information in the proposed ongoing three-year reports concerning those that hold 5% or greater direct and indirect equity and/or voting interests, or a controlling interest, in the authorization holder. Were the Commission to adopt this approach, the Commission also provides an estimate of the costs associated with filing this information every three years. If adopted, these ongoing reports will provide updates to ownership information that would need to be provided in a renewal application that is filed every 10 years, which should be simple to provide in most cases. The Commission therefore assumes a relatively light burden for compliance at three hours of attorney time and three hours of support staff time, or approximately \$1,100 per authorization holder. With 1,500 estimated authorization holders filing every three years, the Commission assumes one third of this total, or 500, will file each

<sup>72</sup> Specifically, the Commission estimated that compliance would take 10 hours of labor from a General and Operations Manager compensated at \$82 per hour (\$820 = \$82 × 10). *Amendment of Part 11 of the Commission's Rules Regarding the Emergency Alert System; Wireless Emergency Alerts; Protecting the Nation's Communications Systems from Cybersecurity Threats*, PS Docket Nos. 15–94, 15–91, 22–329, Notice of Proposed Rulemaking, FCC 22–82, at paragraph 32 (rel. Oct. 27, 2022).

<sup>73</sup> For the initial 10-year timeframe, this consists of, each year, 150 authorization holders certifying compliance together with their initial renewal application and 35 new applicants certifying compliance together with their initial application each facing a cost of \$820 (\$152,000 = \$820 × (150 + 35)). After the initial 10-year timeframe, new applicants will pay the cost of \$820 for a total of \$28,700, which the Commission rounds to \$29,000. For subsequent renewal applications and for applications for modification, assignment, or transfer of control of an international section 214 authorization, the Commission subsumes the cost of cybersecurity certification in the Commission's total annual estimates above (\$540,000 per year for subsequent renewal applications and \$408,000 per year for applications for modification, assignment, or transfer of control).

year. The Commission therefore estimates \$550,000 in annual costs for all authorization holders to comply with the ongoing ownership reporting requirements.<sup>74</sup>

164. Combining the estimated costs of these additional filings on an annual basis, for the initial 10-year timeframe, the Commission adds \$55,000 for authorization holders with cross border facilities to report the requested information; \$152,000 for authorization holders and new applicants to certify compliance to basic cybersecurity standards; \$550,000 for all authorization holders to comply with any ongoing reporting requirements related to ownership information; \$238,000 for new applications for international section 214 authority filed by new applicants; and \$408,000 for applications for modification, assignment, or transfer of control of international section 214 authority for a sum of \$1,403,000. In subsequent years, the Commission estimates that these additional costs will become \$1,406,000.<sup>75</sup> The Commission adds these sums to, respectively, the estimated costs for preparing renewal applications, which the Commission estimates to be \$1,152,000 annually for the initial 10-year period, and \$540,000 annually for subsequent renewal applications. Therefore, to summarize the Commission's estimate of total costs, the Commission expects the initial costs to be \$2,555,000 annually for the first 10 years, and the Commission expects costs to be \$1,946,000 annually for subsequent years.<sup>76</sup>

165. The Commission seeks comment on all these estimates. The Commission also seeks comment on the costs that could also impose potential burdens on authorization holders.<sup>77</sup> Do the Commission's assumptions represent a reasonable estimate of total costs of the proposals in the document? Do the

<sup>74</sup> Specifically, with three hours of attorney time and three hours of staff times estimated as \$1,100, as noted above, the Commission estimates the total cost for 500 authorization holders at \$550,000 (\$1,100 × 500).

<sup>75</sup> Specifically, the cost of certifying compliance falls from \$152,000 per year to \$29,000 per year, but there is an additional \$126,000 annual cost associated with new applicants from the initial 10-year timeframe subsequently submitting renewal applications thereafter. In other words, the annual cost rises by \$3,000 = \$126,000 – (\$152,000 – \$29,000) = \$1,406,000 – \$1,403,000.

<sup>76</sup> For the first 10 years, the Commission estimates total costs as \$2,555,000 (\$1,152,000 + \$1,403,000) annually and for subsequent years the Commission estimates total costs as \$1,946,000 (\$540,000 + \$1,406,000) annually.

<sup>77</sup> For example, the Commission seeks comment on the costs and benefits of requiring all applicants, including those without reportable foreign ownership, to provide information on foreign-owned MNSPs.

Commission's assumptions represent a reasonable estimate of the number of attorney and non-attorney labor hours needed to meet the requirements of the proposed rules? Are there other potential burdens or costs imposed by the proposed rules that the Commission has not captured here? Is the likely number of new applicants for an international section 214 authorization in this market accurate? How would an alternative, periodic review approach, in lieu of a renewal framework, affect the Commission's projected costs and benefits? Are there other approaches that would use alternative means to provide the same benefits, in terms of advancing national security, law enforcement, and other interests, at lower costs? If so, what are those means of obtaining the same benefits and what are the expected costs? Any suggestions for alternative approaches should include clear explanations of the cost estimates, as well as estimates as to whether the benefits under any proposed alternatives would increase or decrease compared to the benefits described above.

#### H. Digital Equity and Inclusion

166. Finally, the Commission, as part of its continuing effort to advance digital equity for all,<sup>78</sup> including people of color, persons with disabilities, persons who live in rural or Tribal areas, and others who are or have been historically underserved, marginalized, or adversely affected by persistent poverty or inequality, invites comment on any equity-related considerations<sup>79</sup> and benefits (if any) that may be associated with the proposals and issues discussed herein. Specifically, the Commission seeks comment on how its proposals may promote or inhibit advances in diversity, equity, inclusion, and accessibility, as well the scope of

<sup>78</sup> Section 1 of the Communications Act of 1934 as amended provides that the FCC "regulat[es] interstate and foreign commerce in communication by wire and radio so as to make [such service] available, so far as possible, to all the people of the United States, without discrimination on the basis of race, color, religion, national origin, or sex." 47 U.S.C. 151.

<sup>79</sup> The term "equity" is used here consistent with Executive Order 13985 as the consistent and systematic fair, just, and impartial treatment of all individuals, including individuals who belong to underserved communities that have been denied such treatment, such as Black, Latino, and Indigenous and Native American persons, Asian Americans and Pacific Islanders and other persons of color; members of religious minorities; lesbian, gay, bisexual, transgender, and queer (LGBTQ+) persons; persons with disabilities; persons who live in rural areas; and persons otherwise adversely affected by persistent poverty or inequality. See *Exec. Order No. 13985*, 86 FR 7009, Executive Order on Advancing Racial Equity and Support for Underserved Communities Through the Federal Government (Jan. 20, 2021).

the Commission's relevant legal authority.

#### I. Conclusion

167. The Commission's action today is intended to protect the nation's telecommunications infrastructure from threats in an evolving national security and law enforcement landscape by proposing to establish a 10-year renewal scheme or, in the alternative, a periodic review process for all international section 214 authorization holders. The Commission tentatively finds that the rules proposed in the document will improve the Commission's oversight of authorization holders while also providing regulatory certainty to authorization holders. Importantly, the Commission believes that changed circumstances mandate that the Commission adopts a renewal process to ensure that an international section 214 authorization continues to serve the public interest in an ever-evolving national security and law enforcement environment.

#### II. Procedural Issues

168. *Ex Parte Rules*. This proceeding this document initiates shall be treated as a "permit-but-disclose" proceeding in accordance with the Commission's *ex parte* rules. 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 rule 1.1206(b). In proceedings governed by rule 1.49(f) 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.

169. *Regulatory Flexibility Act*. The Regulatory Flexibility Act of 1980, as amended (RFA), requires that an agency prepare a regulatory flexibility analysis for notice and comment rulemakings, unless the agency certifies that "the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities." Accordingly, the Commission has prepared an Initial Regulatory Flexibility Analysis (IRFA) concerning the potential impact of rule and policy changes in this Notice of Proposed Rulemaking on small entities. The IRFA is set forth in Appendix B. Written public comments are requested on the IRFA. Comments must be filed by the deadlines for comments on the document indicated on the first page of this document and must have a separate and distinct heading designating them as responses to IRFA. Because the Order does not adopt a rule and therefore does not require notice and comment, no Final Regulatory Flexibility Analysis is required.

170. *Final Paperwork Reduction Act Analysis*. This document may contain new or modified information collection requirements subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104-13. All such new or modified information collection requirements will be submitted to the Office of Management and Budget (OMB) for review under Section 3507(d) and (j) of the PRA. OMB, the general public, and other Federal agencies will be invited to comment on any new or modified information collection requirements contained in this proceeding. In addition, pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107-198, see 44 U.S.C. 3506(c)(4), the Commission considers how it might further reduce the information collection burden for small business concerns with fewer than 25 employees. In the Order, the Commission has assessed the effects of requiring international section 214 authorization holders to identify reportable foreign ownership and to certify as to the accuracy of the information provided and find that they would have information about their

ownership available in the ordinary course of business, for instance, for purposes of compliance with the Commission's rules. Further, although the Commission does not have an estimated number of authorization holders that will need to obtain an FRN number or to file a surrender letter, the burdens are also low. For instance, obtaining an FRN for this purpose entails only a minimal burden. Therefore, the Commission anticipates that the new collection will not be unduly burdensome.

171. *Initial Paperwork Reduction Act Analysis.* This Notice of Proposed Rulemaking may contain proposed new or modified information collection requirements. The Commission, as part of its continuing effort to reduce paperwork burdens, invites the general public and the OMB to comment on any information collection requirements contained in this document, as required by the Paperwork Reduction Act of 1995, Public Law 104–13. In addition, pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, see 44 U.S.C. 3506(c)(4), the Commission seeks specific comment on how the Commission might further reduce the information collection burden for small business concerns with fewer than 25 employees.

