FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 0, 1, and 43

[OI Docket No. 24–523, MD Docket No. 24–524; FCC 24–119; FR ID 282229]

Review of Submarine Cable Landing License Rules and Procedures To Assess Evolving National Security, Law Enforcement, Foreign Policy, and Trade Policy Risks; Schedule of Application Fees

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Federal Communications Commission (''FCC'' or ''Commission'') takes another important step to protect the Nation's submarine cable infrastructure from threats in an evolving national security and law enforcement landscape by undertaking the first major comprehensive review of the Commission's submarine cable rules since 2001. This review seeks to develop forward-looking rules to better protect submarine cables, identify and mitigate harms affecting national security and law enforcement, and facilitate the deployment of submarine cables and capacity to the market. Among other things, the Commission proposes to adopt a three-year periodic reporting requirement for submarine cable landing licenses; in the alternative, the Commission seeks comment on shortening the current 25-year submarine cable license term or adopting a shorter license term in combination with periodic reporting. The Commission also proposes or seeks comment on codifying the Commission's legal jurisdiction and other legal requirements in its rules to provide regulatory certainty to submarine cable owners and operators. Additionally, the Commission proposes and seeks comment on appropriate applicant and application requirements to account for the evolution of technologies and facilities and changes in the national security landscape over the last two decades and to ensure the Commission has targeted and granular information regarding the ownership, control, use of a submarine cable system, and other things, which are critical to the Commission's review to assess potential national security risks and other important public interest factors. Further, the Commission seeks comment on improving the quality of the circuit capacity data and facilitating the sharing of such information with other Federal agencies. Through these proposals, the Commission seeks to ensure that the Commission is exercising appropriate oversight of submarine cables to safeguard U.S. communications networks.

DATES: Comments are due on or before April 14, 2025; and reply comments are due on or before May 12, 2025. Written comments on the Paperwork Reduction Act proposed information collection requirements must be submitted by the public, Office of Management and Budget (OMB), and other interested parties on or before May 12, 2025.

ADDRESSES: Pursuant to §§ 1.415 and 1.419 of the Commission's rules, 47 CFR 1.415, 1.419, interested parties may file comments and reply comments on or before the dates indicated in the **DATES** section of this document. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS). You may submit comments, identified by OI Docket No. 24–523 and MD Docket No. 24–524, by any of the following methods:

- *Electronic Filers:* Comments may be filed electronically using the internet by accessing the ECFS: *https://www.fcc.gov/ecfs.*
- *Paper Filers:* Parties who choose to file by paper must file an original and one copy of each filing.
- Filings can be sent by hand or messenger delivery, by commercial courier, or by the U.S. Postal Service. All filings must be addressed to the Secretary, Federal Communications Commission.
- Hand-delivered or messenger-delivered paper filings for the Commission's Secretary are accepted between 8:00 a.m. and 4:00 p.m. by the FCC's mailing contractor at 9050 Junction Drive, Annapolis Junction, MD 20701. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes and boxes must be disposed of before entering the building.
- Commercial courier deliveries (any deliveries not by the U.S. Postal Service) must be sent to 9050 Junction Drive, Annapolis Junction, MD 20701.
- Filings sent by U.S. Postal Service First-Class Mail, Priority Mail, and Priority Mail Express must be sent to 45 L Street NE, Washington, DC 20554.
- *People with Disabilities.* To request materials in accessible formats for people with disabilities (braille, large print, electronic files, audio format), send an email to *fcc504@fcc.gov* or call the Consumer & Governmental Affairs Bureau at 202–418–0530 (voice), 202–418–0432 (TTY).

Send a copy of your comment on the proposed information collection to Cathy Williams, FCC, via email to *PRA@fcc.gov* and to *Cathy.Williams@fcc.gov.* Include in the comments the OMB control number 3060–0944.

FOR FURTHER INFORMATION CONTACT: Desiree Hanssen, Attorney Advisor, Telecommunications and Analysis Division, Office of International Affairs, at (202) 418–0887 or via email at *Desiree.Hanssen@fcc.gov.* For additional information concerning the Paperwork Reduction Act information collection requirements contained in this document, send an email to *PRA@fcc.gov* or contact Cathy Williams, Office of Managing Director, at (202) 418–2918 or *Cathy.Williams@fcc.gov.*

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rulemaking (*NPRM*), in OI Docket No. 24–523 and MD Docket No. 24–524; FCC 24–119, adopted on November 21, 2024, and released on November 22, 2024. The full text of this document is available on the FCC's website at *https://docs.fcc.gov/public/attachments/FCC-24-119A1.pdf.* The Notice of Proposed Rulemaking is adopted pursuant to sections 1, 4(i), 4(j), 201–255, 303(r), 403, 413 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i), 154(j), 201–255, 303(r), 403, 413, and the Cable Landing License Act of 1921, 47 U.S.C. 34–39, and Executive Order 10530, section 5(a) (May 12, 1954) reprinted as amended in 3 U.S.C. 301.

To request materials in accessible formats for people with disabilities, send an email to *FCC504@fcc.gov* or call the Consumer & Governmental Affairs Bureau at (202) 418–0530 (voice), (202) 418–0432 (TTY).

Providing Accountability Through Transparency Act. Consistent with the Providing Accountability Through Transparency Act, Public Law 118–9, a summary of this document is available on *https://www.fcc.gov/proposed-rulemakings.*

Initial Paperwork Reduction Act of 1995 Analysis. This document contains proposed information collection requirements. The Commission, as part of its continuing effort to reduce paperwork burdens, invites the general public and the Office of Management and Budget (OMB) to comment on the information collection requirements contained in this document, as required by the Paperwork Reduction Act of 1995, Public Law 104–13. Public and agency comments are due May 12, 2025.

Comments should address: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's

burden estimates; (c) ways to enhance the quality, utility, and clarity of the information collected; (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology; and (e) way to further reduce the information collection burden on small business concerns with fewer than 25 employees. In addition, pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, see 44 U.S.C. 3506(c)(4), the Commission seeks specific comment on how the Commission might further reduce the information collection burden for small business concerns with fewer than 25 employees.

Synopsis

I. Notice of Proposed Rulemaking

1. In the *NPRM*, the Commission initiates a comprehensive review of its submarine cable rules to develop forward-looking rules to better protect submarine cables, identify and mitigate harms affecting national security and law enforcement, and facilitate the deployment of submarine cables and capacity to the market. The Commission believes this proceeding will improve Commission review and oversight of submarine cable landing licenses and ensure each licensee continues to serve the public interest in an evolving national security and law enforcement landscape.

A. Legal Authority Under the Cable Landing License Act of 1921

1. Commission Jurisdiction

a. General License Requirement

2. As an initial matter, the Commission proposes to codify in its rules when a submarine cable license is required under the Cable Landing License Act. The Cable Landing License Act states that ''[n]o person shall land or operate in the United States any submarine cable directly or indirectly connecting the United States with any foreign country, or connecting one portion of the United States with any other portion thereof, unless a written license to land or operate such cable has been issued by the President.'' The Cable Landing License Act further states that ''[t]he conditions of sections 34 to 39 of this title shall not apply to cables, all of which, including both terminals, lie wholly within the continental United States.'' [1]

3. Specifically, the Commission proposes to adopt a rule stating that a submarine cable landing license must be obtained prior to landing a submarine cable that connects:

(1) the continental United States with any foreign country;

(2) Alaska, Hawaii or the U.S. territories or possessions with a

(i) foreign country,

(ii) the continental United States, or

(iii) with each other; or

(3) points within the continental United States, Alaska, Hawaii, or a territory or possession in which the cable is laid in international waters.

Although the Commission believes that the scope of the Cable Landing License Act has been well-understood, the Commission also believes that codifying these requirements will bring additional clarity to the application process and provide regulatory certainty to submarine cable owners and operators.

b. Submarine Cable System Definition

4. For the same reasons the Commission proposes to codify in its rules when a submarine cable landing license must be obtained, the Commission seeks comment generally on whether to adopt a definition of a submarine cable system. Conceptually and in simple terms, a submarine cable system is comprised of a cable laid beneath the water that carries telecommunication transmission signals between two or more cable landing stations containing equipment that converts submarine cable signals to terrestrial signals.[2] The wet segment of the submarine cable system makes landfall at the beach manhole or beach joint that, in turn, connects to the dry segment and submarine cable landing stations. A submarine cable landing station is a dry land facility where submarine cables terminate traffic, allowing voice, data, and internet to be transmitted to terrestrial or local networks.[3] At the terminal, equipment such as Submarine Line Terminal Equipment (SLTE),[4] converts cable signals to terrestrial signals allowing the cable to interconnect to terrestrial facilities in the United States.

5. Based on the description above, the Commission seeks comment on whether it is necessary to adopt a definition of submarine cable for purposes of the Commission's licensing process. If so, should the Commission define a submarine cable as a cable(s) laid beneath the water [5] that transmits voice, data, and internet between terminal cable landing stations that, among other functions, contain the SLTE located in the continental United States, Alaska, Hawaii, or the U.S. territories or possessions. The Commission believes that defining a submarine cable accordingly would account for a submarine cable system that may have more than one terminal landing point

[1] In 1921, the definition of ''United States'' included ''the Canal Zone, the Philippine Islands, and all territory, continental or insular, subject to the jurisdiction of the United States of America.'' In 1946, following the proclamation of the independence of the Philippines by the President, the definition was amended to remove the Philippines. In 1959, Hawaii and Alaska became part of the United States and were admitted as states. The Cable Landing License Act definition, however, was not later amended to incorporate Hawaii and Alaska as part of the continental United States, or other territories or possessions.

[2] In the Technical Appendix, the Commission provides a technical description of a submarine cable system for informational purposes.

[3] Cable landing stations contain equipment that supplies power to optical submarine cables and equipment that receives signals from submarine cables and transmits signals to a backhaul network that terminates at a Point of Presence (PoP). A data center can serve as a cable landing station, and PoPs can be located within a cable landing station or data center.

[4] The SLTE determines the cable's data throughput or performance.

[5] The Cable Landing License Act does not apply to submarine cables wholly within the continental United States, such as a cable traversing a river or a lake located wholly within the continental United States. A submarine cable landing license is required under the Cable Landing License Act, however, if a cable connects the United States to a foreign country, such as Canada or Mexico. The Commission has granted cable landing licenses, for instance, (1) to land and operate a submarine cable under the Rio Grande River connecting the United States and Mexico, (2) to land and operate a submarine cable located within a tunnel traversing the Detroit River between the United States and Canada, and (3) to land and operate a submarine cable across Lake Ontario connecting the United States and Canada. File No. SCL–LIC–20210930–00042, *Actions Taken Under Cable Landing License Act,* Public Notice, Report No. SCL–00376, 37 FCC Rcd 7380, 7381–82 (IB 2022) (granting a cable landing license to Neural Networks USA LLC ''for the purpose of landing and operating a non-common carrier fiber optic submarine cable, the Neutral Networks Laredo Cable, that connects Laredo, Texas and Nuevo Laredo, Tamaulipas, Mexico,'' which ''will consist of three fiber optic cables in a seven duct conduit extending 251 feet under the Rio Grande River''); *GTE Sprint Communications Corp.; Application for a license to land in the United States a submarine cable extending between the United States at Detroit, Michigan and Canada at Windsor, Ontario,* S–C–L–85–002, Cable Landing License, 1986 WL 292524 at *1, paras. 2, 4 (CCB Jan. 10, 1986) (granting to GTE Sprint Communications Corp. a cable landing license ''to land and operate a submarine cable between Detroit, Michigan and Windsor, Ontario, Canada,'' which ''will be located within the conduit space of the Detroit-Windsor tunnel which traverses the Detroit River between Detroit[,] Michigan and Windsor, Ontario''); File No. SCL–LIC–20180216–00002, *Actions Taken Under Cable Landing License Act,* Public Notice, Report No. SCL–00226, DA 18–1026, 2018 WL 4851455 at *2 (IB 2018) (granting a cable landing license to Crosslake Fiber USA LP ''for the purpose of constructing, landing and operating a private fiber-optic submarine cable network, the Crosslake Fibre cable system, connecting Toronto, Ontario, with Cambria, New York,'' which ''will consist of a single, unrepeatered segment across Lake Ontario'').

located on or near the coast. Moreover, the Commission believes this definition is sufficiently flexible to also account for the various technical options available to cable owners and operators for routing traffic from a cable landing station located near the coast—which may have only certain equipment such as Power Feed Equipment (PFE) [6]—to another cable landing station to connect to a PoP, or similar facility. The Commission seeks comment on this definition and whether it would capture the current state of submarine cable systems and account for the evolution and upgrades of submarine cable technologies.

