

FCC Aims to Expand Oversight of Foreign Ownership Interests in International Section 214 Authorization Holders

Potential rule changes could expand the scope of the disclosure and reporting obligations for FCC-regulated businesses.

On April 25, 2023, the Federal Communications Commission (FCC) released an Order and Notice of Proposed Rulemaking ([Order and NPRM](#)) that takes certain steps, and proposes others, to expand its oversight of international Section 214 authorization holders' ownership and operations. In particular, the Order requires holders of international Section 214 authorizations to participate in a onetime collection of information regarding their foreign ownership interests. The NPRM, meanwhile, seeks comment on rule changes that would, among other things:

- require applicants for international Section 214 authorizations, and for FCC consent for the transfer of control, assignment, or modification of such authority, to provide more detailed information regarding their ownership and operations; and
- establish a 10-year renewal and/or three-year periodic review requirement for holders of international Section 214 authorizations, to allow the FCC to assess whether such authorizations remain in the public interest.

The NPRM also proposes certain other rule changes that seek to streamline the FCC's administration of international Section 214 authority.

Notably, while the FCC is not soliciting input on the onetime information collection process established in the Order, interested parties will have an opportunity to weigh in on the proposals in the NPRM, and the FCC will consider stakeholders' comments before adopting any new rules in a subsequent order.

Background

To provide telecommunications services between the United States and any foreign point, an entity must first apply for an international Section 214 authorization from the FCC.¹ In addition, parties seeking to assign an international Section 214 authorization or transfer control of a holder of such authorization must seek the FCC's approval before completing such a transaction. In both cases, the FCC scrutinizes the qualifications of the prospective authorization holder, including the extent and nature of any foreign ownership interests of the prospective holder, as part of its public interest analysis.² The FCC also routinely refers international Section 214 applications that include reportable foreign owners to the

Committee for the Assessment of Foreign Participation in the United States Telecommunications Services Sector (the Committee, also informally known as Team Telecom), a group of Executive Branch agencies that evaluates risks that may arise from an applicant's foreign ownership.³ (For more information, see this Latham [Client Alert](#).)

The FCC also possesses the authority to reevaluate an existing authorization holder's qualifications at any time, and recently revoked the authority of certain carriers based on national security concerns. These actions followed ad hoc reviews undertaken at the recommendation of various Executive Branch agencies. However, the FCC does not currently exercise this oversight authority in any systematic manner. By taking steps, and proposing others, to exercise such oversight of international Section 214 authorizations on an ongoing basis, the Order and NPRM are the most recent in a number of actions that the FCC has taken to address national security, law enforcement, foreign policy, and trade policy concerns relating to the United States' communications networks and supply chain. By the same token, the information-collection process established in the Order, and the rule changes contemplated by the NPRM, stand to expand the scope of the disclosure and reporting obligations to which FCC-regulated businesses — and in turn, their existing and prospective owners and investors — would be subject.

The Order

The Order establishes a onetime information-collection process in which international Section 214 authorization holders will be required to disclose to the FCC certain details about their 10% or greater direct or indirect foreign interest holders, or certify that no such reportable foreign ownership interests exist. (¶¶ 18-20)

According to the Order, this information will help the FCC assess the extent and nature of foreign ownership interests in existing international Section 214 authorization holders, which will inform how it might implement the proposals set out in the NPRM. The FCC also plans to use the information that it collects to identify authorization holders that no longer provide services pursuant to their authority, or that have gone out of business. (¶ 16)

In the NPRM, the FCC proposes to cancel the authority of any international Section 214 authorization holder that does not comply with this onetime information-collection requirement. (¶¶ 25-26)

The NPRM

The NPRM proposes a number of rule changes that would expand the scope of the FCC's ongoing oversight of international Section 214 authorization holders, particularly with respect to their ownership and operations. Other of the NPRM's proposals would streamline the FCC's administration of such authority.

Most notably, the NPRM:

- seeks comment on whether to impose additional requirements on applicants for international Section 214 authority, and for FCC consent for the transfer of control, assignment, or modification of such authorizations, including by reducing the reportable foreign ownership threshold from 10% to 5%; and
- proposes to require international Section 214 authorization holders to renew their authority every 10 years and seeks comment on whether to adopt a triennial review process, to allow the FCC to assess whether continuing such authority is in the public interest.

New Application Requirements

Prospective international Section 214 authorization holders currently are required to make various public disclosures as part of the application process, including regarding any holders of direct or indirect interests of 10% or greater. The NPRM contemplates expanding applicants' disclosure obligations in several key respects.