172. *Filing of Comments and Reply Comments.* 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 on the first page of 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). All comments and reply comments must be filed in IB Docket No. 23–119. Comments and reply comments must also be filed in MD Docket No. 23–134 if they address application fees.<sup>80</sup>

173. *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), 202–418–0432 (TTY).

<sup>80</sup>The public draft of the item released on March 30, 2023, identified MD Docket No. 20–270 as one of the docket numbers. The Commission has created a new docket number, MD Docket No. 23–134, associated with this proceeding instead of MD Docket No. 20–270. The Commission will make available in MD Docket No. 23–134 copies of any comments that were previously filed in MD Docket No. 20–270 in response to the public draft to the extent the comments address application fees.

174. *Additional Information.* For further information regarding Notice of Proposed Rulemaking, please contact Gabrielle Kim, Attorney Advisor, Telecommunications and Analysis Division, Office of International Affairs, at [Gabrielle.Kim@fcc.gov](mailto:Gabrielle.Kim@fcc.gov) or 202–418–0730.

#### Initial Regulatory Flexibility Analysis

175. As required by the Regulatory Flexibility Act of 1980, as amended (RFA), the Commission has prepared this Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on a substantial number of small entities by the policies and rules proposed in this Notice of Proposed Rulemaking. Written public comments are requested on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments on the document provided in paragraph 195 of the item. The Commission will send a copy of the document, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration (SBA). In addition, the document and IRFA (or summaries thereof) will be published in the **Federal Register**.

#### A. Need for, and Objectives of, the Proposed Rules

176. In the document, the Commission takes another important step to protect the nation's telecommunications infrastructure from threats in an evolving national security and law enforcement landscape by proposing comprehensive changes to the Commission's rules that allow carriers to provide international telecommunications service pursuant to section 214 of the Communications Act of 1934, as amended (Act). The overarching objective of this proceeding is to adopt rule changes that will enable the Commission, in close collaboration with relevant Executive Branch agencies, to better protect telecommunications services and infrastructure in the United States in light of evolving national security, law enforcement, foreign policy, and trade policy risks. By this document, the Commission proposes rules that would require carriers to renew, every 10 years, their international section 214 authority. In the alternative, the Commission seeks comment on adopting rules that would require all international section 214 authorization holders to periodically update information enabling the Commission to review the public interest and national security implications of those authorizations based on that updated information. Through these proposals, the

Commission seeks to ensure that it is exercising appropriate oversight of international section 214 authorization holders to safeguard U.S. telecommunications networks.

177. In 2020, the report of the United States Senate Committee on Homeland Security and Governmental Affairs, Permanent Subcommittee on Investigations (PSI Report) recommended the periodic review and renewal of foreign carriers' international section 214 authorizations to ensure that the Commission and the Executive Branch account for evolving national security, law enforcement, foreign policy, and trade risks. In particular, the PSI Report highlighted the national security concerns associated with Chinese state-owned carriers operating in the United States. The Commission has taken concrete action to address those risks. Now, based in part on the PSI Report recommendation, the Commission proposes several changes to strengthen the Commission's oversight of international section 214 authorizations and ensure that a carrier's authorization continues to serve the public interest, as the Act intended.

178. *Executive Summary of the Proposed Rules.* To establish an effective and expeditious process for the renewal or, in the alternative, periodic review of international section 214 authorizations, in this document, the Commission proposes and seeks comment on the following issues:

- *Renewal of International Section 214 Authority.* The Commission proposes to adopt a 10-year renewal requirement for all international section 214 authorization holders. In the alternative, the Commission seeks comment on adopting a periodic review process.
  - The Commission proposes to adopt a process that establishes a system of priorities for renewal applications according to the existence and nature of reportable foreign ownership and the likelihood that the applications will raise national security, law enforcement, foreign policy, or trade policy concerns.
  - Consistent with Commission practice, the Commission will continue to coordinate with the Executive Branch agencies for assessment of any national security, law enforcement, foreign policy, and trade policy concerns.
  - To minimize administrative burdens, the Commission proposes to adopt streamlined and simplified procedures for renewal applications that do not have reportable foreign ownership.
  - The Commission proposes, as a baseline, to apply to renewal

applications the same rules applicable to initial applications for international section 214 authority and thus harmonize the application requirements.

- *Proposed Rules Applicable to All Applicants.* In addition, to continue to address evolving national security, law enforcement, foreign policy, and/or trade policy risks, the Commission proposes or seeks comment on other improvements to the Commission's rules applicable to applications for international section 214 authority and modification, assignment, transfer of control, and renewal of international section 214 authority.

- *Five (5) Percent Threshold for Reportable Ownership Interests.* The Commission seeks comment on whether to adopt a new ownership reporting threshold that would require disclosure of 5% or greater direct and indirect equity and/or voting interests.

- *Services and Geographic Markets.* The Commission proposes to adopt rules requiring applicants to provide information about their current and/or expected future services and geographic markets.

- *Foreign-Owned Managed Network Service Providers (MNSPs).* The Commission proposes to require all applicants to provide information on foreign-owned MNSPs.

- *Cross Border Facilities Information.* The Commission proposes to require applicants to identify the facilities that they use and/or will use to provide services under their international section 214 authority from the United States into Canada and/or Mexico and to provide updated information on a periodic basis.

- *Facilities Certifications.*

- *Facilities Cybersecurity Certification.* The Commission proposes to require applicants to certify in their application that they will undertake to implement and adhere to baseline cybersecurity standards based on universally recognized standards.

- *Facilities "Covered List"*

*Certification.* The Commission proposes to require applicants to certify in their application whether or not they use equipment or services identified in the Commission's "Covered List" of equipment and services deemed pursuant to the Secure and Trusted Communications Networks Act to pose an unacceptable risk to the national security of the United States or the security and safety of United States persons.

- *Other Changes to Parts 1 and 63 of the Commission's Rules.* To further ensure that carriers' use of their international section 214 authority is

consistent with the public interest, the Commission proposes and seeks comment on modifications to Part 1 and 63 rules.

- *Permissible Number of Authorizations.* The Commission proposes to adopt a rule that would allow an authorization holder to hold only one international section 214 authorization except in certain limited circumstances.

- *Commence Service Within One Year.* The Commission proposes to adopt a rule requiring an international section 214 authorization holder to commence service under its international section 214 authority within one year following the grant.

- *Changes to the Discontinuance Rule.* The Commission proposes to amend § 63.19 of the Commission's rules to require all authorization holders that permanently discontinue service provided pursuant to their international section 214 authority, to file a notification of the discontinuance and surrender the authorization.

- *Ongoing Reporting Requirements.* The Commission proposes to require authorization holders to provide updated ownership information, cross border facilities information, and other information every three years.

- *International Signaling Point Codes (ISPCs).* The Commission proposes to adopt a rule requiring applicants seeking to assign or transfer control of their international section 214 authorization to identify in their applications any ISPCs that they hold and whether the ISPC will be subject to the assignment or transfer of control.

- *Administrative Modifications.* The Commission proposes to adopt other administrative corrections to Parts 1 and 63 of the Commission's rules.

## B. Legal Basis

179. The proposed action is authorized under §§ 4(i), 4(j), 201, 214, 403, and 413 of the Communications Act as amended, 47 U.S.C. 154(i), 154(j), 201, 214, 403, and 413.

## C. Description and Estimate of the Number of Small Entities to Which the Proposed Rules Will Apply

180. The RFA directs agencies to provide a description of, and where feasible, an estimate of the number of small entities that may be affected by the proposed rules, if adopted. The RFA generally defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction." In addition, the term "small business" has the same meaning as the term "small business concern"

under the Small Business Act. A "small business concern" is one which: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA).

181. *Wired Telecommunications Carriers.* The U.S. Census Bureau defines this industry as establishments primarily engaged in operating and/or providing access to transmission facilities and infrastructure that they own and/or lease for the transmission of voice, data, text, sound, and video using wired communications networks.

Transmission facilities may be based on a single technology or a combination of technologies. Establishments in this industry use the wired

telecommunications network facilities that they operate to provide a variety of services, such as wired telephony services, including VoIP services, wired (cable) audio and video programming distribution, and wired broadband internet services. By exception, establishments providing satellite television distribution services using facilities and infrastructure that they operate are included in this industry. Wired Telecommunications Carriers are also referred to as wireline carriers or fixed local service providers.

182. The SBA small business size standard for Wired Telecommunications Carriers classifies firms having 1,500 or fewer employees as small. U.S. Census Bureau data for 2017 show that there were 3,054 firms that operated in this industry for the entire year. Of this number, 2,964 firms operated with fewer than 250 employees.

Additionally, based on Commission data in the 2021 Universal Service Monitoring Report, as of December 31, 2020, there were 5,183 providers that reported they were engaged in the provision of fixed local services. Of these providers, the Commission estimates that 4,737 providers have 1,500 or fewer employees. Consequently, using the SBA's small business size standard, most of these providers can be considered small entities.

183. *Competitive Local Exchange Carriers (LECs).* Neither the Commission nor the SBA has developed a size standard for small businesses specifically applicable to local exchange services. Providers of these services include several types of competitive local exchange service providers. Wired Telecommunications Carriers is the closest industry with a SBA small business size standard. The SBA small business size standard for Wired Telecommunications Carriers classifies



firms having 1,500 or fewer employees as small. U.S. Census Bureau data for 2017 show that there were 3,054 firms that operated in this industry for the entire year. Of this number, 2,964 firms operated with fewer than 250 employees. Additionally, based on Commission data in the 2021 Universal Service Monitoring Report, as of December 31, 2020, there were 3,956 providers that reported they were competitive local exchange service providers. Of these providers, the Commission estimates that 3,808 providers have 1,500 or fewer employees. Consequently, using the SBA's small business size standard, most of these providers can be considered small entities.