c. Public Interest Standard

6. The Commission proposes to codify in its rules the longstanding practice that applicants seeking a submarine cable landing license or modification, assignment, transfer of control, and renewal or extension of a cable landing license must include in their application information demonstrating how the grant of the application will serve the public interest, convenience, and necessity, consistent with the Commission's authority to withhold or revoke any license where doing so ''will assist in securing rights for the landing or operation of cables in foreign countries, or in maintaining the rights or interests of the United States or of its citizens in foreign countries, or will promote the security of the United States.'' The Commission has long found that national security, law enforcement, foreign policy, and trade policy concerns are important to its public interest analysis of submarine cable applications, and these concerns warrant continued consideration in view of evolving and heightened threats to the Nation's communications infrastructure.[7] The Commission's determination assesses whether the public interest, convenience, and necessity would be served by the grant of an application for a cable landing license or modification, assignment, transfer of control, and renewal or extension of a cable landing license and is based on the totality of the circumstances presented by each application, supplemented with additional information as necessary. The Commission seeks comment on this proposed codification.

d. Character Qualifications

7. The Commission proposes to codify in its rules regarding submarine cable applications the Commission's longstanding practice regarding the character qualifications of applicants for Commission licenses and authorizations. Specifically, the Commission proposes that it will consider whether an applicant seeking a cable landing license or modification, assignment, transfer of control, and renewal or extension of a cable landing license has the requisite character qualifications, including whether the applicant has violated the Cable Landing License Act, the Communications Act, or Commission rules, including making false statements or misrepresentations to the Commission; whether the applicant has been convicted of a felony; and whether there is an adjudicated determination that the applicant has violated U.S. antitrust or other competition laws, has been found to have engaged in fraudulent conduct before another government agency, or has engaged in other non-FCC misconduct the Commission has found to be relevant in assessing the character qualifications of a licensee or authorization holder.[8] The Commission has found in other contexts that such conduct demonstrates that an applicant may fail to comply with the Commission's rules and policies as well as any conditions on its authorization.[9] The public interest may therefore require, in a particular case, that the Commission deny an application for a cable landing license or modification, assignment, transfer of control, and renewal or extension of a cable landing license because the applicant has violated the Cable Landing License Act, the Communications Act, or the Commission rules, or other laws that may be indicative of the applicant's truthfulness and reliability, or that the Commission revoke a cable landing license on such grounds. The Commission believes consideration of an applicant's or cable landing licensee's regulatory compliance and adherence to other relevant laws is also consistent with the Commission's review of applications in other contexts and is important to the Commission's assessment as to whether the public interest, convenience, and necessity would be served by grant of the applications. The Commission seeks comment on this proposed codification.

e. Process To Withhold or Revoke a Cable Landing License

8. In the *NPRM,* the Commission proposes and seeks comment on adopting a procedural framework that it may use to consider whether withholding a grant of a cable landing license or revocation of a cable landing license is warranted pursuant to the Cable Landing License Act and Executive Order 10530. The Commission has specific statutory authority to withhold or revoke cable landing licenses under the Cable Landing License Act and Executive Order 10530. Section 35 of the Cable Landing License Act states that ''[t]he President may withhold or revoke such license when he shall be satisfied after due notice and hearing that such action will assist in securing rights for the landing or operation of cables in foreign countries, or in maintaining the rights or interests of the United States or of its citizens in foreign countries, or will promote the security of the United States . . . .'' In addition, section 5 of Executive Order 10530 states that the Commission is ''designated and empowered to . . . withhold[ ] or revoke licenses to land or operate submarine cables in the United States . . . .'' The Commission has not prescribed specific procedures applicable to withholding or revocation of a cable landing license, yet in the *Executive Branch Review Report and Order,* it has stated that if it is

[6] The PFE, in general, provides the electrical current that powers submarine cable system repeaters and/or optical branching units, and are located in or close to terminal landing stations.

[7] *See Executive Branch Review Report and Order,* 85 FR 76360 (November 27, 20220), 35 FCC Rcd at 10928–29, para. 3 (''In adopting rules for foreign carrier entry into the U.S. telecommunications market over two decades ago in its *Foreign Participation Order,* the Commission affirmed that it would consider national security, law enforcement, foreign policy, and trade policy concerns in its public interest review of application for international section 214 authorizations and submarine cable landing licenses and petitions for declaratory ruling under section 310(b) of the Act.''); *see, e.g., Applications of T-Mobile US, Inc. and Sprint Corporation for Consent to Transfer Control of Licenses and Authorizations, et al.,* WT Docket 18–197, Memorandum Opinion and Order, Declaratory Ruling, and Order of Proposed Modification, 34 FCC Rcd 10578, 10732–33, para. 349 (2019) (''When analyzing a transfer of control or assignment application that involves foreign investment, we also consider public interest issues related to national security, law enforcement, foreign policy, or trade policy concerns.'').

[8] The term ''non-FCC misconduct'' refers to misconduct other than a violation of the Rules or the Act. The Commission and the courts have recognized that ''[t]he FCC relies heavily on the honesty and probity of its licensees in a regulatory system that is largely self-policing.'' Reliability is a key, necessary element to operating a broadcast station in the public interest. An applicant or licensee's propensity to comply with the law generally is relevant because a willingness to be less than truthful with other government agencies, to violate other laws, and, in particular, to commit felonies, is potentially indicative of whether the applicant or licensee will in the future conform to the Commission's rules or policies.

[9] *See also MCI Telecommunications Corp.; Petition for Revocation of Operating Authority,* 3 FCC Rcd 509, 512, n.14 (1988) (stating that character qualifications standards adopted in the broadcast context, while not applicable to common carriers, can provide guidance in the common carrier context).

considering revoking a license that was granted following referral to the Committee for the Assessment of Foreign Participation in the United States Telecommunications Services Sector (the Committee) or its predecessor pursuant to Executive Order 13913, it will provide ''such notice and an opportunity to respond as is required by due process and applicable law, and appropriate in light of the facts and circumstances.'' [10] The Commission seeks to adopt a process applicable to withholding or revocation of cable landing licenses that will enable it to fulfill its statutory responsibilities—including, among other things, promotion of the national and economic security of the United States and other public interest considerations, such as character issues—while ensuring procedural safeguards to protect licensees' due process rights.

9. Specifically, the Commission seeks comment on integrating the approach it utilized in recent section 214 revocation proceedings—and which the Court of Appeals for the D.C. Circuit upheld [11]—where the Commission exercised its discretion to ''resolve disputes of fact in an informal hearing proceeding on a written record,'' and reasonably determined that the issues raised in those cases could be properly resolved through the presentation and exchange of full written submissions before the Commission itself.[12] The Commission tentatively finds that it may exercise similar procedural discretion in its evaluation of each case as to whether withholding or revocation of a cable landing license is warranted. The Commission believes that the statutory language ''withhold . . . such license'' is identical to the concept of denying an application. For purposes of submarine cable licenses, withholding of a license would apply to the Commission's consideration of a grant of an initial application for a cable landing license and an application to modify, assign, transfer control of, or renew or extend a cable landing license.[13] The Commission seeks comment on whether it may use the same informal hearing process or an alternative process if it considers termination of a cable landing license due to a licensee's failure to comply with any condition of the license.

10. Further, the Commission proposes to modify the Office of International Affairs' (OIA) existing delegated authority to codify the Commission's existing ability to deny an application and to revoke and/or terminate a submarine cable landing license under the Cable Landing License Act and Executive Order 10530.[14] The Commission also proposes to delegate authority to OIA to implement these procedures described above for denial, revocation, and/or termination, as required by due process and applicable law and in light of the relevant facts and circumstances, including providing the applicant or licensee with notice and opportunity to respond.[15]

(i) Due Process and Procedural Requirements

11. The Commission tentatively finds that the process it seeks to apply in cases involving withholding or revocation of cable landing licenses—which, in effect, would constitute an informal hearing process through the presentation and exchange of full written submissions before the Commission—is consistent with due process and procedural requirements under relevant statutes including the Cable Landing License Act, the Communications Act, and the Administrative Procedure Act (APA). The Cable Landing License Act sets forth, among other things, that ''[t]he President may withhold or revoke such license when he shall be satisfied after due notice and hearing that such action will assist in securing rights for the landing or operation of cables in foreign countries, or in maintaining the rights or interests of the United States or of its citizens in foreign countries, or will promote the security of the United States . . . .'' The authority vested in the President, including the authority to withhold or revoke cable landing licenses, is delegated to the Commission pursuant to Executive Order 10530, on the condition that ''[n]o such license shall be granted or revoked by the Commission except after obtaining approval of the Secretary of State and such advice from any executive department or establishment of the Government as the Commission may deem necessary.'' [16] Currently, the Commission's rules codify as a condition of such license that ''[t]he cable landing license is revocable by the Commission after due notice and opportunity for hearing pursuant to Section 2 of the Cable Landing License Act, 47 U.S.C. 35, or for failure to comply with the terms of the license or with the Commission's rules.'' [17]

12. The Cable Landing License Act, which is the source of authority from which authority to withhold or revoke a cable landing license emanates, states that the President may ''withhold or revoke such [cable landing] license . . . after due notice and hearing,'' but does not identify particular procedures that must be followed. As the Commission has stated, where an agency's enabling statute does not expressly require an ''on the record'' hearing and instead calls simply for a ''hearing,'' a ''full hearing,'' or uses similar terminology,

[10] Section 6 of Executive Order 13913 provides that the Committee may at any time ''review existing licenses to identify any additional or new risks to national security or law enforcement interests of the United States.'' Executive Order 13913 defines ''license'' as ''any license, certificate of public interest, or other authorization issued or granted by the Federal Communications Commission (FCC) after referral of an application by the FCC to the Committee established by subsection 3(a) of this order or, if referred before the date of this order, to the group of executive departments and agencies involved in the review process that was previously in place.''

[11] *China Telecom. (Ams.) Corp.* v. *FCC,* 57 F.4th at 262 (citing *Procedural Streamlining of Administrative Hearings,* Report and Order, 35 FCC Rcd 10729, 10732–33, para. 11 (2020) (*Administrative Hearings Order*) (''The Communications Act gives the Commission the power of ruling on facts and policies in the first instance. In exercising that power, the Commission may resolve disputes of fact in an informal hearing proceeding on a written record. And the Commission may reach any decision that is supported by substantial evidence in the record.'')).

[12] *China Telecom (Ams.) Corp.* v. *FCC,* 57 F.4th at 256, 269 (''As explained above, the FCC has broad discretion to craft its own rules 'of procedure and to pursue methods of inquiry capable of permitting them to discharge their multitudinous duties.' *Schreiber,* 381 U.S. at 290, 85 S.Ct. 1459 (internal quotations omitted); *see also Vermont Yankee,* 435 U.S. at 543, 98 S.Ct. 1197). The Commission has exercised this discretion to 'resolve disputes of fact in an informal hearing proceeding on a written record.' *Streamlining Order,* 35 FCC Rcd. at 10732. Here, the Commission reasonably determined that the issues raised in this case could be properly resolved through the presentation and exchange of full written submissions before the Commission itself.'').

[13] Section 1.767(g)(15) sets forth that ''[t]he cable landing license shall expire twenty-five (25) years from the in-service date, unless renewed or extended upon proper application. Upon expiration, all rights granted under the license shall be terminated.'' The Commission notes that within the category of applications for modifications, different procedures might be appropriate based on the nature of the modification. For example, procedures for reviewing an application seeking to incorporate a revised mitigation agreement may be more streamlined than procedures applicable to modifications to update facilities or add a submarine cable landing station.

[14] The Commission's proposed delegation of authority to OIA would broaden OIA's existing delegated authority to act pursuant to § 0.19(q) and (r).

[15] OIA's implementation could include, for example, establishing response and pleading cycle deadlines, addressing waiver requests, addressing requests for live hearing procedures, seeking additional information, and providing for additional pleading cycles.

[16] Executive Order 10530, sec. 5(a).