First, the NPRM seeks comment on whether to reduce the reportable ownership threshold from 10% to 5%, compelling applicants to disclose certain minority interest holders that previously were not required to be reported. Acknowledging the potential burdens that a 5% threshold might present for applicants, the FCC also seeks comment on exceptions to this new requirement, such as for less-than-10% interest holders that are deemed to be insulated or otherwise passive under its rules, or allowing such interests to be filed confidentially. (¶¶ 89-97)

Second, the NPRM proposes to require applicants to provide additional details regarding the services that they currently or intend to provide, the facilities that they use or plan to use to provide services, the geographic areas in which they presently or expect to provide services, and the kinds of customers that they currently or plan to serve. (¶¶ 98-100)

Third, the NPRM proposes to require applicants to disclose whether they use or plan to use foreign-owned managed network service providers (MNSPs), or third parties to which they grant access to their telecommunications network, systems, or records to provide managed services in support of core telecommunications services, functions, or operations. Applicants that use MNSPs, or plan to do so, would be required to provide certain additional information about such arrangements to the FCC. (¶¶ 101-106)

Fourth, the NPRM proposes to require applicants to provide certain details about the facilities that they use or plan to use to provide services across the US-Mexico or US-Canada borders. In particular, applicants would be required to disclose the location, ownership, and types of equipment used in these cross-border facilities, as well as the services that they provide or expect to provide through such facilities. (¶¶ 107-121)

Fifth, the NPRM proposes to require applicants to certify compliance with cybersecurity standards, and to disclose whether they use or expect to use equipment or services from any company on the FCC's Covered List of communications equipment and services that have been determined by the government to pose an unacceptable risk to US national security or the security and safety of US persons pursuant to the Secure and Trusted Communications Networks Act of 2019. (¶¶ 122-126)

Renewal and/or Periodic Review of Authorizations

International Section 214 authorizations currently do not expire. The NPRM, however, proposes to require all authorization holders to periodically renew their authority — tentatively, every 10 years, although the FCC seeks comment on alternative timeframes. (¶¶ 41-48) Under this approach:

- authorization holders would be required to submit the same types of information in renewal applications that they provide in initial applications for authority (including the additional ownership and operational information contemplated by the above-outlined rule changes, insofar as they are adopted) (¶ 83);
- the FCC would apply the same public interest standard to renewal applications that it applies to initial applications for international Section 214 authorizations (¶¶ 55-56); and

- if an authorization holder fails to satisfy this burden, the authorization would be treated as expired upon the FCC's denial of its renewal application (¶ 58).

Relatedly, the NPRM seeks input on requiring entities that would become subject to this new renewal process to also submit updated ownership and operational information to the FCC every three years, between renewal proceedings. (¶¶ 146-155)

As an alternative to a renewal requirement, the NPRM proposes a periodic review process, whereby authorization holders would submit similar information to the FCC every three years to demonstrate that their continued possession of such authority is in the public interest. Under this approach, an authorization holder would retain its authority in perpetuity, subject to the FCC's exercise of its revocation authority, if deemed warranted by information disclosed in a triennial report. (¶¶ 27, 49-50)

Acknowledging the potential legal implications of the retroactive application of a renewal requirement on existing authorization holders, the NPRM also seeks comment on adopting a bifurcated approach, in which entities that already hold authority would become subject to the contemplated periodic review process, while authorizations that subsequently are issued would be subject to the proposed renewal requirement. (¶ 51)

Other Rule Changes

The NPRM proposes a number of other rule changes that would streamline the FCC's administration of international Section 214 authorizations, including by, among other things:

- requiring most entities that hold more than one international Section 214 authorization to surrender their excess authorizations (¶¶ 129-130);
- requiring entities to begin providing services pursuant to the international Section 214 authorization within one year after its grant (¶¶ 131-133); and
- requiring all entities that permanently discontinue services provided under their international Section 214 authorization to notify the FCC of the discontinuance and surrender their authority. (¶¶ 134-137)

Next Steps

Once the Order has been published in the Federal Register, the FCC's Office of International Affairs will issue a public notice with details on the onetime information-collection process, including the submission deadline. Comments on the proposals set out in the NPRM will be due 30 days after the date of its publication in the Federal Register, and reply comments will be due 60 days after its publication date.

If you have questions about this Client Alert, please contact one of the authors listed below or the Latham lawyer with whom you normally consult:

[Elizabeth R. Park](#)

elizabeth.park@lw.com
+1.202.637.1056
Washington, D.C.

[Jasmine D. Benjamin*](#)

jasmine.benjamin@lw.com
+1.202.654.7121
Washington, D.C.

[Michael H. Herman](#)

michael.herman@lw.com
+1.202.637.2170
Washington, D.C.

*Admitted in Maryland

You Might Also Be Interested In

[FCC Adopts Process Reforms for Foreign Ownership Reviews](#)

[FCC Adopts Standardized National Security and Law Enforcement Questions for Foreign Ownership Reviews](#)

[Committee on Foreign Investment in the United States — Key Questions Answered](#)

Client Alert is published by Latham & Watkins as a news reporting service to clients and other friends. The information contained in this publication should not be construed as legal advice. Should further analysis or explanation of the subject matter be required, please contact the lawyer with whom you normally consult. The invitation to contact is not a solicitation for legal work under the laws of any jurisdiction in which Latham lawyers are not authorized to practice. A complete list of Latham's Client Alerts can be found at www.lw.com. If you wish to update your contact details or customize the information you receive from Latham, [visit our subscriber page](#).

Endnotes

¹ See 47 C.F.R. § 63.18.

² See *id.* § 63.24.

³ See *Process Reform for Executive Branch Review of Certain FCC Applications and Petitions Involving Foreign Ownership*, Report and Order, 35 FCC Rcd 10927 (2020).