184. *Interexchange Carriers (IXCs)*. Neither the Commission nor the SBA have developed a small business size standard specifically for Interexchange Carriers. Wired Telecommunications Carriers is the closest industry with a SBA small business size standard. The SBA small business size standard for Wired Telecommunications Carriers classifies firms having 1,500 or fewer employees as small. U.S. Census Bureau data for 2017 show that there were 3,054 firms that operated in this industry for the entire year. Of this number, 2,964 firms operated with fewer than 250 employees. Additionally, based on Commission data in the 2021 Universal Service Monitoring Report, as of December 31, 2020, there were 151 providers that reported they were engaged in the provision of interexchange services. Of these providers, the Commission estimates that 131 providers have 1,500 or fewer employees. Consequently, using the SBA's small business size standard, the Commission estimates that the majority of providers in this industry can be considered small entities.

185. *Prepaid Calling Card Providers*. Neither the Commission nor the SBA has developed a small business size standard specifically for prepaid calling card providers. Telecommunications Resellers is the closest industry with an SBA small business size standard. The Telecommunications Resellers industry comprises establishments engaged in purchasing access and network capacity from owners and operators of telecommunications networks and reselling wired and wireless telecommunications services (except satellite) to businesses and households. Establishments in this industry resell telecommunications; they do not operate transmission facilities and infrastructure. Mobile virtual network operators (MVNOs) are included in this industry. The SBA small business size

standard for Telecommunications Resellers classifies a business as small if it has 1,500 or fewer employees. U.S. Census Bureau data for 2017 show that 1,386 firms in this industry provided resale services for the entire year. Of that number, 1,375 firms operated with fewer than 250 employees. Additionally, based on Commission data in the 2021 Universal Service Monitoring Report, as of December 31, 2020, there were 58 providers that reported they were engaged in the provision of payphone services. Of these providers, the Commission estimates that 57 providers have 1,500 or fewer employees. Consequently, using the SBA's small business size standard, most of these providers can be considered small entities.

186. *Local Resellers*. Neither the Commission nor the SBA have developed a small business size standard specifically for Local Resellers. Telecommunications Resellers is the closest industry with a SBA small business size standard. The Telecommunications Resellers industry comprises establishments engaged in purchasing access and network capacity from owners and operators of telecommunications networks and reselling wired and wireless telecommunications services (except satellite) to businesses and households. Establishments in this industry resell telecommunications; they do not operate transmission facilities and infrastructure. Mobile virtual network operators (MVNOs) are included in this industry. The SBA small business size standard for Telecommunications Resellers classifies a business as small if it has 1,500 or fewer employees. U.S. Census Bureau data for 2017 show that 1,386 firms in this industry provided resale services for the entire year. Of that number, 1,375 firms operated with fewer than 250 employees. Additionally, based on Commission data in the 2021 Universal Service Monitoring Report, as of December 31, 2020, there were 293 providers that reported they were engaged in the provision of local resale services. Of these providers, the Commission estimates that 289 providers have 1,500 or fewer employees. Consequently, using the SBA's small business size standard, most of these providers can be considered small entities.

187. *Toll Resellers*. Neither the Commission nor the SBA have developed a small business size standard specifically for Toll Resellers. Telecommunications Resellers is the closest industry with an SBA small business size standard. The Telecommunications Resellers industry

comprises establishments engaged in purchasing access and network capacity from owners and operators of telecommunications networks and reselling wired and wireless telecommunications services (except satellite) to businesses and households. Establishments in this industry resell telecommunications; they do not operate transmission facilities and infrastructure. Mobile virtual network operators (MVNOs) are included in this industry. The SBA small business size standard for Telecommunications Resellers classifies a business as small if it has 1,500 or fewer employees. U.S. Census Bureau data for 2017 show that 1,386 firms in this industry provided resale services for the entire year. Of that number, 1,375 firms operated with fewer than 250 employees. Additionally, based on Commission data in the 2021 Universal Service Monitoring Report, as of December 31, 2020, there were 518 providers that reported they were engaged in the provision of toll services. Of these providers, the Commission estimates that 495 providers have 1,500 or fewer employees. Consequently, using the SBA's small business size standard, most of these providers can be considered small entities.

188. *Other Toll Carriers*. Neither the Commission nor the SBA has developed a definition for small businesses specifically applicable to Other Toll Carriers. This category includes toll carriers that do not fall within the categories of interexchange carriers, operator service providers, prepaid calling card providers, satellite service carriers, or toll resellers. Wired Telecommunications Carriers is the closest industry with a SBA small business size standard. The SBA small business size standard for Wired Telecommunications Carriers classifies firms having 1,500 or fewer employees as small. U.S. Census Bureau data for 2017 show that there were 3,054 firms in this industry that operated for the entire year. Of this number, 2,964 firms operated with fewer than 250 employees. Additionally, based on Commission data in the 2021 Universal Service Monitoring Report, as of December 31, 2020, there were 115 providers that reported they were engaged in the provision of other toll services. Of these providers, the Commission estimates that 113 providers have 1,500 or fewer employees. Consequently, using the SBA's small business size standard, most of these providers can be considered small entities.

189. *Wireless Telecommunications Carriers (except Satellite)*. This industry

comprises establishments engaged in operating and maintaining switching and transmission facilities to provide communications via the airwaves. Establishments in this industry have spectrum licenses and provide services using that spectrum, such as cellular services, paging services, wireless internet access, and wireless video services. The SBA size standard for this industry classifies a business as small if it has 1,500 or fewer employees. U.S. Census Bureau data for 2017 show that there were 2,893 firms in this industry that operated for the entire year. Of that number, 2,837 firms employed fewer than 250 employees. Additionally, based on Commission data in the 2021 Universal Service Monitoring Report, as of December 31, 2020, there were 797 providers that reported they were engaged in the provision of wireless services. Of these providers, the Commission estimates that 715 providers have 1,500 or fewer employees. Consequently, using the SBA's small business size standard, most of these providers can be considered small entities.

190. *All Other Telecommunications.* This industry is comprised of establishments primarily engaged in providing specialized telecommunications services, such as satellite tracking, communications telemetry, and radar station operation. This industry also includes establishments primarily engaged in providing satellite terminal stations and associated facilities connected with one or more terrestrial systems and capable of transmitting telecommunications to, and receiving telecommunications from, satellite systems. Providers of internet services (e.g. dial-up ISPs) or Voice over internet Protocol (VoIP) services, via client-supplied telecommunications connections are also included in this industry. The SBA small business size standard for this industry classifies firms with annual receipts of \$35 million or less as small. U.S. Census Bureau data for 2017 show that there were 1,079 firms in this industry that operated for the entire year. Of those firms, 1,039 had revenue of less than \$25 million. Based on this data, the Commission estimates that the majority of "All Other Telecommunications" firms can be considered small.

#### *D. Description of Projected Reporting, Recordkeeping and Other Compliance Requirements for Small Entities*

191. The document is intended to adopt rules that will further the Commission's goal of ensuring that the Commission continually accounts for evolving public interest considerations

associated with international section 214 authorizations following an initial grant of the authority. *First*, the Commission proposes to cancel the authorizations of those authorization holders that fail to respond to the one-time collection required by the *Order*. *Second*, the Commission proposes to implement a formalized renewal framework for the Commission's reassessment of all authorizations or, in the alternative, seek comment on a periodic review process of such authorizations. *Third*, the Commission proposes to adopt a 10-year renewal requirement for international section 214 authorization holders that prioritizes renewal applications with foreign ownership to take into account national security, law enforcement, foreign policy, and trade policy concerns. *Fourth*, the Commission proposes new application rules to capture critical information from applicants and require additional certifications. *Fifth*, to further ensure that carriers' use of their international section 214 authority is in the public interest, the Commission proposes and seeks comment on modifications to related Parts 1 and 63 rules. *Finally*, to further ensure that carriers' use of their international section 214 authority is in the public interest, the Commission proposes and seeks comment on modifications to other Part 63 rules.

192. Given the increasing concerns about ensuring the security and integrity of U.S. telecommunications infrastructure, the Commission proposes or seeks comment on new requirements that the Commission anticipates will help it to acquire critical information from applicants including additional certifications to create accountability for applicants and to improve the reliability of the information that they provide. The Commission proposes to apply the requirements applicable to initial applications for international section 214 authority to the proposed rules for renewal applications and thus harmonize the application requirements. The Commission proposes or seeks comment on adopting new application requirements to improve the Commission's assessment of evolving national security, law enforcement, foreign policy, and/or trade policy risks following a grant of international section 214 authority. The Commission seeks comment on whether to adopt a new 5% ownership reporting threshold for all initial applications for international section 214 authority and applications for modification, assignment, transfer of control, and renewal of international section 214

authority. The Commission also proposes to require each applicant to provide information about its services, geographic markets, and facilities crossing the United States' borders with Canada and Mexico (cross border facilities), and certify that their facilities-based equipment meets certain requirements. The Commission proposes to require all applicants to provide information on foreign-owned MNSPs. The Commission proposes to require applicants to certify in their application whether or not they use equipment or services identified in the Commission's "Covered List" of equipment and services deemed pursuant to the Secure and Trusted Communications Networks Act to pose an unacceptable risk to the national security of the United States or the security and safety of United States persons. The Commission proposes that all applicants seeking international section 214 authority or modification, assignment, transfer of control, or renewal of international section 214 authority must certify in the applications whether or not they are in compliance with the Commission's rules and regulations, the Act, and other laws. The Commission tentatively concludes that these requirements that the Commission proposes or seeks comment on are important and necessary for informing the Commission's evaluation of an applicant's request for international section 214 authority and would serve the public interest given evolving risks identified by the Commission and the Executive Branch.