[17] Except as otherwise ordered by the Commission, the rules in § 1.767(g) apply to each licensee of a cable landing license granted on or after March 15, 2002.

the statute does not trigger the APA's formal adjudication procedures absent clear evidence of congressional intent to do so.[18] Agencies must adhere to the formal hearing procedures in sections 554, 556, and 557 of the APA only in cases of ''adjudication required by statute to be determined on the record after opportunity for an agency hearing.'' [19] In addition to the Cable Landing License Act, neither the Communications Act, the Commission's rules, nor the APA requires trial-type hearing procedures. Congress has granted the Commission broad authority to ''conduct its proceedings in such manner as will best conduce to the proper dispatch of business and to the ends of justice.'' The Commission has broad discretion to craft its own rules ''of procedure and to pursue methods of inquiry capable of permitting them to discharge their multitudinous duties.'' [20] Furthermore, the Communications Act gives the Commission the power of ruling on facts and policies in the first instance. In exercising that power, the Commission may resolve disputes of fact in an informal hearing proceeding on a written record. For instance, the Commission's subpart B hearing rules provide procedures for hearings in appropriate circumstances, including procedures for the revocation of station licenses and construction permits.[21] In the *2023 VoIP Direct Access to Numbers Report and Order* (88 FR 80617, November 20, 2023), the Commission delegated authority to the Wireline Competition Bureau and the Enforcement Bureau to determine appropriate procedures and initiate revocation and/or termination proceedings and to revoke and/or terminate a direct access authorization, as required by due process and applicable law and in light of the relevant facts and circumstances, including providing the direct access authorization holder with notice and opportunity to respond.

13. The Commission proposes an informal written process for Commission actions on denial of applications and revocation and termination of cable landing licenses.[22] The Commission seeks comment on the procedural measures necessary to ensure the development of an adequate administrative record, including procedures for participation by other interested parties, and on the appropriate procedural safeguards to ensure due process. To determine what process is due, the Commission considers the factors set forth in the *Mathews* v. *Eldridge* three-part test: (1) ''the private interest that will be affected by the official action;'' (2) ''the risk of an erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards;'' and (3) ''the Government's interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail.'' With regard to the first *Mathews* factor (the nature of the private interest), while the Commission recognizes that denial of a cable landing license application or revocation of a cable landing license will have an impact on the applicant(s) or on the licensee(s) and any customers, the Commission tentatively finds that private companies have no unqualified right to land or operate a submarine cable in the United States. On the contrary, the Cable Landing License Act sets forth that a cable landing license may be withheld or revoked, stating that the President may ''withhold or revoke such license when he shall be satisfied after due notice and hearing that such action will assist in securing rights for the landing or operation of cables in foreign countries, or in maintaining the rights or interests of the United States or of its citizens in foreign countries, or will promote the security of the United States.'' The Cable Landing License Act and Executive Order 10530, which delegates this denial and revocation authority to the Commission, thereby puts regulated parties on notice that any application for a cable landing license is subject to denial by the Commission and any grant of a cable landing license is contingent on the Commission's authority to revoke such license. Further, whereas licensees facing revocation have a private interest in continuing to operate licensed facilities, applicants typically have no such interest.

14. With regard to the second *Mathews* factor (risk of erroneous deprivation without additional procedures and their probable value), the Commission tentatively finds that the process it seeks to apply would provide cable landing licensees with sufficient due process—notice and the opportunity to be heard ''at a meaningful time and in a meaningful manner.'' [23] Neither the Cable Landing License Act, the APA, nor the Communications Act requires the conduct of evidentiary hearings for denial of cable landing license applications or revocation of cable landing licenses. The Commission tentatively finds it sufficient due process to provide applicants or cable landing licensees with timely and adequate notice of the reasons for any denial or revocation action, and opportunity to respond with their own evidence and to make any factual, legal, or policy arguments. Further, the process the Commission proposes would provide any other interested parties, including any joint applicants or licensees or other proposed or existing owners of a submarine cable, with notice and the opportunity to be heard. Finally, as noted above, the

[18] *See United States* v. *Florida East Coast Railway Co.,* 410 U.S. 224, 234–38 (1973) (the words ''after hearing'' in the Interstate Commerce Act do not require formal APA adjudication); *see also, e.g., City of W. Chicago, Ill.* v. *U.S. Nuclear Regulatory Comm'n,* 701 F.2d 632, 641 (statutory requirement of a ''hearing'' does not trigger formal, on-the-record hearing provisions of the APA); *Chem. Waste Mgmt., Inc.* v. *EPA,* 873 F.2d 1477, 1480–83 (D.C. Cir. 1989) (no presumption that ''public hearing'' means ''on the record'' hearing); *Farmers Union Cent. Exch.* v. *FERC,* 734 F.2d 1486, 1499 n.39 (D.C. Cir. 1984) (''after full hearing'' is ''not equivalent to the requirement of a decision 'on the record' '') (internal citation omitted).

[19] 5 U.S.C. 551(7) (defining ''adjudication'').

[20] *Numbering Policies for Modern Communications et al.,* WC Docket No. 13–97 et al., Second Report and Order (88 FR 80617, November 20, 2023) and Second Further Notice of Proposed Rulemaking (88 FR 74098, October 30, 2023), 38 FCC Rcd 8951, 8972, para. 64 (2023) (delegating authority to the Wireline Competition Bureau and the Enforcement Bureau to determine appropriate procedures and initiate revocation and/or termination proceedings and to revoke and/or terminate a direct access authorization, as required by due process and applicable law and in light of the relevant facts and circumstances, including providing the direct access authorization holder with notice and opportunity to respond).

[21] Section 1.91 of the Commission's rules applies subpart B hearing rules to revocations of ''station license[s]'' or ''construction permit[s],'' which refer to spectrum licenses issued under title III of the Communications Act.

[22] In the 2020 *Executive Branch Review Report and Order,* the Commission addressed how it would handle modifications and revocations requested by the executive branch. *See Executive Branch Review Report and Order,* 35 FCC Rcd at 10963–64, para. 92 (''Consistent with current practice, the Commission will provide any affected authorization holder or licensee an opportunity to respond to the Committee's recommendation prior to any action by the Commission. This will address the commenters' concern that the Commission might proceed with modification or revocation of an existing authorization or license without warning or the opportunity to comment. [The Commission finds] that new rules or a separate proceeding are unnecessary to address Committee reviews of existing licenses as the Commission already has procedural safeguards in place to protect licensees' due process rights, and that until such time as the Commission has more experience with such Committee recommendations, it is more appropriate to tailor such procedures to the facts and circumstances of a particular Committee recommendation.'').

[23] *See, e.g., Mathews,* 424 U.S. at 333 (citing *Armstrong* v. *Manzo,* 380 U.S. 545, 552 (1965)); *cf.* 5 U.S.C. 558(c)(1) and (2) (permitting ''revocation . . . of a license'' following ''notice by the agency in writing'' of any basis for revocation and an ''opportunity to demonstrate compliance'').

private interests in grant of an application typically are less than the private interests in continued use of licensed facilities, thus, the Commission believes that it may appropriately deny an application with fewer procedures than would be appropriate for revocation. The Commission seeks comment on this analysis. Would the Commission's proposed process for denying initial applications be appropriate for renewal and extension applications [24] or for modification, assignment, or transfer of control applications? If not, what is the due process rationale for using different procedures in these circumstances?

15. With regard to the third *Mathews* factor (the Government's interest), the Commission tentatively finds that ''the fiscal and administrative burdens'' on the Commission and the relevant executive branch agencies, including the Committee, weigh in favor of the Commission's proposal to base its procedures on those it utilized in the denial of an international section 214 application of China Mobile USA and in subsequent section 214 revocation proceedings involving Chinese state-owned entities. As the Commission stated in the *China Telecom Americas Order on Revocation and Termination, China Unicom Americas Order on Revocation,* and *Pacific Networks and ComNet Order on Revocation and Termination,*[25] courts have recognized that hearings before an administrative law judge, with live testimony and cross examination, impose significant temporal and cost burdens on agencies. The Commission determined, among other things, that the fiscal and administrative burden on the Government would be especially heavy in those cases, as a trial before an administrative law judge could require participation by officials from other agencies and take time away from their essential duties to participate in additional administrative proceedings. For these same reasons, the Commission tentatively finds that the administrative burden on the Government would be heavy in cases involving denial of cable landing license applications or revocation of cable landing licenses. More importantly, given the national security issues that may be at stake, any resulting unwarranted delay could be harmful. The Commission also believes that traditional live hearing procedures involving testimony and cross-examination could entail significant administrative burdens on the Commission even in cases involving other issues that do not involve the executive branch agencies, such as character concerns, or other Commission rule violations. The Commission seeks comment on this assessment.

16. The Commission seeks comment generally on its *Mathews* analysis and whether the process it proposes herein would provide applicants and cable landing licensees with sufficient due process and notice and opportunity to respond. The Commission notes that the process that it proposes to apply in cases involving denial of cable landing license applications or revocation of cable landing licenses is distinct from the Commission's subpart B hearing rules, including the written hearing rules codified in §§ 1.371 through 1.377. The Commission has never applied its subpart B hearing rules to every adjudication,[26] and has never had an established practice of requiring subpart B hearings for denial of cable landing license applications or revocation of cable landing licenses. Indeed, the Commission does not believe it would be appropriate to require subpart B rules and procedures, including the written hearing rules providing for discovery and the ability to request an oral hearing before a presiding officer, in all proceedings to deny cable landing license applications or to revoke cable landing licenses, particularly in cases involving national security issues, where the Commission has previously concluded that the burdens on the Government of implementing such procedures outweighed the private interest and the probable value of additional procedures. Moreover, under the subpart B hearing rules, if the Commission were to delegate initial responsibility to an administrative law judge, the resulting decision could be appealed to the full Commission—which would be required to review the record independently and would not owe any deference to the administrative law judge's determinations.[27] The Commission tentatively concludes that the extra step of appointing an administrative law judge to preside prior to the Commission's independent review, rather than simply proceeding directly before the Commission, will not be necessary for nor will enhance the ability of the Commission, which will be the ultimate arbiter, to decide matters that may arise in its evaluation of applications for a cable landing license or existing cable landing licenses. Further, courts have held that the question of whether to hold an evidentiary hearing is ''within [the agency's] discretion, and it may 'properly deny an evidentiary hearing if the issues, even disputed issues, may be adequately resolved on the written record, at least where there is no issue of motive, intent or credibility.' '' Nevertheless, the Commission seeks comment on whether it should provide a process by which an applicant for a cable landing license or a cable landing licensee may request a live hearing in certain cases. The Commission also seeks comment on whether it should use different procedures for matters that do not involve executive branch expertise. If so, what due process or administrative considerations are relevant to this determination?

17. Furthermore, unlike revocations of title III station licenses and construction permits, the Commission may not revoke a cable landing license ''except after obtaining approval of the Secretary of State and such advice from any executive department or establishment of the Government as the Commission may deem necessary.'' Therefore, in contrast to subpart B hearings, any revocation procedures for cable landing licenses must integrate approval or objection by the State Department before the Commission may issue a final decision. The Commission notes that the Commission and the State Department have existing procedures by which the State Department approves

[24] For purposes of this proceeding, the Commission refers to applications to renew or extend a cable landing license collectively as ''renewal applications.''

[25] *China Telecom (Americas) Corporation,* GN Docket No. 20–109, File Nos. ITC–214–20010613–00346, ITC–214–20020716–00371, ITC–T/C–20070725–00285, Order on Revocation and Termination, 36 FCC Rcd 15966, 15958, para. 27 (2021) (*China Telecom Americas Order on Revocation and Termination*), *aff'd, China Telecom. (Ams.) Corp.* v. *FCC,* 57 F.4th 256 (D.C. Cir. 2022); *China Unicom (Americas) Operations Limited,* GN Docket No. 20–110, File Nos. ITC–214–20020728–00361, ITC–214–20020724–00427, Order on Revocation, 37 FCC Rcd 1480, 1499, para. 35 (2022) (*China Unicom Americas Order on Revocation*), *appeal pending sub nom China Unicom (Americas) Operations Limited* v. *FCC,* No. 22–70029 (9th Cir.); *Pacific Networks Corp. and ComNet (USA) LLC,* GN Docket No. 20–111, File Nos. ITC–214–20090105–00006 and ITC–214–20090424–00199, Order on Revocation and Termination, 37 FCC Rcd 4220, 4242, para. 29 (2022) (*Pacific Networks and ComNet Order on Revocation and Termination*) (''A detailed procedural history of Pacific Networks' and ComNet's authorizations can be found in the *Order to Show Cause.*''), *aff'd, Pacific Networks Corp.* v. *FCC,* 77 F.4th 1160 (D.C. Cir. 2023); *see, e.g., Chem. Waste Mgmt., Inc.* v. *EPA,* 873 F.2d at 1485; *G.E.* v. *EPA,* 595 F. Supp. 2d 8, 38–39 (D.D.C. 2009).

