

ALERT

FCC Continues Team Telecom Modernization, Seeking Comment on Standard Questions for Applicants

January 5, 2021

On December 30, 2020, the Federal Communications Commission's (FCC or Commission) International Bureau published a Public Notice seeking comment on a set of standardized national security and law enforcement questions (Standard Questions) for applicants whose applications will be referred for foreign ownership review to the Committee for the Assessment of Foreign Participation in the United States Telecommunications Services Sector (the Committee)—the inter-agency working group previously referred to as "Team Telecom." This is the latest step in the Commission's efforts to modernize the Team Telecom process, and was authorized in the Commission's Team Telecom Modernization Report and Order.

The Standard Questions will have a broad impact on investors and regulated entities—once effective, they will need to be answered and submitted to the Committee prior to or at the same time that applicants file certain petitions or applications with the FCC. Wiley's National Security and Telecom, Media & Technology practices have been deeply engaged in these efforts, as well as reforms to the Committee on Foreign Investment in the United States (CFIUS). If your organization would like to engage with the FCC in the development of the Standard Questions, or if you have questions about the FCC's steps to modernize the Team Telecom process, do not hesitate to reach out to one of the authors listed on the alert.

Team Telecom Modernization Report & Order Background

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In its September 30, 2020 Team Telecom Modernization Report and Order, the Commission adopted rules to improve timeliness and transparency of the former Team Telecom process. One update to the process is that “applicants with reportable foreign ownership when applying for international section 214 authority, submarine cable licenses, and section 310(b) foreign ownership declaratory rulings, [will now be] required to file with the Committee—prior to or at the same time they file their application with the Commission—responses to [the Standard Questions].” (Report and Order at 65).

The International Bureau was directed to draft the initial Standard Questions, which it has begun with this Public Notice. Once the Standard Questions have been finalized and are effective, the International Bureau is also charged with updating them, as appropriate.

Proposed Standard Questions

As directed by the Report and Order, the proposed Standard Questions cover five general categories: “(1) corporate structure and shareholder information; (2) relationships with foreign entities; (3) financial condition and circumstances; (4) compliance with applicable laws and regulations; and (5) business and operational information, including services to be provided and network infrastructure.” (Public Notice at 2).

Substantively, the proposed Standard Questions are similar to the sample triage questions that NTIA provided to the FCC earlier in this proceeding; however, there are notable updates. For example:

- In the NTIA’s sample triage questions, inquiries about applicants’ criminal records vary. For example, the sample triage questions for cable landing licenses asked about “[c]riminal violations of U.S. law, including espionage-related acts or criminal violations of the [ITAR] or the [EAR],” whereas the International 214 transfer of control or assignment sample triage questions asked about “[e]spionage-related acts, or criminal acts including violations of the [ITAR] or other US law[.]” The proposed Standard Questions standardize this question, asking—in all but the broadcast-specific Standard Questions—about “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)[.]” The Standard Questions for broadcast licensees ask specifically about violations of the Foreign Agents Registration Act (FARA).
- The proposed Standard Questions also add specific questions. For example, the proposed Standard Questions for common carrier Section 310(b) petitions ask if the licensee’s total number of subscribers, total gross revenue for the preceding fiscal year, or percentage of total gross revenue per category of customer for the preceding fiscal year are expected to change, and if so, how. They also ask if the licensee’s customer base is expected to change.
- In addition, the proposed Standard Questions are in some cases broader in scope than NTIA’s sample triage questions. For example, while the sample questions for broadcaster Section 310(b) petitions sought information regarding foreign relationships of only the Petitioner, the proposed Standard Questions for such petitions expand this inquiry to also cover any entity with a 5% or greater equity (non-voting) and/or voting interest or a controlling interest.

The full content of the International Bureau's six proposed sets of Standard Questions—one for each type of application or petition that will be referred to the Committee—can be found at the below links:

- International Section 214 Authorization Applications
- Applications for an Assignment or Transfer of Control on an International Section 214 Authorization
- Submarine Cable Landing License Applications
- Applications for an Assignment or Transfer of Control on a Submarine Cable Landing License
- Section 310(b) Petitions for Declaratory Ruling Involving a Broadcast Licensee
- Section 310(b) Petitions for Declaratory Ruling Involving a Common Carrier Wireless or Common Carrier Earth Station Licensee

Additionally, the International Bureau has published a Personally Identifiable Information (PII) Supplement for all Standard Questions.

Next Steps for the Development of the Standard Questions

Comments and reply comments will be due 30 and 45 days, respectively, after the Public Notice is published in the Federal Register. The International Bureau is seeking comment generally, including whether any proposed questions are not necessary or if there are additional questions that should be added. It is also seeking comments on key definitions, which are critical to determining the scope of the required answers.

The International Bureau expects to issue an Order with the final Standard Questions, which will be made available on the FCC's website once they are effective. Importantly, until that time, the international Bureau makes clear that the Committee will continue to send its own questions to applicants and petitioners upon referral.

Once finalized, the International Bureau is also charged with reevaluating the Standard Questions. One question it asks in the Public Notice is how often, and under what circumstances, it should do so.