193. The Commission proposes additional changes to its rules concerning international section 214 authorizations to ensure that the Commission has current and accurate information about which authorization holders are providing service under their international section 214 authority. The Commission proposes to adopt a rule that would allow an authorization holder to hold only one international section 214 authorization except in certain limited circumstances. The Commission proposes to adopt a rule requiring an international section 214 authorization holder to commence service(s) within one year following the grant. The Commission proposes to amend § 63.19 of the Commission's rules to require that all authorization holders that permanently discontinue service provided pursuant to their international section 214 authority, to file with the Commission a notification of the discontinuance and surrender the authorization. The Commission

proposes to require authorization holders to provide updated ownership, cross border facilities information, and other information every three years. The Commission proposes to adopt a rule requiring applicants seeking to assign or transfer control of their international section 214 authorization to identify in their applications any ISPCs that they hold and whether the ISPC will be subject to the assignment or transfer of control.

194. The Commission is especially interested in estimates that address alternative means to provide the same benefits, in terms of advancing national security, law enforcement, foreign policy, and trade policy interests, at lower costs. The Commission invites comment on the costs and burdens of the proposals in the document, including for small entities. The Commission expects the information the Commission receives in comments including, where requested, cost and benefit analyses, to help the Commission identify and evaluate relevant compliance matters for small entities, including compliance costs and other burdens that may result if the proposals and associated requirements discussed in the document are adopted.

*E. Steps Taken To Minimize the Significant Economic Impact on Small Entities and Significant Alternatives Considered*

195. The RFA requires an agency to describe any significant, specifically small business, alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives (among others): “(1) the establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance and reporting requirements under the rule for such small entities; (3) the use of performance rather than design standards; and (4) an exemption from coverage of the rule, or any part thereof, for such small entities.”

196. The document seeks comment from all interested parties on the proposals and what potential burdens, if any, would be imposed on applicants and authorization holders, including small entities. The Commission seeks comment on whether there are compliance costs and other burdens the Commission should consider, particularly for small entities. For example, each authorization holder will require 20 hours of work by attorneys and 20 hours of work by support staff, at a cost of \$6,800 per authorization for

renewal. The Commission also concludes that the \$875 administrative fee charged for renewal to obtain a total estimate of this burden at \$7,675 per authorization (for the first time an authorization holder must file for renewal). The document specifically seeks comment on whether the proposed certification requirement concerning implementation and adherence to baseline cybersecurity standards should take into account the size of the applicant and its operations. Ultimately the Commission multiplies the sum by 150 to produce a total estimate of approximately \$1,152,000 per year for the first ten years. The document seeks comment, for example, whether the Commission should allow large facilities-based providers and small resellers to certify adherence to different baseline security standards. Small entities are encouraged to bring to the Commission’s attention any specific concerns they may have with the proposals outlined in the document.

197. To assist in the Commission’s evaluation of the economic impact on small entities, as a result of actions that have been proposed in the document, and to better explore options and alternatives, the Commission has sought comment from the parties. In particular, the Commission seeks comment on whether any of the burdens associated with the filing, recordkeeping and reporting requirements described above can be minimized for small entities. Additionally, the Commission seeks comment on whether any of the costs associated with the Commission’s proposed requirements can be alleviated for small entities. The Commission expects to more fully consider the economic impact and alternatives for small entities following the review of comments filed in response to the documents.

*F. Federal Rules That May Duplicate, Overlap, or Conflict With the Proposed Rules*

198. None.

**List of Subjects in 47 CFR Parts 1 and 63**

Administrative practice and procedure, Authority delegations (government agencies), Communications, Communications common carriers, Organization and functions (Government agencies), Reporting and recordkeeping requirements, Telecommunications, Telephone.

Federal Communications Commission.

**Marlene Dortch**,  
Secretary.

**Proposed Rules**

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR parts 1 and 63 to read as follows:

**PART 1—PRACTICE AND PROCEDURE**

■ 1. The authority citation for part 1 continues to read as follows:

**Authority:** 47 U.S.C. chs. 2, 5, 9, 13; 28 U.S.C. 2461 note, unless otherwise noted.

■ 2. Revise § 1.763(b) to read as follows:

**§ 1.763 Construction, extension, acquisition or operation of lines.**

\* \* \* \* \*

(b) In cases under this section requiring a certificate, applicants shall provide notice to and file a copy of the application with the Secretary of Defense, the Secretary of State (with respect to such applications involving service to foreign points), and the Governor of each State involved. Hearing is held if the Secretary of Defense, the Secretary of State, or the Governor of each State desires to be heard or if the Commission determines that a hearing should be held. The applicants must also file copies of applications for certificates with the regulatory agencies of the States involved.

■ 3. Amend § 1.767 by revising paragraph (a)(8)(i) to read as follows:

**§ 1.767 Cable landing licenses.**

(a) \* \* \*

(8) \* \* \*

(i) The name, address, citizenship, and principal businesses of any individual or entity that directly or indirectly owns 10 percent or more of the equity interests and/or voting interests, or a controlling interest, of the applicant, and the percentage of equity and/or voting interest owned by each of those individuals or entities (to the nearest 1 percent). Where no individual or entity directly or indirectly owns 10 percent or more of the equity interests and/or voting interests, or a controlling interest, of the applicant, a statement to that effect. (A)(1) *Calculation of equity interests held indirectly in the carrier.* Equity interests that are held by an individual or entity indirectly through one or more intervening entities shall be calculated by successive multiplication of the equity percentages for each link in the vertical ownership chain, regardless of whether any particular link in the chain represents a controlling

interest in the company positioned in the next lower tier. Example: Assume that an entity holds a non-controlling 30 percent equity and voting interest in Corporation A which, in turn, holds a non-controlling 40 percent equity and voting interest in the carrier. The entity's equity interest in the carrier would be calculated by multiplying the individual's equity interest in Corporation A by that entity's equity interest in the carrier. The entity's equity interest in the carrier would be calculated as 12 percent ( $30\% \times 40\% = 12\%$ ). The result would be the same even if Corporation A held a de facto controlling interest in the carrier.

(2) *Calculation of voting interests held indirectly in the carrier.* Voting interests that are held through one or more intervening entities shall be calculated by successive multiplication of the voting percentages for each link in the vertical ownership chain, except that wherever the voting interest for any link in the chain is equal to or exceeds 50 percent or represents actual control, it shall be treated as if it were a 100 percent interest. A general partner shall be deemed to hold the same voting interest as the partnership holds in the company situated in the next lower tier of the vertical ownership chain. A partner of a limited partnership (other than a general partner) shall be deemed to hold a voting interest in the partnership that is equal to the partner's equity interest. Example: Assume that an entity holds a non-controlling 30 percent equity and voting interest in Corporation A which, in turn, holds a controlling 70 percent equity and voting interest in the carrier. Because Corporation A's 70 percent voting interest in the carrier constitutes a controlling interest, it is treated as a 100 percent interest. The entity's 30 percent voting interest in Corporation A would flow through in its entirety to the carrier and thus be calculated as 30 percent ( $30\% \times 100\% = 30\%$ ).

(B) An ownership diagram that illustrates the applicant's vertical ownership structure, including the direct and indirect ownership (equity and voting) interests held by the individuals and entities named in response to paragraph (a)(8)(i) of this section. Every individual or entity with ownership shall be depicted and all controlling interests must be identified. The ownership diagram shall include both the pre-transaction and post-transaction ownership of the authorization holder.

(C) The applicant shall also identify any interlocking directorates with a foreign carrier.

(D) The information and certifications required in § 63.18(o), (p), and (q) of this chapter.

\* \* \* \* \*

■ 4. Revise § 1.40001 to read as follows:

**§ 1.40001 Executive branch review of applications, petitions, other filings, and existing authorizations or licenses with reportable foreign ownership.**

(a) The Commission, in its discretion, may refer applications, petitions, and other filings to the executive branch for review for national security, law enforcement, foreign policy, and/or trade policy concerns.

(1) The Commission will generally refer to the executive branch:

(i) An application for a new international section 214 authorization as well as an application to modify, assign, transfer control of, or renew those authorizations where the applicant has reportable foreign ownership pursuant to §§ 63.18, 63.24, and 63.27 of this chapter.

(ii) An application for a new international section 214 authorization as well as an application to modify, assign, transfer control of, or renew those authorizations where the applicant with or without reportable foreign ownership certifies that it uses and/or will use facilities to provide services under its international section 214 authority from the United States into Canada and/or Mexico.

(iii) An application for a new submarine cable landing license as well as an application to modify, assign, transfer control of, or renew those licenses where the applicant has reportable foreign ownership pursuant to § 1.767 of this chapter.

(iv) Petitions for section 310(b) foreign ownership rulings for broadcast, common carrier wireless, and common carrier satellite earth station licenses pursuant to §§ 1.5000 through 1.5004.