[26] In fact, § 1.201 of those rules provides that subpart B applies only to cases that ''have been designated for hearing.'' An explanatory note makes clear that the new procedures for written hearings are a subset of such cases.

[27] *See Kay* v. *FCC,* 396 F.3d 1184, 1189 (D.C. Cir. 2005) (explaining how ''an agency reviewing an ALJ decision is not in a position analogous to a court of appeals reviewing a case tried to a district court'').

the Commission's grant of a cable landing license application or revocation of a cable landing license, as required by Executive Order 10530, and these procedures would continue to apply to any revocation of a cable landing license. Such procedures would not apply to the Commission's denial of a cable landing license application, given Executive Order 10530 does not require the State Department's approval of a denial action and expressly states that ''no such license shall be *granted or revoked* by the Commission except after obtaining approval of the Secretary of State . . . .'' The Commission notes that the language in Executive Order 10530 appears inconsistent with § 1.767(b) of the existing rules, which states that cable license applications are ''acted upon by the Commission after obtaining the approval of the Secretary of State.'' The term ''acted upon'' would appear to include denial of an application. The Commission proposes to amend the rule so that it does not state that denial of an application requires approval by the Secretary of State. The Commission seeks comment on the change. While the procedures under subpart B do not automatically apply to denial of cable landing license applications or revocation of cable landing licenses, the Commission seeks comment on whether it should incorporate these or similar procedures, including hearings before an administrative law judge, should the Commission determine they are appropriate in a specific case, for example where a matter does not involve executive branch participation. Under what circumstances, if any, should any such procedures be incorporated in denial or revocation proceedings involving cable landing licenses? The Commission further seeks comment on whether its procedures for denial of an application might be more streamlined than the Commission's procedures for revocation of an existing license, consistent with the Cable Landing License Act, the APA, and due process.[28] Should the Commission's procedures for denial of an application to modify, assign, or transfer control of a license, or for renewal and extension applications mirror the Commission's procedures or denial of an initial application? What considerations are relevant to this determination?

(ii) Denial and Revocation Proceedings

18. Under the Commission's existing rules, the filing of an initial application for a cable landing license or an application to modify, assign, transfer control, or renew or extend a cable landing license after the Commission places the application on an Accepted for Filing public notice commences a proceeding in which the Commission may grant or deny an application. Commission staff may seek additional information after an application is filed, and once complete, the application is placed on public notice.[29] Any executive branch recommendation to deny or condition the grant of an application is included in the record of the proceeding, and the Commission provides the applicant a written opportunity to respond. The Commission considers the entire record in reaching its determination. The Commission or OIA, pursuant to its delegated authority, can deny applications for cable landing licenses.[30] Consistent with the Commission's rules, applicants may seek reconsideration of a denial of an application. The Commission seeks comment on the extent to which existing procedures for denial of applications should be modified in any respect. The Commission tentatively concludes that additional procedures are not warranted but that OIA should have delegated authority to adopt additional procedures on a case-by-case basis as circumstances warrant, and consistent with due process. The Commission proposes that it may commence a revocation proceeding either on its own initiative or upon the filing of a recommendation by the executive branch agencies, including the Committee, to revoke the license of a cable landing licensee. To the extent the Commission considers whether revocation of a cable landing license is warranted, the Commission proposes to implement the approach it used in the most recent section 214 revocation proceedings. Specifically, in those revocation proceedings, the Commission exercised its discretion to ''resolve disputes of fact in an informal hearing proceeding on a written record,'' and reasonably determined that the issues raised in those cases could be properly resolved through the presentation and exchange of full written submissions before the Commission itself. The Commission explained that although it adopted regulations prescribing certain procedures for the revocation of station licenses and construction permits pursuant to part 1, subpart B of its rules, those regulations do not apply to the revocation of a section 214 authorization. To provide affected carriers with due process, the Commission allowed them to submit evidence and arguments in writing and determined the need for the revocation and/or termination of section 214 authorizations on the basis of a written record. The court of appeals affirmed the Commission's use of these procedures.[31] The Commission seeks comment on whether it should incorporate similar procedures to determine whether revocation of a cable landing license is warranted. The Commission also seeks comment on whether it should retain authority to modify these procedures on a case-by-case basis as circumstances warrant, as long as any alternative procedures provide adequate due process.

19. The Commission seeks comment on whether it may use the same process or an alternative process if it considers termination of a cable landing license due to a licensee's failure to comply with any condition of the license. Under section 5 of Executive Order 10530, the Commission is ''designated and empowered to . . . withhold[ ] or revoke licenses to land or operate submarine cables in the United States . . . .'' Separate and apart from revocation, the Commission uses the term

[28] The Commission notes, for example, that it denied China Mobile USA's application for an international section 214 authorization after review of the executive branch recommendation, China Mobile USA's opposition, and the executive branch reply. In contrast, when the Commission subsequently revoked the international section 214 authorizations of CTA, the Commission provided notice and an opportunity to respond before it instituted a revocation proceeding. Similarly, under the APA, the procedure for denying an application need not mirror the procedure for revoking a license. *Compare* 5 U.S.C. 558(c) (''When application is made for a license required by law, the agency, with due regard for the rights and privileges of all the interested parties or adversely affected persons and within a reasonable time, shall set and complete proceedings required . . . by law and shall make its decision'') *with id.* (''Except in cases of willfulness or those in which public health, interest, or safety requires otherwise, the withdrawal, suspension, revocation, or annulment of a license is lawful only if, before the institution of agency proceedings therefor, the licensee has been given—(1) notice by the agency in writing of the facts or conduct which may warrant the action; and (2) opportunity to demonstrate or achieve compliance with all lawful requirements.'').

[29] *See* 47 CFR 1.767(a)(10) (requiring ''[a]ny other information that may be necessary to enable the Commission to act on the application.'').

[30] 47 CFR 0.351(a)(9) (delegating authority to OIA ''[t]o act upon applications for cable landing licenses pursuant to § 1.767 of this chapter'').

[31] *China Telecom (Americas) Corp.,* 57 F.4th at 262 (citing *Administrative Hearings Order,* 35 FCC Rcd at 10732–33, para. 11) (''The Communications Act gives the Commission the power of ruling on facts and policies in the first instance. In exercising that power, the Commission may resolve disputes of fact in an informal hearing proceeding on a written record. And the Commission may reach any decision that is supported by substantial evidence in the record.' ''); *id.* at 268–71 (holding that discovery and live hearing procedures, and an opportunity to achieve or demonstrate compliance were not required ''by statute, regulation, FCC practice, or the Constitution'').

''termination'' where a license or authorization is terminated based on the licensee's or authorization holder's failure to comply with a condition of the license or authorization, and has determined that the procedures applicable to termination need not mirror the procedures used for revocation of licenses or authorizations.[32] The Commission proposes to delegate authority to OIA to determine appropriate procedures, within the framework authorized by the Commission and consistent with Commission precedent and guidance, and initiate revocation and/or termination proceedings and revoke and/or terminate a cable landing license, as required by due process and applicable law and in light of the relevant facts and circumstances, including providing a licensee with notice and opportunity to respond and, where appropriate, to achieve compliance with all lawful requirements.[33]

20. The Commission seeks comment on whether this procedural framework would provide cable landing licensees and any other affected parties with sufficient notice of the basis for any denial, revocation, or termination action, an opportunity to present evidence and arguments that support their respective positions, and an opportunity to respond to opposing evidence and arguments. The Commission also seeks comment on whether this process would ensure the development of an adequate administrative record, including procedures for participation by other affected individuals and entities, and appropriate procedural safeguards to ensure due process.

21. *Cable Landing Licenses/Licensees That are Insolvent or No Longer Exist.* Section 1.767(m)(2) of the rules requires that ''[a]ny licensee that seeks to relinquish its interest in a cable landing license shall file an application to modify the license.'' The Commission's records in the International Communications Filing System (ICFS) and other records, indicate that some submarine cables licensed by the Commission may not have commenced service and/or some cable landing licensees of record may be insolvent or no longer in operation.[34] Furthermore, some licensees that may be insolvent or no longer exist did not file a modification application to relinquish their interest in the cable landing license or otherwise notify the Commission. The Commission seeks comment on what processes it should adopt when submarine cables and/or licensees are insolvent or no longer exist generally. The Commission seeks comment on whether the same process proposed above is appropriate in all cases involving cable landing licenses, or whether the Commission should consider alternative processes. For example, should the Commission adopt a similar cancellation process as proposed in the *Evolving Risks NPRM* (88 FR 50486, August 1, 2023) for international section 214 authorization holders that are no longer in business, where failure to timely respond to an information collection or other inquiry by the Commission may be deemed presumptive evidence that the cable landing licensee is no longer in operation?[35] In these instances, the Commission or OIA may assess whether the cable landing licensee no longer complies with certain terms of the license or the Commission's rules,[36] and thus revocation and/or termination of the license or the licensee's rights under the license and the Cable Landing License Act is warranted.[37]

22. For consortium cables, if any of the cable landing licensees no longer exists and was unable to file an application to modify the license to relinquish its interest in the license, should the Commission adopt rules requiring the remaining joint licensee(s) of the cable, if any, to collectively file a modification application to remove the licensee from the license by demonstrating and certifying that (1) the licensee no longer exists as a legal entity, and (2) the remaining licensee(s) will retain collectively *de jure* and *de facto* control of the U.S. portion of the cable system sufficient to comply with the requirements of the Commission's rules and any specific conditions of the license? Or, should the Commission adopt rules requiring joint licensees of a submarine cable system to identify the lead licensee responsible for administrative matters concerning the cable system, including directing the lead licensee to submit a filing in the record demonstrating and certifying whether or not an identified licensee is insolvent or has ceased to exist and that the remaining licensee(s) will retain collectively *de jure* and *de facto* control of the U.S. portion of the cable system?

2. Three-Year Periodic Reporting

23. Currently, a cable landing license expires ''twenty-five (25) years after the in-service date for the cable, unless renewed or extended upon proper application'' pursuant to § 1.767(g)(15) of the Commission's rules.[38] The Commission, however, does not routinely require a submarine cable landing licensee to provide updated ownership and related submarine cable system information during the 25-year term with the exception of annual circuit capacity data. The annual circuit capacity data, however, lacks critical ownership and facilities information that would allow the Commission and other Government agencies to assess for evolving national security and law enforcement concerns. To ensure that the Commission has the information it needs to timely monitor and continually assess national security or other risks that may arise over the course of a licensee's 25-year license term, the Commission proposes to require

[32] *See China Telecom Americas Order on Revocation and Termination,* 36 FCC Rcd at 15988, para. 35; *see also id.* at 15989, para. 36 (''[S]ection 558(c)(2) does not grant a substantive right to escape from a condition that terminates a license.''); *Atlantic Richfield Co.* v. *United States,* 774 F.2d 1193, 1200–01 (D.C. Cir. 1985) (holding that the procedural requirements of section 558(c) apply only where ''the licensee [may] be able to establish compliance with all legal requirements or . . . change its conduct in a manner that will put its house in lawful order'') (internal quotation and citations omitted).

[33] *See China Telecom. (Ams.) Corp.* v. *FCC,* 57 F.4th at 270 (''Given the futility of offering China Telecom even more of an opportunity to demonstrate or achieve compliance than they received, the Commission did not err in denying it.''); *Pacific Networks Corp.* v. *FCC,* 77 F.4th at 1166 (''In short, the FCC reasonably explained why no realistic agreement could have worked given the carriers' proven lack of trustworthiness.'').

[34] *See, e.g.,* Letter from Peter J. Schildkraut, Counsel for AT&T Mobility Puerto Rico Inc., to Marlene H. Dortch, Secretary, FCC at 2–3 (Feb. 5, 2020) (on file in File No. SCL–MOD–20191202–00038) (filing supplement to modification application and addressing, among other things, that the corporate status of certain licensees is void according to state records).

[35] *See Evolving Risks NPRM,* 38 FCC Rcd at 4363, paras. 25–26; *id.* at 4377, para. 66.

[36] 47 CFR 1.767(g)(14) (''The cable landing license is revocable by the Commission after due notice and opportunity for hearing pursuant to section 2 of the Cable Landing License Act, 47 U.S.C. 35, or for failure to comply with the terms of the license or with the Commission's rules . . . .'').

[37] For instance, the Commission's rules require, as a condition of a cable landing license, that ''[t]he licensee, or in the case of multiple licensees, the licensees collectively, shall maintain *de jure* and *de facto* control of the U.S. portion of the cable system, including the cable landing stations in the United States, sufficient to comply with the requirements of the Commission's rules and any specific conditions of the license.'' *See also* 47 CFR 1.767(m)(2).

