

FCC Proposes New Rules to Strengthen National Security in Submarine Cable Systems

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On November 21, 2024, the Federal Communications Commission (“FCC”) [voted](#) to release a [notice of proposed rulemaking](#) (the “NPRM”) aimed at strengthening its oversight of the global undersea communication cable network. The proposed rules in the NPRM would revise the FCC’s current submarine cable landing licensing rules and introduce procedures to address national security concerns. Since the agency’s last review in 2001, the technology, economics and national security environments surrounding these systems have changed greatly. The FCC is proposing modifications and seeks comment in various areas, including:

- clarifying and potentially expanding the scope of the license requirement to land submarine cables that connect the United States to foreign countries, U.S. territories or possessions or other locations within the United States and the information required for such a license;
- establishing a presumption that entities are ineligible for submarine cable landing licenses, including those whose applications were previously denied or revoked because of national security and law enforcement concerns, as well as those linked to certain foreign governments;
- updating disclosure and certification requirements regarding license applicants’ and licensees’ ownership, with a particular focus on non-U.S. ownership;
- updating disclosure and certification requirements related to submarine cable system operations, including in areas relevant to national security, such as Managed Network Service Providers (“MNSPs”), Network Operations Centers (“NOCs”), cybersecurity risk management plans and equipment from companies on the “Covered List” (an FCC-determined list of companies deemed to pose an unacceptable national security risk);
- requiring for the first time companies with international telecommunications authorizations to file renewal applications with the FCC;

- implementing a periodic review process of cable landing licenses every three years or shortening the 25-year license term for such licenses; and
- expediting the sharing of specific submarine cable data with federal agencies to improve response times to national security threats.

These and other proposed rule changes indicate the FCC's commitment to formalizing the license application process while prioritizing national security concerns. In particular, the proposed rule, if enacted, could have a significant impact on the national security review process undertaken by Team Telecom, which is formally known as the Committee for the Assessment of Foreign Participation in the United States Telecommunications Services Sector. Team Telecom evaluates certain FCC applications and licenses to assess potential national security and law enforcement risks. As an interagency committee, Team Telecom is comprised of members from the Departments of Justice, Defense and Homeland Security, along with advisors from other key government agencies.

Based on its review, Team Telecom can recommend: (1) approval of, or no comment on, a license or a license application; (2) denial of a license application or revocation or termination of a license; or (3) conditional approval of a license or license application with risk mitigation for applicants or licensees that raise national security or law enforcement concerns. Team Telecom can also re-assess existing licenses for emerging risks or noncompliance. Information from the FCC is an important part of Team Telecom's national security review process. Our key takeaways on what the NPRM could mean for national security reviews of submarine cable systems are below.

Key Takeaways

The FCC Wants More Insight into Owners, Operators, Vendors and Capacity Holders in Submarine Cable Systems

The FCC is growing more concerned about the potential for minority stakeholders from countries of concern to influence cable operations or use capacity in ways that could compromise national security. Consequently, the proposed rules would introduce additional reporting requirements and expand who must be disclosed as part of the license application or renewal process. They would also require more frequent reporting over the term of the license. Stakeholders should expect more scrutiny on owners, operators, vendors and significant individuals with voting power or equity in a submarine cable system.

Specifically, the proposed rules would define applicants and licensees as not only entities that own or control a cable landing station in the United States but also entities or individuals that directly or indirectly own or control 5% or more of a cable system. These applicants and licensees would be required to disclose their names and contact information, as well as those of other relevant parties. They would also be required to disclose whether they utilize any foreign-owned MNSPs for activities such as operations and management support, network operations and intrusion testing. Additionally, the proposed rules would mandate disclosure of any affiliations with foreign carriers, including entities that own or control a cable landing station in a foreign country. Certifications would also be required for processes that may involve vendors or other third parties, such as compliance with cybersecurity risk management plans.

By proposing to incorporate this information into the application and licensure process, the FCC is emphasizing the importance of understanding ownership, influence and access related to cable systems. The proposed rules signal the need to collect this data early and efficiently—not only during the initial application but also on an ongoing basis through required reporting throughout the license term. Following the submission of an application, Team Telecom may request additional information in areas that could pose potential national security risks. For example, if a cable system employs an MNSP from a country of concern, Team Telecom’s review process may seek specific details about the MNSP and inquire about other vendors involved with the cable system. As such, the initial application should be viewed as providing baseline information for assessing national security risks, with further details potentially required to complete any national security review.

The FCC Seeks More Frequent Reporting by Submarine Cable Systems on National Security-Related Matters

In the proposed rules, the FCC would require more frequent reporting from licensees. Currently, the FCC issues licenses for a 25-year term, meaning updates to the information provided in the initial license application are typically only submitted at the end of the term when a renewal is sought or when the licensee submits another type of application or notification that prompts an update to that information. Although some information, such as annual circuit capacity data, must already be submitted to the FCC on a regular basis, this data does not fully address the FCC’s areas of national security concern.

Under the proposed rules, the FCC would implement a periodic review process of licensees every three years. This approach would address the FCC’s concern about the lack of regular updates on certain ownership or cable system information during the 25-year license term. The proposed rules also suggest staggering periodic reporting by licensees to ensure effective intake by the FCC. According to the NPRM, this periodic

review process will enhance oversight of foreign entities with access to U.S. telecommunications networks and facilitate a more streamlined process for Team Telecom. Additionally, the FCC's proposed rules include the possibility of shortening the 25-year license term, and the FCC is seeking public comment on whether reducing the term could improve its information-collection efforts.

The Proposed Rules Suggest an FCC Intent to Speed Up Team Telecom Reviews

In the NPRM, the FCC emphasizes its commitment to formalizing and standardizing the application review process for submarine cable systems. Given that the proposed rules focus on national security, it appears that Team Telecom reviews would significantly benefit from such formalization and standardization. The type of information the FCC is requesting, both upfront as part of an application process and continually during the term of a license, has traditionally been collected during the Team Telecom review process. Additionally, certain requirements previously addressed through mitigation agreements with Team Telecom may now be incorporated into rules that apply universally to all applicants. This includes certification of ownership and foreign affiliate information, practices related to MNSPs and NOCs and compliance with cybersecurity risk management plans and other FCC regulations. By requiring standardized information in each initial application, this approach may reduce Team Telecom review time that would otherwise be spent requesting such data. This also ensures that applicants are fully aware of their national security obligations from the outset, rather than encountering them during mitigation negotiations.

The proposed rules would also allow for the expedited sharing of specific submarine cable data, including confidential information, between federal agencies by bypassing the current pre-notification process outlined in 47 C.F.R. § 0.442. Under the existing pre-notification process, applicants typically have a 10-day period to contest a federal agency's request for information. However, under the new rule, in certain situations, this data could be shared without prior notification to applicants, enabling a quicker federal response to national security issues. This could include providing the information to the member agencies of Team Telecom for consideration in a national security review.

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The global undersea communication cable network has evolved considerably since 2001, with rapid technological advancements and increased data connectivity. The FCC plays a crucial role in safeguarding the U.S. telecommunications infrastructure from potential threats, and as such, these proposed updates to the rules may be considered long overdue. However, now is the time for those involved with submarine cable systems to

take stock of the national security concerns illustrated in the NPRM and ensure responsiveness to the FCC's stated interest in protecting the national security of U.S. telecommunications systems.

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