(2) The Commission will generally exclude from referral to the executive branch certain applications set out in paragraph (a)(1) of this section when the applicant makes a specific showing in its application that it meets one or more of the following categories:

(i) Pro forma notifications and applications;

(ii) Applications filed pursuant to §§ 1.767, 63.18, 63.24, and 63.27 of this chapter if the applicant has reportable foreign ownership and petitions filed pursuant to §§ 1.5000 through 1.5004 where the only reportable foreign ownership is through wholly owned intermediate holding companies and the ultimate ownership and control is held by U.S. citizens or entities;

(iii) Applications filed pursuant to §§ 63.18, 63.24, and 63.27 of this chapter where the applicant has an existing international section 214 authorization that is conditioned on compliance with an agreement with an executive branch agency concerning national security and/or law enforcement, there are no new reportable foreign owners of the applicant since the effective date of the agreement, and the applicant agrees to continue to comply with the terms of that agreement; and

(iv) Applications filed pursuant to §§ 63.18, 63.24, and 63.27 of this chapter where the applicant was reviewed by the executive branch within 18 months of the filing of the application and the executive branch had not previously requested that the Commission condition the applicant's international section 214 authorization on compliance with an agreement with an executive branch agency concerning national security and/or law enforcement and there are no new reportable foreign owners of the applicant since that review.

(3) In circumstances where the Commission, in its discretion, refers to the executive branch an application, petition, or other filing not identified in this paragraph (a)(3) or determines to refer an application or petition identified in paragraph (a)(2) of this section, the Commission staff will instruct the applicant, petitioner, or filer to follow the requirements for a referred application or petition set out in this subpart, including submitting responses to the standard questions to the Committee and making the appropriate certifications.

(b) The Commission will consider any recommendations from the executive branch on pending application(s) for an international section 214 authorization or cable landing license(s) or petition(s) for foreign ownership ruling(s) pursuant to §§ 1.5000 through 1.5004 or on existing authorizations or licenses that may affect national security, law enforcement, foreign policy, and/or trade policy as part of its public interest analysis. The Commission will evaluate concerns raised by the executive branch and will make an independent decision concerning the pending matter.

(c) In any such referral pursuant to paragraph (a) of this section or when considering any recommendations pursuant to paragraph (b) of this section, the Commission may disclose to relevant executive branch agencies, subject to the provisions of 44 U.S.C. 3510, any information submitted by an applicant, petitioner, licensee, or authorization holder in confidence

pursuant to § 0.457 or § 0.459 of this chapter. Notwithstanding the provisions of § 0.442 of this chapter, notice will be provided at the time of disclosure.

(d) As used in this subpart, “reportable foreign ownership” for applications filed pursuant to §§ 63.18 and 63.24 and 63.27 of this chapter means any foreign owner of the applicant that must be disclosed in the application pursuant to § 63.18(h); for applications filed pursuant to § 1.767 “reportable foreign ownership” means any foreign owner of the applicant that must be disclosed in the application pursuant to § 1.767(a)(8)(i); and for petitions filed pursuant to §§ 1.5000 through 1.5004 “reportable foreign ownership” means foreign disclosable interest holders pursuant to § 1.5001(e) and (f).

**PART 63—EXTENSION OF LINES, NEW LINES, AND DISCONTINUANCE, REDUCTION, OUTAGE AND IMPAIRMENT OF SERVICE BY COMMON CARRIERS; AND GRANTS OF RECOGNIZED PRIVATE OPERATING AGENCY STATUS**

■ 5. The authority citation for part 63 continues to read as follows:

**Authority:** 47 U.S.C. 151, 154(i), 154(j), 160, 201–205, 214, 218, 403, 571, unless otherwise noted.

■ 6. Amend § 63.12 by revising paragraph (c)(3) to read as follows:

**§ 63.12 Processing of international Section 214 applications.**

\* \* \* \* \*

(c) \* \* \*  
(3) An individual or entity that is not a U.S. citizen holds a 5 percent or greater direct or indirect equity or voting interest, or a controlling interest, in any applicant; or

\* \* \* \* \*

■ 7. Amend § 63.18 by revising paragraphs (h), (k), (o), (p), (s), and (t); redesignating paragraphs (r), (s), and (t) as (w), (x), and (y); adding new paragraphs (r), (s), and (t); and adding paragraphs (u) and (v) to read as follows:

**§ 63.18 Contents of applications for international common carriers.**

\* \* \* \* \*

(h)(1) The name, address, citizenship, and principal businesses of any individual or entity that directly or indirectly owns 5 percent or more of the equity interests and/or voting interests, or a controlling interest, of the applicant, and the percentage of equity and/or voting interest owned by each of those individuals and entities (to the nearest 1 percent). Where no individual

or entity directly or indirectly owns 5 percent or more of the equity interests and/or voting interests, or a controlling interest, of the applicant, a statement to that effect.

(i) *Calculation of equity interests held indirectly in the carrier.* Equity interests that are held by an individual or entity indirectly through one or more intervening entities shall be calculated by successive multiplication of the equity percentages for each link in the vertical ownership chain, regardless of whether any particular link in the chain represents a controlling interest in the company positioned in the next lower tier. Example: Assume that an entity holds a non-controlling 30 percent equity and voting interest in Corporation A which, in turn, holds a non-controlling 40 percent equity and voting interest in the carrier. The entity’s equity interest in the carrier would be calculated by multiplying the individual’s equity interest in Corporation A by that entity’s equity interest in the carrier. The entity’s equity interest in the carrier would be calculated as 12 percent (30% × 40% = 12%). The result would be the same even if Corporation A held a de facto controlling interest in the carrier.

(ii) *Calculation of voting interests held indirectly in the carrier.* Voting interests that are held through one or more intervening entities shall be calculated by successive multiplication of the voting percentages for each link in the vertical ownership chain, except that wherever the voting interest for any link in the chain is equal to or exceeds 50 percent or represents actual control, it shall be treated as if it were a 100 percent interest. A general partner shall be deemed to hold the same voting interest as the partnership holds in the company situated in the next lower tier of the vertical ownership chain. A partner of a limited partnership (other than a general partner) shall be deemed to hold a voting interest in the partnership that is equal to the partner’s equity interest. Example: Assume that an entity holds a non-controlling 30 percent equity and voting interest in Corporation A which, in turn, holds a controlling 70 percent equity and voting interest in the carrier. Because Corporation A’s 70 percent voting interest in the carrier constitutes a controlling interest, it is treated as a 100 percent interest. The entity’s 30 percent voting interest in Corporation A would flow through in its entirety to the carrier and thus be calculated as 30 percent (30% × 100% = 30%).

(2) An ownership diagram that illustrates the applicant’s vertical ownership structure, including the

direct and indirect ownership (equity and voting) interests held by the individuals and entities named in response to paragraph (h)(1) of this section. Every individual or entity with ownership shall be depicted and all controlling interests must be identified. The ownership diagram shall include both the pre-transaction and post-transaction ownership of the authorization holder.

(3) The applicant shall also identify any interlocking directorates with a foreign carrier.

\* \* \* \* \*

(k) For any country that the applicant has listed in response to paragraph (j) of this section that is not a member of the World Trade Organization, the applicant shall make a demonstration as to whether the foreign carrier has market power, or lacks market power, with reference to the criteria in § 63.10(a).

(1) Under § 63.10(a), the Commission presumes, subject to rebuttal, that a foreign carrier lacks market power in a particular foreign country if the applicant demonstrates that the foreign carrier lacks 50 percent market share in international transport facilities or services, including cable landing station access and backhaul facilities, intercity facilities or services, and local access facilities or services on the foreign end of a particular route.

(2) [Reserved]

\* \* \* \* \*

(o) A certification pursuant to §§ 1.2001 through 1.2002 of this chapter that no party to the application is subject to a denial of Federal benefits pursuant to Section 5301 of the Anti-Drug Abuse Act of 1988. See 21 U.S.C. 862.

(p) Each applicant for which an individual or entity that is not a U.S. citizen holds a 5 percent or greater direct or indirect equity or voting interest, or a controlling interest, in the applicant, must submit:

\* \* \* \* \*

(r) Each applicant shall provide the following information with respect to services it expects to provide using the international section 214 authority:

(1) Identification and description of the specific services that the applicant will provide using the international section 214 authority;

(2) Types of customers that will be served;

(3) Whether the services will be provided through the facilities for which the applicant has an ownership, indefeasible-right-of use or leasehold interest or through the resale of other companies’ services; and

(4) Identification of where the applicant in the future expects to

market, offer, and/or provide services using the particular international section 214 authority, such as a U.S. state or territory and/or U.S.-international route or globally.

(s) Each applicant shall provide the following information concerning facilities crossing the U.S.-Mexico and U.S.-Canada borders (cross border facilities) that it will use or lease:

(1) Location of each cross border facility (street address and coordinates);

(2) Name, street address, email address, and telephone number of the owners of each cross border facility, including the Government, State, or Territory under the laws of which the facility owner is organized;

(3) Identification of the equipment to be used in the cross border facilities, including equipment used for transmission, as well as servers and other equipment used for storage of information and signaling in support of telecommunications;

(4) Identification of all IP prefixes and autonomous system domain numbers used by the facilities that have been acquired from the American Registry for internet Numbers (ARIN); and

(5) Identification of any services that will be provided by an applicant through these facilities using the international section 214 authority.

(t) Each applicant shall certify that it will undertake to implement and adhere to baseline cybersecurity standards based on universally recognized standards such as those provided by the Department of Homeland Security's Cybersecurity & Infrastructure Security Agency (CISA) or the Department of Commerce's National Institute of Standards and Technology (NIST).

(u) Each applicant shall make the following certifications with respect to its regulatory compliance:

(1) Whether or not the applicant is in compliance with the Commission's rules and regulations, the Communications Act, and other laws;

(2) Whether or not the applicant has violated the Communications Act, Commission rules, or U.S. antitrust or other competition laws, has engaged in fraudulent conduct before another government agency, has been convicted of a felony, or has engaged in other non-FCC misconduct the Commission has found to be relevant in assessing the character qualifications of a licensee or authorization holder.