[38] 47 CFR 1.767(g)(15) (''The licensee must notify the Commission within thirty (30) days of the date the cable is placed into service. The cable landing license shall expire twenty-five (25) years from the in-service date, unless renewed or extended upon proper application. Upon expiration, all rights granted under the license shall be terminated.''). *See 2001 Cable Report and Order,* 67 FR 1615 (January 14, 2002), 16 FCC Rcd 22167 (codifying the 25-year license term condition in § 1.767(g)(14), and which is currently codified in § 1.767(g)(15)). The 25-year license term is one of the routine conditions the Commission adopted in 2001 that applies to ''each licensee of a cable landing licenses granted on or after March 15, 2002.''

licensees to provide certain information to the Commission every three years (hereinafter, ''periodic reporting''). Alternatively, the Commission seeks comment on whether a different time period would support the Commission's goals.

24. As a fundamental matter, it is critical that the Commission has a continuous and systematic understanding of who owns and controls submarine cables and how they are used because submarine cables are a significant component of the global communications ecosystem. Submarine cables serve as the foundation for the global internet infrastructure and carry over 99% of transoceanic digital communications. Submarine cables are also critical infrastructure that historically have carried more than 95% of all U.S.-international voice, data, and internet traffic, including civilian and military U.S. Government traffic. And increasing demand for capacity [39] has spurred the deployment of more submarine cables.

25. Because the Commission does not ordinarily receive updated information about changes in the ownership of licensees or the submarine cable system over the course of the 25-year license term, the Commission likely has incomplete and outdated information regarding submarine cable landing licensees with foreign ownership and the submarine cable system itself. The Commission does receive such information when an applicant/licensee (1) seeks Commission consent to the substantial transfer of control and/or assignment or modification of its existing cable landing license, (2) the licensee undergoes a *pro forma* transfer of control and/or assignment that require(s) notification to the Commission, (3) files a foreign carrier affiliation notification, or (4) files a renewal application.[40] The information obtained from substantial or *pro forma* assignment and/or transfer of control applications and foreign carrier affiliation notifications, however, is limited to that particular licensee and does not provide updated information about the other licensees. In the case of renewal applications, the information obtained is based on the end of the license term. The Commission also has authority to conduct an *ad hoc* assessment of whether a licensee's cable landing license presents national security, law enforcement, foreign policy, and/or trade policy risks that warrant revocation. Reliance on sporadic submissions of applications and *ad hoc* assessments for important information regarding this critical infrastructure, however, creates an information gap that limits the Commission's knowledge of the licensees, updated information on the cable itself, and its ability to assess any national security, law enforcement, foreign policy, and/or trade policy concerns.

26. The Commission tentatively concludes that the periodic reporting requirement would improve the Commission's oversight of submarine cable licenses and ensure the license continues to serve the public interest. In this regard, the Commission tentatively finds that the information the Commission would obtain from its proposed three-year periodic reporting requirement provides crucial information about submarine cables that complements the capacity information the Commission already receives from the annual § 43.82 circuit capacity reports provided by filing entities. Among other things, the Commission tentatively concludes information derived from the periodic reports such as updated contact information for licensees and cable landing stations and geographic coordinates of the cable landing stations, coupled with information from the Commission's annual circuit capacity reports, would better enable the Commission to carry out its public interest responsibilities such as assessing capacity information and conducting time-sensitive outreach to licensees during a natural disaster or in a state of emergency.[41] Importantly, the Commission believes the updated information regarding this critical infrastructure would improve consistency in the Commission's consideration of evolving public interest risks (including national security risks), completeness of the Commission's information regarding submarine cable landing licensees, and timely Commission attention to issues that warrant heightened scrutiny.

27. Additionally, the Commission tentatively concludes the periodic reporting requirement would ensure a more consistent and complete referral of relevant evolving issues to the executive branch agencies, including the Committee, for their review and ultimately, improved protection of U.S. communications infrastructure. With updated information regarding this critical infrastructure, the Commission tentatively concludes it, in coordination with the relevant executive branch agencies, could assess national security and other public interest risks and, if necessary, pursue remedial action and/or initiate a revocation or termination proceeding. As noted above, the executive branch agencies recommended that the Commission revoke certain international section 214 authorizations that posed unacceptable risks to national security and law enforcement interests of the United States. Ultimately, the Commission believes that its proposed periodic reporting requirement would meet the Commission's principal goal of providing it with updated critical information regarding licensees and the cable systems and ''promote the security of the United States . . . .'' in accordance with the Cable Landing License Act.

28. Accordingly, as discussed below, the Commission proposes to adopt and codify in its rules a routine condition that would require all submarine cable landing licensees to jointly or separately submit to the Commission every three years updated information about, among other things, the licensee and its ownership, points of contact for the submarine cable system, use of foreign owned Managed Network Service Providers (MNSPs), as well as cybersecurity and regulatory compliance certifications. The Commission also proposes that failure to timely submit a periodic report would constitute a breach of this condition that could warrant Commission enforcement action or revocation, the procedures of which are discussed above. The Commission tentatively concludes that the proposed reporting requirement would address the aforementioned information gap by providing the Commission with updated critical information necessary to fulfill its national security and other public interest responsibilities on a more

[39] Telegeography reports that, ''[a]s recently as 2016, internet backbone providers accounted for the majority of demand.'' At that time, internet backbone providers or internet Service Providers (ISPs) included businesses, such as AT&T, Verizon, Comcast, Tata Communications, CenturyLink, Cogent Communications, Deutsche Telekom, GTT, NTT Communications, and Sprint, among others. Now, internet backbone providers no longer dominate the demand for global submarine cable capacity. According to TeleGeography, ''a handful of major content and cloud service providers—namely Google, Facebook, Amazon, and Microsoft—have become the primary sources of demand. As of 2020, these companies are the dominant users of international bandwidth, account for two-thirds of all used international capacity.'' These entities ''led the way in building mega Data Centers to meet th[e] growing demand [for data processing and storage capacity.'' Moreover, the ''data demands of hyperscalers' subsea cable is surging 45% to 60% per year.'' Indeed, as of 2023, content and cloud networks accounted for more than 70% of all bandwidth usage.''

[40] The Commission notes that submarine cable landing licensees are required to submit annual circuit capacity data under § 43.82 of its rules.

[41] *See* Proposed Rules, § 1.70016(b) (setting forth the contents that must be included in the proposed periodic report).

regular and systematic basis. The Commission seeks comment on this proposal and the impact on small entities, as well as any alternatives.

29. Under the Commission's proposed approach, the submarine cable landing license would continue in force throughout its term. To the extent circumstances in any particular situation raise national security, law enforcement, foreign policy, and/or trade policy or other concerns (for example, due to incompleteness of the periodic report or new foreign ownership), the Commission could initiate a further inquiry to assess the risks and concerns raised and coordinate with the relevant executive branch agencies that may, in turn, result in Commission enforcement action, executive branch mitigation efforts, and/or a revocation or termination proceeding. The Commission's proposed periodic reporting requirement would not supplant existing Commission authority to conduct an *ad hoc* assessment of whether a licensee's cable landing license presents public interest concerns, including national security, law enforcement, foreign policy, and/or trade policy risks nor would this proposed approach replace the 25-year license term. The Commission proposes that each periodic report would be submitted through a filing in ICFS, or any successor system, under each licensee's license file number and would not require action from the Commission, *i.e.,* a grant or confirmation. The Commission proposes that licensees with reportable foreign ownership as of thirty (30) days prior to the date of the submission or that have a mitigation agreement with the Committee or particular agencies must also file a copy of the report directly with the Committee.

30. The Commission seeks comment generally on this approach and whether a three-year period is the appropriate timeframe. The Commission proposes a three-year period because it strikes an appropriate balance between the Commission's need for current ownership, location and facilities information and the reporting burden on the Commission's licensees. The Commission can also stagger the reviews over three years, reducing the workload on the Commission and on the Committee. The Commission seeks comment on whether it should adopt a time period that is longer or shorter for purposes of assessing national security, law enforcement, and other risks. The Commission notes, however, that because the marketplace changes quickly, it believes requiring periodic information longer than three years might result in the Commission missing significant changes in ownership and changes in facilities, thus potentially endangering national security and other concerns.

31. The Commission proposes that any new report would reflect updated information since the report three-years prior or other substantive filing. If no changes have occurred since the licensee's last periodic report or other substantive filing—which may be an application for a cable landing license or modification, assignment, transfer of control, and renewal or extension of a cable landing license—should the licensee have to provide only a periodic statement that its license remains in compliance with the Commission's rules and with its most recent periodic report, or other substantive filing? How should the Commission account for a situation where the substantive filing does not require all of the same information that would be in a periodic report? Lastly, should the licensee re-certify, such as to the character qualification requirements, among other requirements?

32. The Commission seeks comment on how to properly account for multiple licensees on a submarine cable system. The Commission proposes to require joint licensees to submit one joint periodic report per submarine cable system, subject to the proposed filing contents requirements. In what the Commission expects will be the unlikely event of potential issues that may prevent a joint filing, the Commission seeks comment on whether to permit an individual licensee to file its own report. Should the Commission adopt a rule that joint licensees or consortium members must identify a lead licensee that would be required to file the periodic report on behalf of the joint licensees or consortium? How can joint licensees or consortium members provide the periodic information while remaining accountable for providing truthful, complete, and accurate information? Additionally, how can the Commission minimize burdens on licensees while balancing the Commission's policy considerations with administrative efficiency for the Commission and the relevant executive branch agencies, including the Committee? What other options should the Commission consider given evolving national security, law enforcement, foreign policy, and/or trade policy risks?

a. Prioritizing the Periodic Reporting and Other National Security and Law Enforcement Concerns

33. The Commission proposes to adopt a schedule that prioritizes the filing and review of periodic reports based on whether the cable's licensee(s) have reportable foreign ownership and the length of the time since the Commission's most recent review of the license. The proposal would structure the timing of the submission of periodic reports to minimize burdens on licensees, the Commission,[42] and the executive branch staff, while ensuring that the Commission receives the information it needs to protect this critical infrastructure. The Commission also proposes to delegate authority to OIA to establish and modify, as appropriate, the filing categories and associated deadlines, and if needed, to consult with the relevant executive branch agencies concerning prioritization of the periodic reports.

34. The Commission proposes to assign each of the existing licensed cable systems to one of four categories with a different deadline for each, and with the deadlines separated by six months. The Commission proposes to require that licensees of submarine cable systems in Category 1 shall submit their initial periodic report by six months following the effective date of new rules adopted in this proceeding, and licensees of submarine cable systems in Categories 2, 3, and 4, respectively, shall submit their initial periodic reports thereafter in fixed intervals separated by six months.

• *Category 1:* Submarine cable systems that: (1) have a licensee that is directly or indirectly wholly or partially owned by a government of, or other entities with a place of organization in, a ''foreign adversary'' country, as defined in the Department of Commerce's rule, 15 CFR 791.4; (2) have a licensee with a place of organization in a ''foreign adversary'' country; or (3) land in a ''foreign adversary'' country.[43]

[42] *See Review of the Commission's Assessment and Collection of Regulatory Fees for Fiscal Year 2024 Assessment and Collection of Space and Earth Station Regulatory Fees for Fiscal Year 2024,* MD Docket Nos. 24–85 and 24–86, Second Report and Order, 89 FR 78452 (September 25, 2024), FCC–24–93, para. 45 (2024) (*2024 Regulatory Fee Second Report and Order*) (noting that ''in the Office of International Affairs, there are eight Full-Time Equivalents (FTEs) within the Telecommunications and Analysis Division that work on international bearer circuit-related issues, including the services provided over submarine cables . . . .'').

[43] 15 CFR 7.4 (stating ''[t]he Secretary has determined that the following foreign governments or foreign non-government persons have engaged in a long-term pattern or serious instances of conduct significantly adverse to the national security of the

Continued

• *Category 2:* Submarine cable systems where the Commission's most recent review of the license [44] occurred 4 or more years ago [45] and where a licensee has reportable foreign ownership.

• *Category 3:* Submarine cable systems where the Commission's most recent review of the license occurred less than 4 years ago and where a licensee has reportable foreign ownership.

• *Category 4:* All other submarine cable systems, including those where no licensee has reportable foreign ownership.

