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FCC Proposes Major Expansion of Oversight of Foreign Ownership of U.S. Telecommunications Companies

By John Gasparini

On April 20, 2023, the Federal Communications Commission ("FCC") proposed new rules to reshape and significantly expand reporting and FCC review of non-U.S. ownership interests in companies authorized to provide international telecommunications services under Section 214 of the Communications Act, including making those authorizations subject to renewal and imposing ongoing reporting obligations.[1] The FCC also adopted a one-time collection of updated ownership information from these Section 214 authorization holders. In addition to increasing compliance burdens for licensees, these changes may also significantly impact investors in FCC-licensed businesses.

One-Time Data Collection

The FCC's actions come in two parts: an Order and a Notice of Proposed Rulemaking. The Order imposes a one-time ownership disclosure requirement on all current holders of international Section 214 authorizations. Noting that these disclosures are currently only required at the time of application, and that Section 214 authorizations currently do not require renewal, the FCC explains that its records are out of date and it therefore cannot effectively assess national security and other threats to the U.S. telecommunications industry stemming from non-U.S. ownership interests. Therefore, the FCC is seeking a one-time disclosure of the same information that would be included in an initial application—identifying any 10% direct or indirect foreign interest holders, or certifying the absence of any.

Information collections such as those at issue here require the approval of the Office of Management and Budget, and that approval will need to be published in the Federal Register. The FCC's Office of International Affairs must also develop the requisite forms for information submission. However, the FCC Order sets a filing deadline of no later than 30 days following publication in the Federal Register, which may not provide adequate time for licensees with complex ownership structures to collect the necessary information. Absent a legal challenge to the Order's legality, holders of international Section 214 authorizations should make preparations to quickly collect and organize the required information.

Proposed Renewal of International Section 214 Authorizations

The FCC's proposed rule changes, while not yet final, are potentially far more significant. The FCC proposes to require renewal of international Section 214 authorizations every 10 years; currently, no renewal is required. The proposed rules suggest that this renewal process may be equally as burdensome as initial applications, as the FCC proposes requiring the same application contents for renewals as for initial applications.

In addition to increasing compliance burdens, these requirements will inevitably create business uncertainty, as a shifting geopolitical landscape may raise obstacles to renewal in certain cases. The renewal process also creates a new opportunity for the Committee for the Assessment of Foreign Participation in the United States Telecommunications Services Sector, formerly known as Team Telecom, to conduct a more probing national security review of an application, and impose additional mitigation and reporting requirements. The Committee, made up of executive branch agencies similar to those comprising CFIUS, examines national security and law enforcement risks stemming from foreign ownership of telecommunications businesses in the U.S., and has not previously had a clear opportunity to engage with a licensee other than at the time of its initial application or a transfer of control. Committee reviews are lengthy, often taking upwards of six months, and their expansion into renewals may lead to more mitigation agreements and potentially further delays if agency resources are not expanded commensurately.

Expanded Application Requirements

Compounding the issues presented by renewal, the FCC also proposed several expansions to its application requirements. Chief among these is a reduction in the ownership reporting threshold, down from its current level of 10% direct or indirect interest to just 5%, and a requirement to update these disclosures every three years. In addition to the administrative burden, ownership disclosures in FCC applications are typically filed publicly, unlike those submitted to the Committee and other agencies. Expanded public disclosure, along with the lowered threshold, will significantly impact investment decisions and structure for non-U.S. investors.

Lastly, the FCC proposes an expansion of application requirements to include detailed listing of services, geographic markets, non-U.S. managed network services providers, facilities used to cross U.S. borders, and cybersecurity and other equipment certifications. In addition, an array of other administrative changes are on deck, including limitations on holding multiple international Section 214 authorizations and a requirement to commence service within one year.

Impact and Next Steps

Holders of international Section 214 authorizations should begin preparing for the one-time data collection in the near future, and not wait until the deadline is firmly established.

If finalized, the proposed rules will impact not only licensees, but the individual investors, funds, and investment managers who hold and control interests in Section 214 authorization-holders. These proposed rules will be subject to public comment over the coming months, and the rules may change before finalization. While many FCC proposals don’t become final rules, national security and foreign investment review have been an area of bipartisan cooperation and action in recent years, so engagement in the process is imperative for concerned parties.

Paul Hastings attorneys will closely monitor this process as it develops, assisting clients as they navigate this and other complex FCC processes.

This Client Alert is based on a draft version of the FCC’s Order and Notice of Proposed Rulemaking. The FCC routinely releases drafts of its orders ahead of its public meetings and votes. Should the final version of the agency’s action materially differ from the draft, this Client Alert will be updated accordingly.

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[1] *See* Review of International Section 214 Authorizations to Assess Evolving National Security, Law Enforcement, Foreign Policy, and Trade Policy Risks, Draft Order and Notice of Proposed Rulemaking, IB Docket No. 23-119, available at: https://docs.fcc.gov/public/attachments/DOC-392199A1.pdf.

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