(v) Each applicant shall comply with the requirement of § 1.763 to give notice and file a copy of the application with the Secretary of Defense, the Secretary of State, the Governor of each State involved, and the regulatory agencies of the States involved. Each applicant shall

certify such service on a service list attached to its application for international section 214 authority or other filing with the Commission.

(w) If the applicant desires streamlined processing pursuant to § 63.12, a statement of how the application qualifies for streamlined processing.

(x) Any other information that the Commission or Commission staff have advised will be necessary to enable the Commission to act on the application.

(y) Subject to the availability of electronic forms, all applications described in this section must be filed electronically through the International Communications Filing System (ICFS) or its successor system. A list of forms that are available for electronic filing can be found on the ICFS homepage. For information on electronic filing requirements, see §§ 1.1000 through 1.10018 of this chapter and the ICFS homepage at <https://www.fcc.gov/icfs>. See also §§ 63.20 and 63.53.

■ 8. Revise § 63.19 to read as follows:

**§ 63.19 Special procedures for discontinuances of international services.**

(a) With the exception of those international carriers described in paragraph (b) of this section, any international carrier that seeks to discontinue, reduce, or impair service, including the retiring of international facilities, dismantling or removing of international trunk lines, shall be subject to the following procedures in lieu of those specified in §§ 63.61 through 63.602:

(1) The carrier shall notify all affected customers of the planned discontinuance, reduction or impairment at least 30 days prior to its planned action. Notice shall be in writing to each affected customer unless the Commission authorizes in advance, for good cause shown, another form of notice. For purposes of this section, notice by email constitutes notice in writing. Notice shall include the following information:

(i) Name and address of carrier;

(ii) Date of planned service discontinuance, reduction, or impairment;

(iii) Points of geographic areas of service affected (inside of the United States and U.S.-international routes);

(iv) Brief description of type of service(s) affected; and

(v) Brief explanation as to whether the service(s) will be discontinued, reduced, or impaired.

(2) If an international section 214 authorization holder uses email to provide notice to affected customers, it must comply with the following

requirements in addition to the requirements generally applicable to the notice:

(i) The carrier must have previously obtained express, verifiable, prior approval from customers to send notices via email regarding their service in general, or planned discontinuance, reduction, or impairment in particular;

(ii) The carrier must ensure that the subject line of the message clearly and accurately identifies the subject matter of the email; and

(iii) Any email notice returned to the carrier as undeliverable will not constitute the provision of notice to the customer.

(3) The international section 214 authorization holder shall file with this Commission a copy of the notification on the date on which notice has been given to all affected customers. The notification shall be filed electronically through the International Communications Filing System (ICFS), or its successor system, in the file number associated with the carrier's international section 214 authorization. The authorization holder shall also provide the following information to the Commission in the same filing that includes a copy of the notification:

(i) Identification of the geographic areas of the planned discontinuance, reduction or impairment and the authorization(s) pursuant to which the carrier provides service;

(ii) Brief description of the dates and methods of notice to all affected customers;

(iii) Whether or not the authorization holder is surrendering any International Signaling Point Codes (ISPCs); and

(iv) Any other information that the Commission may require.

(b) The following procedures shall apply to any international carrier that the Commission has classified as dominant in the provision of a particular international service because the carrier possesses market power in the provision of that service on the U.S. end of the route. Any such carrier that seeks to retire international facilities, dismantle or remove international trunk lines, but does not discontinue, reduce or impair the dominant services being provided through these facilities, shall only be subject to the notification requirements of paragraph (a) of this section. If such carrier discontinues, reduces or impairs the dominant service, or retires facilities that impair or reduce the service, the carrier shall file an application pursuant to §§ 63.62 and 63.500.

(c) Commercial Mobile Radio Service (CMRS) carriers, as defined in § 20.3 of this chapter, are not subject to the

provisions of paragraphs (a) and (b) of this section.

(d) For purposes of this section, a period of three consecutive months during which an international section 214 authorization holder does not provide any service under its international section 214 authority is referred to as permanent discontinuance of service.

(1) An international section 214 authorization holder that permanently discontinues service under its international section 214 authority shall surrender the international section 214 authorization.

(2) An international section 214 authorization holder with existing customers shall comply with the requirements of § 63.19(a) to notify all affected customers prior to the planned discontinuance. If a carrier will discontinue part but not all of its U.S.-international services (for example, by discontinuing service only on a particular U.S.-international route) and will continue to provide other U.S.-international service(s) under its international section 214 authority, it shall comply with the requirements of § 63.19(a) to notify affected customers prior to discontinuance of those services.

(3) An international section 214 authorization holder that has permanently discontinued service shall file a notification with the Commission through the International Communications Filing System (ICFS), or its successor system, in the file number associated with the carrier's international section 214 authorization within 30 days after the discontinuance. The notification shall contain the following information:

- (i) The name, address, and telephone number of the authorization holder;
- (ii) The initial date as of when the authorization holder did not provide service under its international section 214 authority;
- (iii) A statement as to whether any customers were affected, and if so, whether the authorization holder complied with section 63.19(a) of the Commission's rules;
- (iv) Whether or not the carrier is also surrendering any International Signaling Point Codes (ISPCs); and
- (v) A request to surrender the authorization.

(e) Even if an international section 214 authorization holder fails to file a notification of discontinuance and surrender its international section 214 authorization, the authorization shall be cancelled if the Commission determines that the authorization holder has permanently discontinued service under

its international section 214 authority. Upon determination that an authorization holder has permanently discontinued service under its international section 214 authority:

(1) The Office of International Affairs shall release an informative public notice announcing the proposed cancellation of the authorization;

(2) The authorization holder shall have 30 days to respond and explain why the authorization should not be cancelled; and

(3) If the authorization holder does not respond, the authorization shall be automatically cancelled at the end of the 30-day period.

(f) An international section 214 authorization holder whose international section 214 authorization is cancelled pursuant to paragraph (e) of this section may file an application for a new international 214 authorization in accordance with the Commission's rules.

(g) Subject to the availability of electronic forms, all filings described in this section must be filed electronically through the International Communications Filing System (ICFS) or its successor system. A list of forms that are available for electronic filing can be found on the ICFS homepage. For information on electronic filing requirements, see §§ 1.1000 through 1.10018 of this chapter and the ICFS homepage at <https://www.fcc.gov/icfs>. See also §§ 63.20 and 63.53.

■ 9. Revise § 63.21 to read as follows:

**§ 63.21 Conditions applicable to all international Section 214 authorizations.**

International carriers authorized under Section 214 of the Communications Act of 1934, as amended, must follow the following requirements and prohibitions:

(a) An international section 214 authorization will have a term not to exceed 10 years from the date of grant or renewal. A carrier's international section 214 authority may be renewed for additional periods not to exceed 10 years upon proper application to the Commission pursuant to § 63.27 of this chapter, subject to the Commission's grant of the renewal application. The Commission reserves the discretion to shorten the renewal timeframe on a case-by-case basis where the Commission deems it appropriate to require an international section 214 authorization holder to seek renewal of its international section 214 authority sooner than a 10 year period, or to adopt conditions on renewal where the Commission determines that renewal of the carrier's international section 214

authority otherwise would not be in the public interest.

(b) An international section 214 authorization holder shall hold only one international section 214 authorization except in certain limited circumstances. An authorization holder that holds more than one authorization shall surrender the excess authorization(s) except in certain limited circumstances where a carrier may need more than one authorization for different authority and conditions, such as:

(1) Authority for overseas cable construction for a common carrier submarine cable; or

(2) The carrier is affiliated with a foreign carrier with market power on a U.S.-international route; or

(3) Other limited circumstance as approved by the Commission, or the Office of International Affairs.

(c) An international section 214 authorization holder shall commence service under its international section 214 authority within one year following the grant.

(1) An authorization holder shall file a notification with the Commission through the International Communications Filing System (ICFS), or its successor system, within 30 days of the date when it begins to offer service but in no case later than one year following the grant of international section 214 authority. The commencement of service notification shall include:

(i) A certification by an officer or other authorized representative of the authorization holder that the authorization holder has met the commencement of service requirement;

(ii) The date that the authorization holder commenced service;

(iii) A certification that the information is true and accurate upon penalty of perjury; and

(iv) The name, title, address, telephone number, and association with the authorization holder of the officer or other authorized representative who executed the certifications.

(2) An authorization holder may obtain a waiver of the one-year time period if it can show good cause why it is unable to commence service within one year following the grant of its authorization and identify an alternative reasonable timeframe when it can commence service

(3) If an authorization holder does not notify the Commission of the commencement of service or file a request for a waiver within one year following the grant of international section 214 authority, the authorization shall be cancelled.



(d) Each carrier is responsible for the continuing accuracy of the certifications made in its application. Whenever the substance of any such certification is no longer accurate, the carrier shall as promptly as possible and, in any event, within thirty (30) days, file with the Commission a corrected certification referencing the FCC file number under which the original certification was provided. The information may be used by the Commission to determine whether a change in regulatory status may be warranted under § 63.10. See also § 63.11.

(e) Carriers must file copies of operating agreements entered into with their foreign correspondents as specified in § 43.51 of this chapter and shall otherwise comply with the filing requirements contained in that section.

(f) Carriers regulated as dominant for the provision of a particular international communications service on a particular route for any reason other than a foreign carrier affiliation under § 63.10 shall file tariffs pursuant to Section 203 of the Communications Act, 47 U.S.C. 203, and part 61 of this chapter. Except as specified in § 20.15(d) of this chapter with respect to commercial mobile radio service providers, carriers regulated as non-dominant, as defined in § 61.3 of this chapter, and providing detariffed international services pursuant to § 61.19 of this chapter must comply with all applicable public disclosure and maintenance of information requirements in §§ 42.10 and 42.11 of this chapter.