35. *FCC's Preliminary Review of Existing Licensed Submarine Cables.* Commission staff have conducted a preliminary review of its records, and based on this review, the Commission assesses that eight of the 84 licensed submarine cable systems would meet one or more of the criteria under Category 1: (1) Americas-1 Cable System, (2) Asia-America Gateway (AAG), (3) FASTER Cable System, (4) Japan-U.S. Cable Network,[46] (5) Jupiter, (6) New Cross-Pacific (NCP), (7) PPC–1, and (8) Trans-Pacific Express (TPE) Cable Network. Based on the Commission's preliminary review of the 84 licensed cables to date,[47] Category 1 would include eight submarine cable systems; Category 2 would include 21 submarine cable systems; Category 3 would include 36 submarine cable systems; and Category 4 would include 19 submarine cable systems. The full set of categories and the licensed submarine cable systems associated with each category are set forth in the table labeled ''Three-Year Periodic Reporting Prioritization Schedule.'' The Commission seeks comment on the results of its preliminary review.

36. *FCC's Review of Future Licensed Submarine Cables.* The Commission proposes to require that cable landing licensees of submarine cable systems that are licensed after the effective date of new rules shall submit their initial periodic report by a deadline of three years following the date of the grant of authority. The Commission proposes to require licensees of future licensed submarine cable systems to file the periodic reports every three years after the deadline of their initial periodic report. The Commission seeks comment on whether a cable landing licensee should file the required report every three years based on the date of such grant of authority, until and unless the Commission grants a subsequent application filed by the licensee, at which point the three-year reporting cycle would commence anew as of the date of the new grant.

37. The Commission believes these approaches would simplify the reporting requirement and minimize administrative burdens while prioritizing the Commission's consideration of those licensees that most likely raise national security, law enforcement, foreign policy, and/or trade policy concerns. Prioritizing the Commission's review in the manner described above ensures the Commission focuses on those cables that potentially raise concerns and those that have not been reviewed by the Commission and the Committee. The Commission believes this approach would accomplish its national security objectives and provide regulatory certainty to licensees. What are the benefits and potential drawbacks of this approach? Should the Commission instead follow the *Evolving Risks NPRM* proposal and factor in mitigation agreements? Why or why not? The Commission seeks comment generally on this and other approaches for periodic reporting of licensed submarine cables.

b. Shorten the 25 Year License Term

38. As an alternative to the proposed periodic reporting requirement the Commission seeks comment on whether shortening the current 25-year submarine cable license term or adopting a shorter license term in combination with periodic reporting would similarly account for evolving national security, law enforcement, and other risks. Like the Commission's proposed periodic reporting requirement, the Commission would codify either of these options as a routine condition in its rules. The Commission notes that by rule, a submarine cable landing licensee's failure to renew its license would cause the license to expire, and ''[u]pon expiration, all rights granted under the license shall be terminated.'' [48]

39. Given changed circumstances since the Commission codified the 25-year license term, the Commission believes that a shortened license term or a shortened term in combination with periodic reporting, would be consonant with its public interest responsibilities under the Cable Landing License Act regarding national security. The Commission notes that the 25-year license term appears to relate to operational aspects of submarine cable systems.[49] Also, in light of the

United States or security and safety of United States persons and, therefore, constitute foreign adversaries solely for the purposes of the Executive Order, this rule, and any subsequent rule'' promulgated pursuant to the Executive Order); *see* 15 CFR 7.2 (''Foreign adversary means any foreign government or foreign non-government person determined by the Secretary to have engaged in a long-term pattern or serious instances of conduct significantly adverse to the national security of the United States or security and safety of United States persons.'').

[44] The Commission refers to its review of the license to include the grant of an initial application for a cable landing license or an application for modification, substantial assignment, substantial transfer of control, or renewal or extension of a cable landing license.

[45] For purposes of prioritizing the filing and review of periodic reports, the Commission refers to its most recent review of the license as its most recent action, which would include grant of an initial application for a cable landing license or an application for modification, substantial assignment, substantial transfer of control, or renewal or extension of a cable landing license and ensure that the Committee or particular executive branch agencies also reviewed the cable system for any national security, law enforcement, and other concerns.

[46] On June 18, 2024, the current licensees of the Japan-U.S. Cable Network filed an application to modify the license to remove all licensees except Verizon Business Global LLC (Verizon) from the license, and request a waiver of § 1.767(h)(1) to replace AT&T Enterprises, LLC with Verizon as the licensee that controls the cable landing facilities in Makaha, Hawaii. On July 25, 2024, Verizon and Hawaiian Telcom Services Company, Inc. filed an application for a license to land and operate the California-Hawaii S1, which will consist of Segment 1 of the Japan-U.S. Cable Network. To the extent the Commission grants these applications prior to the adoption of any final Report and Order in this proceeding, the Commission proposes that it would adjust the categorization of the Japan-U.S. Cable Network accordingly in such Report and Order.

[47] This number of 84 licensed cables does not include cables for which the license expired and has not been renewed or extended, including where an application is pending before the Commission to renew or extend the license. *See, e.g.,* File No. SCL–STA–20240626–00028, Actions Taken Under Cable Landing License Act, Report No. SCL–00484, DA 24–926 (OIA 2024) (granting the request for special temporary authority (STA) filed by GCI Communication Corp. to continue operation of the Alaska United East Cable System (AU-East) (SCL–LIC–19961205–00615, SCL–LIC–19980602–00008, SCL–MOD–20020409–00018, SCL–MOD–20020409–00019) while the Commission considers an application for a new cable landing license for the cable system (SCL–LIC–20240815–00036)). To the extent the Commission grants any application to renew or extend a cable landing license prior to the adoption of any final Report and Order in this proceeding, the Commission proposes that it would include or adjust the categorization of the respective cable system accordingly in such Report and Order.

[48] *See* 47 CFR 1.767(a)(9) (requiring applicants to certify ''that the applicant accepts and will abide by the routine conditions specified in paragraph (g) of this section''); 47 CFR 1.767(g)(15) (''[T]he cable landing license shall expire twenty-five (25) years from the in-service date, unless renewed or extended upon proper application. Upon expiration, all rights granted under the license shall be terminated.'').

[49] For example, according to a working group report of Communications, Security, Reliability, and Interoperability Council (CSRIC) IV, ''[t]he normal planned commercial lifespan of the cables is 25 years, though they often get used for longer periods of time. Nevertheless, the commercial lifespan of submarine cable systems may extend well beyond 25 years, particular where the systems

constantly changing national security environment, 25 years is a long time period in which a license is not reviewed. Shortening the license term by itself or in combination with periodic reporting, could enable the Commission to assess—earlier than the current 25-year license term—whether a particular cable landing licensee complies with the relevant statutory and rule requirements, whether there are any rule-compliant but unreported changes in ownership or operations, or other factors that present national security, law enforcement, foreign policy and/or trade policy concerns, and whether the license continues to serve the public interest.

40. The Commission tentatively concludes that a shortened license term or a shortened term in combination with periodic reporting would provide the Commission and the relevant executive branch agencies the ability and opportunity to assess in a more timely and systematic manner, the evolving national security, law enforcement, foreign policy, and/or trade policy risks associated with cable landing licenses.[50] The Commission seeks comment on an appropriate time frame to better account for evolving risks while minimizing burdens on licensees, recognizing the significant capital expenditures and long lead times in planning and constructing submarine cable systems. What is the current lifespan of a modern submarine cable system, and should that factor into the Commission's analysis? The Commission also seeks comment on the economic impact of shortening the 25-year license term. Would a 5-year or 10-year license term alter investment incentives in new submarine cable infrastructure? Would shortened license terms impact the upgradation and maintenance of existing submarine cable systems? The Commission notes that it has adopted various license terms for differing services. For example, wireless and broadcast licensees have renewal terms. For Miscellaneous Wireless Communications Services (WCS), the license term varies according to spectrum band, which results in different license periods such as 10, 12, or 15 years. License terms for satellites also vary. Space stations licensed under part 25 of the Commission's rules have a 15-year license term, except that small satellites have a 6-year license term and certain Satellite Digital Audio Radio Service (SDARS) and Direct Broadcast Satellite (DBS) space stations have an 8-year license term.[51] In the context of broadcast licensing, each license granted for the operation of a broadcasting station is limited to a term not to exceed eight years. In the *Evolving Risks NPRM,* the Commission tentatively concluded that a 10-year timeframe is reasonable under the proposed renewal framework for structuring a formalized and systemic reassessment of carriers' international section 214 authority.[52]

41. Would a shortened license term similar to the terms for a broadcast or wireless license or the proposed 10-year timeframe proposed for international section 214 authorizations be appropriate, and if so, why? Would adopting a 15-year license term similar to geostationary space station licenses under part 25 be more appropriate given the large capital investment typically required to launch these satellites and deploy submarine cable systems? Would a 10- to 15-year renewal time frame, as opposed to a 25-year term, better ensure that the Commission and the relevant executive branch agencies can continually reassess and account for evolving national security and other concerns? The Commission also seeks comment on whether licensees should or could ask for different renewal terms prior to the expiration of their current license term based on their particular circumstances. What is the capital investment and lifespan of current fiber optic cable infrastructure and how should that impact the Commission's proposal? While most cable landing licensees have asked for a renewal term of 25 years, a few have asked for a shorter term.[53] Should the Commission adopt a rule reserving its discretion to impose a shorter license term on a case-by-case basis based on risk factors where the Commission deems it would be in the public interest?[54] Should a license term reset if a submarine cable landing licensee undergoes a complete review, such as during the review of a substantial assignment or transfer of control application?[55] What factors should the Commission take into consideration in its analysis of whether to shorten the submarine cable landing license term and renewal process? The Commission seeks comment on whether to adopt a renewal expectancy standard for submarine cable licenses, subject to any approval of or objection to a proposed grant of an application by the State Department. Should such a standard apply only in the event the Commission shorten the license term? Should a specific showing at renewal be required, such as certification that the licensee has been in operation consistent with their initial application

have been upgraded or redeployed. Consistent with these characteristics, the Federal Communications Commission ('FCC') grants cable landing licenses for a term of 25 years (subject to renewal) from commencement of commercial service.'' TeleGeography, *Submarine Cable Frequently Asked Questions, https://www2.telegeography.com/submarine-cable-faqs-frequently-asked-questions* (last visited Nov. 12, 2024) (''[c]ables are engineered with a minimum design life of 25 years . . .'').

[50] *See Executive Branch Review Report and Order,* 35 FCC Rcd at 10934–35, para. 17 (discussing executive branch referral process for those applications for international section 214 authorizations and submarine cable licenses or to assign, transfer control or modify such authorizations and licenses where the applicant has reportable foreign ownership filed pursuant to §§ 1.767, 63.18, and 63.24 of the rules, 47 CFR 1.767, 63.18, and 63.24).

[51] For geostationary space stations that are issued an initial license term for a period of 15 years, licensees may apply for a modification to extend the license term in increments of five years or less.

[52] In the *Evolving Risks NPRM,* the Commission tentatively found that a renewal timeframe of 10 years—in conjunction with the proposal in that NPRM to require authorization holders to provide updated ownership information, cross border facilities information, and other information every three years—would ensure that the Commission and the relevant executive branch agencies can continually reassess and account for evolving national security, law enforcement, foreign policy, and/or trade policy concerns associated with international section 214 authorizations. Moreover, the Commission noted that a 10-year timeframe would minimize burdens on authorization holders and balance the Commission's policy considerations with administrative efficiency for the Commission and the relevant executive branch agencies, including the Committee.

[53] File No. SCL–MOD–20190305–00007, *Actions Taken Under Cable Landing License Act,* Public Notice, Report No. SCL–00238, 34 FCC Rcd 2810 (IB 2019) (granting Hawaiian Telecom, Inc.'s application to modify the cable landing license for the Hawaiian Interisland Cable System, to extend the license term for an additional five-year period).

[54] The Commission's rules expressly preserve its discretion to grant individual broadcast station licenses for less than the standard license term if the public interest, convenience, and necessity would be served by such action. *See* 47 CFR 73.1020(a) (''Both radio and TV broadcasting stations will ordinarily be renewed for 8 years. However, if the FCC finds that the public interest, convenience and necessity will be served thereby, it may issue either an initial license or a renewal thereof for a lesser term.''); *id.* § 74.15(d) (''Lower power TV and TV translator station and FM translator station licenses will ordinarily be renewed for 8 years. However, if the FCC finds that the public interest, convenience or necessity will be served, it may issue either an initial license or a renewal thereof for a lesser term. The FCC may also issue a license renewal for a shorter term if requested by the applicant.''); *1997 Broadcast License Terms Order,* 62 FR 5339 (February 5, 1997), 12 FCC Rcd at 1729, 1739, n.24, Appx. A. *See also* 47 U.S.C. 309(k)(2) (where applicant fails to meet the standards for renewal, the Commission may grant the application ''on terms and conditions as are appropriate, including renewal for a term less than the maximum otherwise permitted.'').

