

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)
)
Process Reform for Executive Branch Review) IB Docket No. 16-155
of Certain FCC Applications and Petitions)
Involving Foreign Ownership)

**EX PARTE SUPPLEMENTAL COMMENTS OF THE NATIONAL
TELECOMMUNICATIONS AND INFORMATION ADMINISTRATION**

Pursuant to 47 C.F.R. § 1.1206, on behalf of the Executive Branch, the National Telecommunications and Information Administration (NTIA), respectfully submits the following supplemental comments in connection with the above-captioned Notice of Proposed Rulemaking (NPRM).¹ On August 18, 2016, the Executive Branch, through NTIA, submitted initial comments in response to the NPRM;² and on September 2, 2016, the Executive Branch, through NTIA, submitted reply comments that addressed issues raised by other commenters.³ We submit these supplemental comments to further address the NPRM proposal to establish time periods for Executive Branch review of applications and petitions referred to it by the Commission, in light of the extensive comment on this issue by other entities including telecommunications companies, trade associations, and law firms.

¹ *Process Reform for Executive Branch Review of Certain FCC Applications and Petitions Involving Foreign Ownership*, IB Docket No. 16-155, Notice of Proposed Rulemaking (rel. June 24, 2016).

² Comments of National Telecommunications and Information Administration, IB Docket No. 16-155 (filed Aug. 18, 2016) (NTIA Comments), *available at* <https://ecfsapi.fcc.gov/file/10819006022362/Executive%20Branch%20Comments%20on%20IB%20Dkt%20No.%2016-155.pdf>. For convenience, all subsequent citations to “Comments” and “Reply Comments” shall refer to pleadings filed on August 18, 2016, and September 2, 2016, respectively, in IB Docket No. 16-155.

³ Reply Comments of National Telecommunications and Information Administration (NTIA Reply Comments), *available at* <https://ecfsapi.fcc.gov/file/10902899122508/Executive%20Branch%20Reply%20Comments%20in%20IB%20Dkt.%20No.%2016-155.pdf>.

Other commenters generally supported the NPRM provision that would require the Executive Branch to complete its review within 90 days or any permitted extension period, or be deemed to have no national security concerns with the granting of the license.⁴ Other commenters also generally supported the NPRM provision that extensions would be rarely granted and would not exceed a single extension of an additional 90 days.⁵

Although we share the goal of improving the Executive Branch's ability to review expeditiously and efficiently applications referred to it, we continue to believe that the rigid time frame the Commission proposes would not be feasible, for the reasons discussed in our initial and reply comments.⁶ Based on our experience reviewing a range of applications presenting varying national security and law enforcement concerns, we expect that some applications will inevitably require more time to review than the time periods proposed in the NPRM would permit, especially where specific concerns about a particular applicant or technology require additional work or resources to resolve. Although we assess the additional information and certification requirements proposed by the NPRM will reduce the time it takes to process most applications, until those requirements take effect, we cannot predict the precise amount of time that will be needed to review every such application. Accordingly, we believe that establishing rigid time periods for processing applications would be premature, and reiterate our proposal that the Commission issue the rule without timeframes so that it can assess its impact on the

⁴ See, e.g., Comments of Level 3 Communications, LLC at 2-5, *available at* https://ecfsapi.fcc.gov/file/108190289718483/Level%20Team%20Telecom%20Reform%20Comments_Final.pdf; Comments of Telstra at 5-6, *available at* https://ecfsapi.fcc.gov/file/1081839724359/Comments_of_Telstra.pdf.

⁵ See, e.g., Comments of INCOMPAS at 2, 7, *available at* [https://ecfsapi.fcc.gov/file/1081896873783/Comments%20of%20INCOMPAS%20\(IB%2016-155\)%20\(8-18-2016\).pdf](https://ecfsapi.fcc.gov/file/1081896873783/Comments%20of%20INCOMPAS%20(IB%2016-155)%20(8-18-2016).pdf); Comments of Sprint Corp. at 4, *available at* <https://ecfsapi.fcc.gov/file/1081852690485/Sprint%20Comments%2008182016.pdf>.

⁶ See NTIA Comments at 14-17; NTIA Reply Comments at 9-12.

Executive Branch's ability to expedite its reviews, based on experience and the operation of the new procedures in practice.

If the Commission decides to establish time periods through the current rulemaking, however, we strongly recommend that the Commission modify its proposal in two specific ways.

First, if the Commission establishes time periods, we propose that the default time period of 90 days and the extension period of an additional 90 days be increased to, respectively, 180 and 120 days. If the Commission were to adopt such extended time periods, we would continue to seek to process applications as expeditiously as possible and within 90 days where feasible; and, where not feasible, to process applications in the minimum time necessary beyond 90 days. In this regard, we note that, as stated in the NTIA Reply Comments, the Executive Branch would ensure that reviews are conducted in an efficient and diligent manner, that any procedural concerns or delays are rapidly resolved, and that changes in the status of pending applications are promptly communicated to the Commission. The longer time periods would also provide the Executive Branch with flexibility, where necessary and appropriate, to conduct thorough assessments of especially complex national security or law enforcement risks – including risks that could not easily be mitigated after issuance of a license.

Second, while the 180 and 120 day timeframes would be achievable for the great majority of the cases, some applications will require more time to process – due to, for example, the complexity of the national security or law enforcement issues raised or the back and forth required with the applicants – we propose that the rule include a mechanism whereby in exceptional circumstances the Executive Branch can, with appropriate transparency and oversight, extend the time period to continue its review of and efforts to address these issues, in order to provide informed and deliberate input to the Commission. In particular, as discussed in

more detail in the initial NTIA Comments, we propose that the rule permit the Executive Branch to further extend the time period for review beyond the initial 120-day extension period, until such time as any potential concerns are addressed. For those exceptional applications that require additional extensions of time, the Executive Branch would implement controls to ensure that any such determinations are made judiciously, and with the necessary accountability and transparency. Specifically, the decision that additional extensions are required would be made by one or more of the Senior Executive Service officials in the relevant agencies charged with overseeing Executive Branch review of that application.⁷ Additionally, the Executive Branch would notify the Commission and the applicant of any such extensions and as to the reasons why additional extensions of time are required (with classified or other sensitive information provided directly to the Commission), and we would continue to work expeditiously to resolve outstanding issues as quickly as feasible.

We appreciate your consideration of these views.

Respectfully submitted,



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⁷ See NTIA Reply Comments at 10; NTIA Comments at 16.