(g) [Reserved]

(h) Authorized carriers may not access or make use of specific U.S. customer proprietary network information that is derived from a foreign network unless the carrier obtains approval from that U.S. customer. In seeking to obtain approval, the carrier must notify the U.S. customer that the customer may require the carrier to disclose the information to unaffiliated third parties upon written request by the customer.

(i) Authorized carriers may not receive from a foreign carrier any proprietary or confidential information pertaining to a competing U.S. carrier, obtained by the foreign carrier in the course of its normal business dealings, unless the competing U.S. carrier provides its permission in writing.

(j) The Commission reserves the right to review a carrier's authorization at any time, and, if warranted, impose additional requirements on U.S. international carriers in circumstances where it appears that harm to competition is occurring on one or more U.S. international routes or where

national security, law enforcement, foreign policy, trade policy, and/or other public interest concerns are raised by the U.S. international carrier's international section 214 authority.

(k) Subject to the requirement of § 63.10 that a carrier regulated as dominant along a route must provide service as an entity that is separate from its foreign carrier affiliate, and subject to any other structural-separation requirement in Commission regulations, an authorized carrier may provide service through any wholly owned direct or indirect subsidiaries. The carrier must, within thirty (30) days after the subsidiary begins providing service, file with the Commission a notification referencing the authorized carrier's name and the FCC file numbers under which the carrier's authorizations were granted and identifying the subsidiary's name and place of legal organization. This provision shall not be construed to authorize the provision of service by any entity barred by statute or regulation from itself holding an authorization or providing service.

(l) An authorized carrier, or a subsidiary operating pursuant to paragraph (h) of this section, that changes its name (including the name under which it is doing business) must notify the Commission within thirty (30) days of the name change. Such notification shall reference the FCC file numbers under which the carrier's authorizations were granted.

(m) Subject to the availability of electronic forms, all notifications and other filings described in this section must be filed electronically through the International Communications Filing System (ICFS) or its successor system. A list of forms that are available for electronic filing can be found on the ICFS homepage. For information on electronic filing requirements, see §§ 1.1000 through 1.10018 of this chapter and the ICFS homepage at <https://www.fcc.gov/icfs>. See also §§ 63.20 and 63.53.

■ 10. Revise § 63.24 to read as follows:

**§ 63.24 Assignments and transfers of control.**

(a) *General.* Except as otherwise provided in this section, an international section 214 authorization may be assigned, or control of such authorization may be transferred by the transfer of control of any entity holding such authorization, to another party, whether voluntarily or involuntarily, directly or indirectly, only upon application to and prior approval by the Commission.

(b) *Assignments.* For purposes of this section, an assignment of an

authorization is a transaction in which the authorization is assigned from one entity to another entity. Following an assignment, the authorization is held by an entity other than the one to which it was originally granted.

(1) The sale of a customer base, or a portion of a customer base, by a carrier to another carrier, is a sale of assets and shall be treated as an assignment, which requires prior Commission approval under this section.

(2) [Reserved]

(c) *Transfers of control.* For purposes of this section, a transfer of control is a transaction in which the authorization remains held by the same entity, but there is a change in the entity or entities that control the authorization holder. A change from less than 50 percent ownership to 50 percent or more ownership shall always be considered a transfer of control. A change from 50 percent or more ownership to less than 50 percent ownership shall always be considered a transfer of control. In all other situations, whether the interest being transferred is controlling must be determined on a case-by-case basis with reference to the factors listed in paragraph (d)(1) of this section.

(d) *Pro forma assignments and transfers of control.* Transfers of control or assignments that do not result in a change in the actual controlling party are considered non-substantial, or "pro forma." Whether there has been a change in the actual controlling party must be determined on a case-by-case basis with reference to the factors listed in paragraph (d)(1) of this section. The types of transactions listed in paragraph (d)(2) of this section shall be considered presumptively pro forma and prior approval from the Commission need not be sought.

(1) Because the issue of control inherently involves issues of fact, it must be determined on a case-by-case basis and may vary with the circumstances presented by each case. The factors relevant to a determination of control in addition to equity ownership include, but are not limited to the following: power to constitute or appoint more than 50 percent of the board of directors or partnership management committee; authority to appoint, promote, demote and fire senior executives that control the day-to-day activities of the licensee; ability to play an integral role in major management decisions of the licensee; authority to pay financial obligations, including expenses arising out of operations; ability to receive monies and profits from the facility's operations; and unfettered use of all facilities and equipment.

(2) If a transaction is one of the types listed further, the transaction is presumptively pro forma and prior approval need not be sought. In all other cases, the relevant determination shall be made on a case-by-case basis. Assignment from an individual or individuals (including partnerships) to a corporation owned and controlled by such individuals or partnerships without any substantial change in their relative interests; Assignment from a corporation to its individual stockholders without effecting any substantial change in the disposition of their interests; Assignment or transfer by which certain stockholders retire and the interest transferred is not a controlling one; Corporate reorganization that involves no substantial change in the beneficial ownership of the corporation (including re-incorporation in a different jurisdiction or change in form of the business entity); Assignment or transfer from a corporation to a wholly owned direct or indirect subsidiary thereof or vice versa, or where there is an assignment from a corporation to a corporation owned or controlled by the assignor stockholders without substantial change in their interests; or Assignment of less than a controlling interest in a partnership.

(e) *Applications for substantial transactions.*

(1) In the case of an assignment or transfer of control of an international section 214 authorization that is not pro forma, the proposed assignee or transferee must apply to the Commission for authority prior to consummation of the proposed assignment or transfer of control.

(2) The application shall include:

(i) The information requested in paragraphs (a) through (d) of § 63.18 for both the transferor/assignor and the transferee/assignee;

(ii) The information requested in paragraphs (h) through (q) and (w) of § 63.18 is required only for the transferee/assignee;

(iii) The ownership diagram required under § 63.18(h)(2) shall include both the pre-transaction and post-transaction ownership of the authorization holder. The applicant shall include a narrative describing the means by which the proposed transfer or assignment will take place; and

(iv) The information requested in paragraphs (r) through (v) of § 63.18 is required for the authorization holder whose authorization is subject to the proposed transfer of control or assignment.

(3) The Commission reserves the right to request additional information as to

the particulars of the transaction to aid it in making its public interest determination.

(4) An assignee or transferee must notify the Commission no later than thirty (30) days after either consummation of the proposed assignment or transfer of control, or a decision not to consummate the proposed assignment or transfer of control. The notification shall identify the file numbers under which the initial authorization and the authorization of the assignment or transfer of control were granted.

(f) *Notifications for non-substantial or "pro forma" transactions.*

(1) In the case of a pro forma assignment or transfer of control, the section 214 authorization holder is not required to seek prior Commission approval.

(2) A *pro forma* assignee or a carrier that is subject to a pro forma transfer of control must file a notification with the Commission no later than thirty (30) days after the assignment or transfer is completed. The notification must contain the following:

(i) The information requested in paragraphs (a) through (d) and (h) of § 63.18 for the transferee/assignee;

(ii) The ownership diagram required under § 63.18(h)(2) shall include both the pre-transaction and post-transaction ownership of the authorization holder;

(iii) A certification that the transfer of control or assignment was pro forma and that, together with all previous pro forma transactions, does not result in a change in the actual controlling party; and

(iv) The information requested in paragraphs (r) through (v) of § 63.18 for the authorization holder whose authorization is subject to the transfer of control or assignment.

(3) Subject to § 63.21(b), a single notification may be filed for an assignment or transfer of control of more than one authorization if each authorization is identified by the file number under which it was granted.

(4) Upon release of a public notice granting a pro forma assignment or transfer of control, petitions for reconsideration under § 1.106 of this chapter or applications for review under § 1.115 of this chapter of the Commission's rules may be filed within 30 days. Petitioner should address why the assignment or transfer of control in question should have been filed under paragraph (e) of this section rather than under this paragraph (f).

(g) *International signaling point codes (ISPCs).* An international section 214 authorization holder seeking to assign or transfer control of its international

section 214 authorization must identify in the application any ISPCs that it holds, and state whether the ISPC will be subject to the assignment or transfer of control.

(h) *Involuntary assignments or transfers of control.* In the case of an involuntary assignment or transfer of control to: a bankruptcy trustee appointed under involuntary bankruptcy; an independent receiver appointed by a court of competent jurisdiction in a foreclosure action; or, in the case of death or legal disability, to a person or entity legally qualified to succeed the deceased or disabled person under the laws of the place having jurisdiction over the estate involved; the applicant must make the appropriate filing no later than 30 days after the event causing the involuntary assignment or transfer of control.

(i) *Electronic filing.* Subject to the availability of electronic forms, all applications and notifications described in this section must be filed electronically through the International Communications Filing System (ICFS) or its successor system. A list of forms that are available for electronic filing can be found on the ICFS homepage. For information on electronic filing requirements, see §§ 1.10000 through 1.10018 of this chapter and the ICFS homepage at <https://www.fcc.gov/icfs>. See also §§ 63.20 and 63.53.

■ 11. Add § 63.26 to read as follows:

**§ 63.26 Renewal of International Section 214 Authority**

(a) *Renewal timeframe.* Each international section 214 authorization shall be subject to a renewal timeframe not to exceed 10 years from the date of the grant of international section 214 authority or modification, assignment, transfer of control, or renewal of the international section 214 authority. The Commission reserves its discretion to shorten the renewal timeframe on a case-by-case basis where the Commission deems it appropriate to require the international section 214 authorization holder to seek renewal of its international section 214 authority sooner than otherwise would be required, or to adopt conditions on the renewal of the international section 214 authority where the Commission determines that renewal otherwise would not be in the public interest.