[55] For example, assuming the Commission were to adopt a 10-year license term, if an entity that is granted a license in 2025, so that its 10-year renewal period would be 2035, subsequently files a substantial transfer of control application which is granted in 2030, should the 10-year renewal period be reset to 2040?

for a license? [56] Commenters should address the burdens that will be placed on the licensees based on the length of the license term and identify the costs and benefits overall and impact, if any, on small businesses.

42. The Commission tentatively affirms that, regardless of whether it adopts any new license term separately or in combination with periodic reporting, the Commission will continue to exercise its existing authority, as it deems necessary, to conduct *ad hoc* reviews of submarine cable landing licenses at any time during any license term. For instance, if the Commission were to adopt a license term of 10 years combined with periodic reporting, it might still elect to exercise its existing authority to review and, if necessary, modify or revoke or terminate licenses at any time during the 10-year license term. The Commission seeks comment on its proposed approach.

43. *Potential Rules Would Apply to All Licensees.* The Commission generally seeks comment on the application of any new license term it may adopt to all submarine cable landing licensees. In particular, the Commission seeks comment on whether all submarine cable landing licenses, regardless of issuance date, should be subject to any new license term.

44. *Licensees Whose License is Granted After the Effective Date of New Rules.* With respect to licensees whose license is granted after the effective date of any new rules adopted in this proceeding, the Commission tentatively concludes that it would apply any new license term adopted in this proceeding to such licensees. If the Commission adopts a new license term, it proposes to direct OIA to include a condition in submarine cable landing licenses granted after the effective date of any new rules requiring compliance with any new license term. The Commission seeks comment on this approach.

45. *Licensees Whose License Was or is Granted Prior to the Effective Date of New Rules.* With respect to licensees whose license was or is granted prior to the effective date of the new rules, the Commission seeks comment on whether their existing license term should remain the same, but that at the time of renewal, the Commission would apply any new license term it adopts in this proceeding. The Commission also seeks comment on whether any license granted after the issuance of the *NPRM* and before the effective date of the new rules should be subject to any shortened term the Commission may adopt in this proceeding.[57] If the Commission applies a shortened license term to existing licenses, how should it handle situations in which an existing license has been in effect for a period that exceeds the new license term?

46. *Other Matters.* The Commission seeks comment on whether to apply any shortened license term as a condition of granting an application for a substantial and/or *pro forma* assignment or transfer of control of an existing submarine cable landing license. The Commission also seeks comment on whether cable landing licensees that have a pending renewal application prior to the effective date of any shortened license term should be subject to any new license term the Commission might adopt.

47. *Due Process and Retroactivity.* The Commission seeks comment on due process and retroactivity concerns—including ''primary'' versus ''secondary'' retroactivity—that may arise from modifying existing licenses to conform the license term with any shorter term that may be adopted in final rules or from applying a new, shorter license term as a condition of granting applications for modification, assignment, transfer of control, and renewal or extension of existing licenses.[58]

48. The courts have established a distinction for rules between ''primary'' retroactivity and ''secondary'' retroactivity. A rule is primarily retroactive if it (1) ''increase[s] a party's liability for past conduct''; (2) ''impair[s] rights a party possessed when he acted''; or (3) ''impose[s] new duties with respect to transactions already completed.'' The standard for primary retroactivity assesses whether a rule has changed the past legal consequences of past actions. In contrast, a rule would be ''secondarily'' retroactive if it ''affects a regulated entity's investment made in reliance on the regulatory status quo before the rule's promulgation.'' Secondary retroactivity will be upheld ''if it is reasonable.''

49. The Commission tentatively concludes that any shorter license term it ultimately adopts would not be ''primarily'' retroactive, as the mere adoption of such a requirement would not make past conduct unlawful, alter rights the licensee had at the time when it acted, or impose new duties with respect to completed transactions.

50. The Commission recognizes, however, that such a requirement could upset the expectations of existing submarine cable landing licensees. To the extent that applying any new license term may constitute ''secondary'' retroactivity, the Commission seeks comment on any impact of applying a new license term to existing licensees. How would such an impact compare to the benefits of applying a shortened license term to existing submarine cable landing licenses, including those granted before the issuance of the *NPRM,* such as providing for a more timely, systematic, and uniform review process that will enable the Commission to consider pertinent issues, including national security, law enforcement, foreign policy, and/or trade policy concerns, in the context of a renewal application without waiting for current licenses to expire, potentially decades from now? The Commission also seeks comment on whether and under what circumstances denial of a submarine cable landing license renewal application or an application for assignment/transfer of control would trigger primary or secondary retroactivity concerns. For example, if the Commission adopts a shorter license term and applies it to existing licensees, would non-renewal of a submarine cable landing license based on evolving national security, law enforcement, foreign policy, and/or trade policy risks, regardless of that submarine cable landing licensee's prior compliance with the Commission's rules, have primary or secondary retroactive effect? Additionally, would the application of a new license term to existing cable landing licensees require different standards or procedures based on retroactivity, reliance interests, or fair notice concerns? How would application of a new license term to existing licensees affect those licensees' operations, financial position, or investment incentives?

[56] The Commission notes that broadcast licenses must be renewed unless the Commission makes one of the findings enumerated by statute. *See also Amendment of Parts 1, 22, 24, 27, 74, 80, 90, 95, and 101 to Establish Uniform License Renewal, Discontinuance of Operation, and Geographic Partitioning and Spectrum Disaggregation Rules and Policies for Certain Wireless Radio Services,* WT Docket No. 10–112, Second Report and Order (82 FR 41530, September 1, 2017) and Further Notice of Proposed Rulemaking (82 FR 41580, September 1, 2017), 32 FCC Rcd 8874 (adopting rules that, among other things, establish a consistent standard for renewing wireless licenses).

[57] The Commission notes that applicants seeking licenses after issuance of the *NPRM* will be aware of the possibility that the Commission may adopt a shortened license term and that any new license term may be a condition of grant of their application.

[58] *See, e.g., Mobile Relay Assocs.* v. *FCC,* 457 F.3d 1, 11 (D.C. Cir. 2006) (non-renewal resulting from a new regulatory framework may ''upset[ ] expectations based on prior law,'' but that is not primarily retroactive).

B. Updated Application Requirements for National Security and Other Purposes

51. In this section, the Commission proposes and seeks comment on appropriate applicant and application requirements to account for the evolution of technologies and facilities and changes in the national security landscape over the last two decades. The Commission's goal is to update and improve its rules to ensure it has targeted and granular information regarding the ownership, control, use of a submarine cable system, and other things, which are critical to the Commission's review to assess potential national security risks and other important public interest factors.

1. Requirements To Be an Applicant/Licensee

52. The Commission seeks comment on modernizing its existing rules setting forth minimum applicant/licensee eligibility requirements to ensure that the Commission identifies and captures information on those entities that own and control the submarine cable system and connect with terrestrial networks in the United States.[59] Currently, § 1.767(h) of the Commission's rules identifies the following as those entities that, at a minimum, shall be applicants for and licensees on a cable landing license: (1) ''[a]ny entity that owns or controls a cable landing station in the United States[,]''and (2) ''[a]ll other entities owning or controlling a five percent (5%) or greater interest in the cable system and using the U.S. points of the cable system.'' [60] The Commission seeks comment generally on an appropriate rule that would capture who should be an applicant/licensee on a cable landing license under the Cable Landing License Act today and in the future to ensure the Commission meets its public interest responsibilities.

53. *Entities that Own or Control a U.S. Landing Station or Submarine Line Terminal Equipment (SLTE).* The Commission seeks comment on whether to require not only entities that own or control the U.S. cable landing station, but also entities that own or control the SLTE or equivalent equipment to be applicants for and licensees on a cable landing license. The SLTE is among the most important equipment associated with the submarine cable system and this modification to the Commission's rule would enable it to know and assess any national security and law enforcement concerns related to the entities that will deploy SLTE and thus who can significantly affect the cable system's operations. Specifically, the Commission seeks comment on whether to expand the applicant/licensee requirement to include any entity that owns or controls or operates a cable landing station(s) or the SLTE or equivalent that converts submarine signals into terrestrial signals located in the U.S. portion of a cable system. The Commission believes that including the term ''submarine line terminal equipment'' and a general description of the functionality of the equipment would better reflect technological advances in submarine cable systems. Would this be consistent with the statutory requirement that ''[n]o person shall land or operate . . . any submarine cable'' without a license as specified in the Cable Landing License Act? Moreover, the Commission believes that including such language would capture the potential of a submarine cable system to have more than one cable landing station or a cable landing station that includes multiple SLTEs that could be located farther inland such as in another facility (*e.g.,* a data center). A proposed cable system could also have multiple locations where SLTE is deployed. The Commission seeks comment on whether and if so, how, to incorporate entities with ownership and control of SLTE into the Commission's regulatory framework. Lastly, the Commission seeks comment on how this potential change could impact existing entities, including small business entities, that were not previously required to obtain a cable landing license but now would be required to do so because they own or control SLTE. Should the Commission apply any new requirement to such existing entities and if so, when should it require such existing entities to submit applications? The Commission seeks comment on the burdens this potential change could have on such existing entities, as well as existing licensees, which may include small entities, including how long it would take them to comply with this potential requirement.

54. This option would require any entity with ownership or control of a cable landing station or SLTE or equivalent equipment to be applicants/licensees for a submarine cable landing license. Under this option, Indefeasible Right of Use (IRU) [61] holders or grantees likely meet these requirements. As background, companies that own and operate submarine cable systems may choose to use the capacity on their submarine cable systems themselves or seek to lease, sell, or swap unused or unowned capacity to recoup their investment in the submarine cable project. Internet Content Providers (ICPs) that are licensees may use the capacity themselves to connect to their data centers abroad to serve customers globally. Alternatively, they may choose to sell, lease, or swap capacity of the submarine cable fiber to telecommunications companies or other entities in need of capacity along a certain route, such as research institutions, education institutions, governments, banks, and enterprises, among others.

55. Although IRUs can be short-term, they more typically constitute long-term contracts of 20 years or longer and provide a holder or grantee with a certain amount of bandwidth of capacity or fiber on a submarine cable system.[62] These contracts provide holders or grantees with the rights to use the capacity, which includes equipment, fibers, or capacity, and may constitute assets as well, even though legal title is held by the grantor.[63] Holders or

[59] The Commission has reserved the ability to expand the minimum requirements as to who must apply for and become a licensee on a cable landing license. 47 CFR 1.767(h) (''Except as otherwise required by the Commission, the following entities, at a minimum, shall be applicants for, and licensees on, a cable landing license . . . .''). Although the Commission prescribes the minimum requirements concerning who must be an applicant for and licensee on a cable landing license, this does not foreclose entities that do not meet the minimum requirements from applying to be joint applicants for and licensees on a cable landing license.

[60] The Commission has reserved the ability to expand the types of entities who must be applicants and licensees on a cable landing license. Section 1.767(h) (stating that ''Except as otherwise required by the Commission . . . .''). Thus, other entities are not foreclosed from applying to be a joint applicant and licensee.

[61] *See also* Katie Terrell Hanna, TechTarget, *Definition: Indefeasible Right of Use (IRU)* (March 2022), *https://www.techtarget.com/searchunifiedcommunications/definition/Indefeasible-Right-of-Use* (''In telecommunications, the Indefeasible Right of Use (IRU) is a contractual agreement (temporary ownership) of a portion of the capacity of an international cable. As the name suggests, the contract provides an indefeasible right to use a cable and cannot be annulled or voided. IRU contracts are specified in terms of a certain number of channels of a given bandwidth.'') (*IRU Definition*); *id.* (''Large-scale internet service providers (ISPs) are typical IRU owners. This gives ISPs the ability to assure their own customers of international telecom service on a long-term basis. IRU fibers are also referred to as dark fibers. Here, dark fiber means fiber between two locations that has no electronics attached to it. This needs to be lit by the IRU grantee rather than the cable provider.'').

[62] *Understanding IRU Fiber: A Comprehensive Guide,* 123NET (Mar. 15, 2024), *https://www.123.net/blog/understanding-iru-fiber-a-comprehensive-guide/* (''An Indefeasible Right of Use (IRU) agreement is a legal contract that grants the buyer a permanent right to use a portion of a fiber-optic cable's capacity for a set period.'').