(b) *Filing requirements.* Any party granted authority pursuant to section 214 of the Communications Act of 1934, as amended, to construct a new line, or acquire or operate any line, or engage in transmission over or by means of such additional line for the provision of common carrier communications

services between the United States, its territories or possessions, and a foreign point shall request renewal of the authority by formal application. The application for renewal of international section 214 authority shall contain the information required by § 63.27.

(c) *Streamlined renewal processing procedures.* A complete application seeking renewal of international section 214 authority shall be granted by the Commission 14 days after the date of public notice listing the application as accepted for filing if:

(1) The Commission does not refer the application to the executive branch agencies because the applicant does not have reportable foreign ownership and the application does not raise other national security, law enforcement, or other considerations warranting executive branch review;

(2) The application does not raise other public interest considerations, including regulatory compliance;

(3) The executive branch agencies do not separately request during the comment period that the Commission defer action and remove the application from streamlined processing; and

(4) No objections to the application are timely raised by an opposing party.

(d) *Authorizations pending renewal.* An applicant that has timely applied for renewal of its international section 214 authorization may continue providing service(s) under its international section 214 authority while its renewal application is pending review.

(e) *Referral of applications to the executive branch agencies.*

(1) The Commission will refer to the executive branch agencies an application for renewal of international section 214 authority where the applicant has reportable foreign ownership, consistent with § 1.40002 of this chapter.

(2) The Commission will also refer to the executive branch agencies the following applications for renewal of international section 214 authority, irrespective of whether the applicant has reportable foreign ownership:

(i) Renewal application where an applicant discloses that it uses and/or will use a foreign-owned managed network service provider;

(ii) Renewal application where an applicant discloses it has cross border facilities; and

(iii) Renewal application where an applicant certifies that it uses equipment or services identified on the Commission's "Covered List" of equipment and services deemed pursuant to the Secure and Trusted Communications Networks Act to pose an unacceptable risk to the national

security of the United States or the security and safety of United States persons.

(f) *Expiration and Cancellation of Authorization.* If an authorization holder fails to timely file an application for renewal of its international section 214 authority, the international section 214 authorization shall expire and be cancelled by operation of law. Authority is delegated to the Office of International Affairs to provide notice in advance of the renewal deadline.

(g) *New Application.* An international section 214 authorization holder whose international section 214 authorization is cancelled for failure to timely file a renewal application may file an application for a new international 214 authorization in accordance with the Commission's rules.

■ 12. Add § 63.27 to read as follows:

**§ 63.27 Applications for Renewal of International Section 214 Authority.**

An application for renewal of international section 214 authority shall include information demonstrating how the grant of the application will serve the public interest, convenience, and necessity. The application shall include the following information:

(a) The information requested in paragraphs (a) through (d), (h) through (k), and (m) through (v) of § 63.18;

(b) One or more of the following statements, as pertinent:

(1) *Global facilities-based authority.* If applying for renewal of authority to operate as a facilities-based international common carrier subject to § 63.22, the applicant shall:

(i) State that it is requesting renewal of section 214 authority to operate as a facilities-based carrier pursuant to § 63.27(b)(1) of the Commission's rules;

(ii) List any countries for which the applicant does not request renewal of section 214 authority under this paragraph (see § 63.22(a)); and

(iii) Certify that it will comply with the terms and conditions contained in §§ 63.21 and 63.22.

(2) *Global Resale Authority.* If applying for renewal of authority to resell the international services of authorized common carriers subject to § 63.23, the applicant shall:

(i) State that it is requesting renewal of section 214 authority to operate as a resale carrier pursuant to § 63.27(b)(2) of the Commission's rules;

(ii) List any countries for which the applicant does not request renewal of section 214 authority under this paragraph (see § 63.23(a) of this part); and

(iii) Certify that it will comply with the terms and conditions contained in §§ 63.21 and 63.23 of this part.

(3) *Other authorizations.* If applying for renewal of authority to acquire operate facilities or to provide services not covered by paragraphs (e)(1) and (e)(2) of this section, the applicant shall provide a description of the facilities and services for which it seeks renewal of authority. The applicant shall certify that it will comply with the terms and conditions contained in § 63.21 and § 63.22 and/or § 63.23, as appropriate. Such description also shall include any additional information the Commission shall have specified previously in an order, public notice or other official action as necessary for authorization. The applicant shall also state whether it has separately filed an application for international section 214 authority to acquire facilities or to provide new services not covered by §§ 63.18(e)(1), 63.18(e)(2), 63.27(e)(1), and 63.27(e)(2) nor covered by the previous grant of authority under § 63.18(e)(3) and explain whether the applicant is seeking approval to hold more than one authorization pursuant to the exception in § 63.21(b)(iii).

(c) An applicant shall apply for renewal of any or all of the authority provided for in paragraph (e) of this section in the same renewal application. The applicant may want to file separate applications for renewal of those services not subject to streamlined processing under § 63.12.

(d) Where the applicant is seeking renewal of facilities-based authority under paragraph (e)(3) of this section, a statement whether an authorization of the facilities is categorically excluded as defined by § 1.1306 of this chapter. If answered affirmatively, an environmental assessment as described in § 1.1311 of this chapter need not be filed with the application.

(e) An applicant must certify whether or not it discontinued service provided pursuant to its international section 214 authority for three consecutive months at any time during the preceding renewal timeframe.

(f) Any other information that the Commission or Commission staff have advised will be necessary to enable the Commission to act on the application.

(g) Subject to the availability of electronic forms, all applications described in this section must be filed electronically through the International Communications Filing System (ICFS) or its successor system. A list of forms that are available for electronic filing can be found on the ICFS homepage. For information on electronic filing requirements, see §§ 1.1000 through 1.10018 of this chapter and the ICFS homepage at <https://www.fcc.gov/icfs>. See also §§ 63.20 and 63.53.

■ 13. Add § 63.28 to read as follows:

**§ 63.28 Ongoing Reporting Requirements for International Section 214 Authorization Holders.**

(a) Each international section 214 authorization holder shall provide updated ownership information and other information to the Commission:

(1) Every three years following the date of the initial grant of an application to renew the international section 214 authority.

(2) Prior to an initial grant of an application to renew an authorization holder's international section 214 authority, the reporting requirement pursuant to this section shall commence three years following the date that the Commission grants an application for international section 214 authority or modification, assignment, or transfer of control of international section 214 authority.

(3) An authorization holder shall file a report every three years based on the date of the initial grant of its renewal application, until and unless the Commission grants a subsequent application for modification, assignment, transfer of control, or renewal of the international section 214 authority as filed by the authorization holder, at which point the three-year reporting cycle shall commence anew as of the date of the new grant.

(b) Each authorization holder shall include the following information in the report. The report must contain information that is current as of thirty (30) days prior to the date of the submission.

(1) The information requested in paragraphs (h) and (r) through (u) of § 63.18;

(2) Whether or not the authorization holder has discontinued service provided pursuant to its international section 214 authority as of the most recent renewal process or the most recent report.

(c) Each authorization holder shall submit its report through the International Communications Filing System (ICFS), or its successor system, in the file number associated with its international section 214 authorization.

(d) An authorization holder that has reportable foreign ownership pursuant to § 63.18(h) as of thirty (30) days prior to the date of the submission must also file a copy of the report directly with the Committee.

(e) Failure to submit timely, consistent, accurate, and complete information shall constitute grounds for enforcement action against the authorization holder, up to and including cancellation or revocation of the international section 214 authorization.

■ 14. Add § 63.29 to read as follows:

**§ 63.29 Cross Border International Telecommunications Facilities.**

*Initial Information Collection.* For purposes of the initial information collection, each international section 214 authorization holder shall report the information required in § 63.18(s) sixty (60) days after the effective date established by the Office of International Affairs following i) the completion of review by the Office of Management and Budget or ii) a determination by the Office of International Affairs that such review is not required. The Office of International Affairs shall revise this paragraph accordingly.

■ 15. Add § 63.30 to read as follows:

**§ 63.30 Failure to Comply with One-Time Information Collection.**

(a) *Automatic Cancellation of International Section 214 Authorization.* An international section 214 authorization will be automatically cancelled upon the authorization holder's failure to file the information required by the Order adopted in FCC 23–28 within thirty (30) days after the

date of publication in the **Federal Register** of a notice identifying the authorization holder as among the international section 214 authorization holders that failed to file the required information by the filing deadline.

(b) *Office of Management and Budget Review.* The information required by the Order adopted in FCC 23–28 shall not be required until the Office of International Affairs announces the completion of review by the Office of Management and Budget and the required compliance date and revises this section accordingly.

(c) *New Application.* An international section 214 authorization holder whose international section 214 authorization is cancelled for failure to timely file the information required by the Order adopted in FCC 23–28, may file an application for a new international 214 authorization in accordance with the Commission's rules.

(d) *Reinstatement Nunc Pro Tunc.* An international section 214 authorization holder whose international section 214 authorization is cancelled for failure to timely file the information required by the Order adopted in FCC 23–28 may file a petition for reinstatement *nunc pro tunc* of the international section 214 authorization. A petition for reinstatement will be considered if:

(1) It is filed within six months after the date of publication in the **Federal Register** of a notice identifying international section 214 authorization holders that failed to file the required information by the deadline described in paragraph (a) of this section;

(2) It demonstrates that the authorization holder is currently in operation and has customers; and

(3) Demonstrates good cause for the failure to timely file the information.

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