[63] Fernando Margarit *et al., IRUS AND FIBER OPTIC CABLES: An Overview and Examination of Associated Risks,* Submarine Telecoms Forum,

Continued

grantees of these rights may further lease out capacity to other companies that need only a portion of the holder's capacity. The contracts to lease unused or unowned capacity typically constitute short-term contracts of five years or may be shorter or longer and, unlike IRUs, generally do not require an upfront payment. However, these lease contracts do typically require monthly payments during the course of the lease term and provide a grantee with a certain amount of bandwidth of capacity or spectrum of a fiber on a submarine cable system. Importantly, as noted above, some IRU holders or grantees, such as dark fiber IRU holders, may own, control, and use specific SLTE at the ends of the cable system to interconnect with their terrestrial networks,[64] and such SLTE could be physically or logically accessed by IRU holders or grantees, thus potentially raising national security and law enforcement concerns arising from the Commission's lack of information about and regulatory oversight of these relationships and the ownership of the IRU holder or grantee.

56. Would requiring entities with ownership or control of a cable landing station or SLTE to be applicants/licensees for a submarine cable landing license appropriately address national security and law enforcement concerns regarding physical and/or logical access? Would this be consistent with the statutory requirement that ''[n]o person shall land or operate . . . any a submarine cable'' without a license as specified in the Cable Landing License Act? Does the Commission's legal authority to withhold or grant a cable landing license [65] extend to authorizing such purchases or sales of capacity? Would this be consistent with the statutory requirement to obtain a license to ''land or operate . . . any submarine cable''? If the Commission requires such entities that meet this requirement to become applicants/licensees for a submarine cable landing license, how should this requirement be implemented as to such existing entities as well as existing licensees? The Commission seeks comment on the burdens this potential change could have on affected entities, including small entities, and to identify how long it would take them to comply with this potential requirement.

57. The Commission notes that with respect to the entities that own or control the cable landing stations, it frequently receives waiver requests from entities, such as data center owners, that do not seek to become an applicant or licensee. These entities state that they own the real property/facility in which the cable landing station is located but do not have any ability to significantly affect the cable system's operation.[66] The Commission has granted such waiver requests, based on its review of the particular circumstances raised in each waiver request and done so in coordination with the Committee, as necessary.[67] The Commission seeks comment generally on the applicability of its rules to data center owners, including the access they have over submarine cables and the site operations, such as physical security, power, backup power, HVAC, and other environmental support essential to proper operations of cable landing systems housed in their facilities.

58. *Own or Control a 5% or Greater Interest in the Cable System and Using the U.S. Points of the Cable System.* The Commission seeks comment on whether it should retain the requirement that an entity that owns or controls a 5% or greater interest in the cable and uses the U.S. points of the cable system shall be an applicant for and licensee on a cable landing license. Prior to the rules adopted in 2001, there was no exception for those entities that owned less than a 5% interest in the cable. In the *2001 Cable Report and Order,* the Commission recognized that ''the greater a firm's investment in a cable system, the greater ability the firm has to influence the way in which a cable is operated . . . [and] observed that entities with minimal investment in a cable system, on the other hand, do not have the same ability to affect the operation of the cable system[.]'' [68] The Commission concluded that ''there is not the same need, therefore, to subject these entities to the conditions and responsibilities that come with a cable landing license'' unless such entities had at least a 5% or greater ownership interest in the cable system and used the U.S. points of the cable system. At the time of that proceeding, it was commonplace for consortia of many telecommunications companies to join to co-fund and own and operate a submarine cable system. Now, it is less common for consortia of more than a few entities to jointly pursue a submarine cable project. Moreover, the 5% ownership threshold was created in part to not unduly burden small carriers or investors that lacked the ability to significantly affect the operation of a cable system, such as those consortia members that entered the consortia to obtain capacity on the cable system, but held minimal investments in the cable system and did not have any ability to control the submarine cable system.

59. Should the Commission retain the 5% or greater interest threshold requirement for the same reasons noted above? Is the same rationale to retain the 5% threshold reasonable in today's national security environment? Do commenters believe the Commission can accomplish its goals in this proceeding by retaining the 5% threshold? At this level of ownership, can the Commission continue to properly assess whether certain applicants present any national security and law enforcement risks? If the Commission retains the 5% threshold, will it be able to assess whether entities should not obtain a submarine cable license based on public interest assessments? Or should the Commission instead adopt a lower or higher threshold, and if so, why? If the Commission retains a threshold for when an owner of the cable must be an applicant/licensee, the Commission seeks comment on whether it should require the applicant(s) to identify all of the owners of the cable, and for those owners that are not applicants, provide an explanation for each one as to why it is not required to be an applicant/licensee.

https://subtelforum.com/telecom-indefeasible-rights-of-use/ (last visited Aug. 11, 2024) (''These critical instruments grant exclusive, long-term rights to use specific assets, such as fiber cables, closely mirroring actual ownership without the transfer of legal title.'').

[64] *Open Submarine Cables Handbook* at 4 (''Apart from increased competition for the SLTE supply and deployment of the latest SLTE technology, the open cable model is also more adapted to new business models by providing multiple system owners more independence. Many recent new cables have been built with a per-fiber pair ownership model allowing multiple cable systems owners to use different SLTE (including management systems) on their own fiber pairs. Spectrum sharing within a fiber pair can also be supported. Lastly, when the different owners want to upgrade, they can do so independently from the other owners.'').

[65] 47 U.S.C. 35.

[66] The Commission has seen instances where a submarine cable system will land in an internet exchange, PoP, data center, or a like facility that is owned by a company that leases colocation space and services to submarine cable owners and operators but does not have any ability to significantly affect the cable system's operation.

[67] *See e.g.,* File No. SCL–LIC–20210329–00020, *Actions Taken Under Cable Landing License Act,* Public Notice, Report No. SCL–00353, DA 22064 (IB 2022) (granting the applicants' request for a waiver of 47 CFR 1.767(h)(1)).

[68] *2001 Cable Report and Order,* 16 FCC Rcd at 22167, n.131 (citing *2000 Cable NPRM,* 65 FR 41613 (July 6, 2000), 15 FCC Rcd at 20824, para. 82); *see id.* at 22194–95, paras. 53–54 (modifying the rules to require any entity that could exert influence or control over the cable system or who owned or controlled the cable landing station(s), or the facilities that would permit the cable to interconnect to a terrestrial network in the United States, to be an applicant and licensee on a cable landing license).

60. The Commission also seeks comment on how entities are currently calculating ownership interests to determine if they hold a 5% or greater interest.[69] Should the Commission specify a method for making this calculation? If so, what is an appropriate basis for the calculation given all of the varying pieces of infrastructure in a cable system—the U.S. cable landing station(s) that has the terminal equipment, including the SLTE and the dry segment; the wet segment (including the U.S. beach manhole and every segment and branching unit of the cable system to the foreign beach manhole(s)); and ultimately, the foreign dry plant(s) terminating with the SLTE in the cable landing station(s)? Should the calculation be based on the number of fiber pairs owned by each entity, the percentage of capacity held by each entity, the percent of the total cost of the cable system that each applicant is contributing, or the percentage of the total distance of the cable system from SLTE to SLTE or from beach manhole to beach manhole?[70] The Commission seeks comment on these and other bases for making this calculation.

61. In discussing the basis for adopting the 5% requirement in the *2000 Cable NPRM,* the Commission stated that it intended for an entity that has a ''five percent or greater ownership interest in the proposed cable . . . and . . . will use the U.S. points of the cable system in *any capacity,* unless that use was simply to hard patch through the United States and would not drop traffic in the United States or would use the U.S. points to re-originate traffic,'' to be included as an applicant. The Commission, however, did not further define the phrase ''use of the U.S. points of the cable system'' in the *2001 Cable Report and Order.* Since the Commission adopted this rule over two decades ago, are there new developments in the landing and operation of submarine cable systems that the Commission should take into account when providing guidance on what it means to use the U.S. points of the cable system? In addition, how should the Commission consider use of the U.S. points of the cable system when the traffic's destination is not the United States? The Commission seeks comment on whether and how it should consider ''use of the U.S. point'' today and for the benefit of any public interest concerns.

62. *Any Entity that Owns the Submarine Cable System.* The Commission seeks comment on whether it should instead require any entity that owns the submarine cable system to be an applicant/licensee, even if the entity does not use the cable system. Should the Commission require that any entity that owns any interest in the cable to become a licensee similar to the Commission's rules prior to 2001? Prior to the rules adopted in 2001, there was no exception for those entities that owned less than a 5% interest in the cable. Would this approach be consistent with the statutory requirement that no person shall ''land or operate . . . any submarine cable'' without a license as specified in the Cable Landing License Act? Given the importance of this critical infrastructure and to protect against national security and law enforcement threats, would a rule requiring entities that have any ownership in the cable system to become applicants/licensees be more appropriate today and into the future? Could the Commission better accomplish its goals by adopting this requirement? What are the benefits and concerns with adopting this rule and how would this increase the number of applicants/licensees? What burdens would be imposed on existing and future applicants/licensees, including any implementation concerns? How would this option affect investment incentives and what would be the impact for implementation of this option on existing licenses? How long would it take for entities to come into compliance? How would this change affect small entities? If the Commission were to adopt this rule, would it be able to better assess applicants/licensees for any public interest concerns, including national security or law enforcement risks?

63. *Any Entity that Has Capacity on the Submarine Cable System.* The Commission seeks comment generally on whether to require any entity that holds capacity on the submarine cable to be an applicant/licensee. Would this be consistent with the statutory requirement that no person shall ''land or operate . . . any submarine cable'' without a license as specified in the Cable Landing License Act? Any entity that holds capacity on the submarine cable system, such as an entity that leases capacity and may not own the terminal equipment or SLTE, may still have an ability to operate a portion of the cable system. Would this broader requirement better facilitate the Commission's public interest assessment? Would small entities be affected by this rule change? For example, the Commission seeks comment on whether holding capacity on the cable system should be defined to include the leasing, purchasing, selling, buying, or swapping of a fiber (spectrum, capacity, partial fiber pair, or a full fiber pair, among others) for transmission of voice, data, and internet over the cable system to interconnect with a U.S. terrestrial network. The Commission seeks comment on whether the rule should be limited to entities that hold capacity and are selling, leasing, and/or swapping spectrum or capacity, or extend to those entities that enter into contracts or arrangements to receive spectrum or capacity or a fiber pair. The Commission seeks comment on the same implementation questions as above. For example, what burdens would be imposed on existing and future applicants/licensees? How would this option affect investment incentives and what would be the impact for implementation of this option on existing licenses? How long would it take for entities to come into compliance? How would this change affect small entities? Should the rule apply to entities that lease or employ SLTE in the U.S. point(s) of the cable system for operation of spectrum or capacity? The Commission intends that the rule should not extend to customers on the edge of a network and should instead apply to entities that hold capacity and are using the U.S. end of a submarine cable, which may include ICPs, telecommunications providers, or other businesses.

2. Presumption of Entities Not Qualified To Become a New Submarine Cable Landing Licensee

64. To protect U.S. communications networks from national security and law enforcement threats, the Commission proposes to adopt a presumption that certain entities and their current and future affiliates and subsidiaries shall not be qualified to become a new submarine cable landing licensee. The Commission proposes that such entities shall bear the burden of overcoming this presumption if they file an application for a cable landing license. The Commission also seeks comment on whether it should instead adopt a categorical qualifying condition that would preclude the grant of a cable

[69] 47 CFR 1.767(h)(2) (''All other entities owning or controlling a five percent (5%) or greater interest in the cable system and using the U.S. points of the cable system'' shall be applicants for, and licensees on, a cable system). The Commission has reserved the ability to expand the types of entities who must be applicants and licensees on a cable landing license. 47 CFR 1.767(h) (stating that ''Except as otherwise required by the Commission. . . .''). Thus, other entities are not foreclosed from applying to be a joint applicant and licensee.

[70] For example, assuming that the total cable system distance was 20,000 km, and Company A owns a segment of a cable system that is 1,000 km in length and will use the U.S. points of the cable system, should Company A be attributed with a 5% ownership (1,000 km/20,000 km = 0.05) and required to be an applicant/licensee?

landing license application filed by any applicant: (1) that is directly and/or indirectly owned or controlled by, or subject to the influence of a government organization of a foreign adversary country, as defined under 15 CFR 791.4; (2) that is directly and/or indirectly owned or controlled by, or subject to the influence of an individual or entity that has a citizenship(s) or place(s) of organization in a foreign adversary country; (3) that is directly and/or indirectly owned or controlled by, or subject to the influence of an individual or entity on the Commission's Covered List; and/or (4) that is using or will use equipment or services identified on the Commission's Covered List in the proposed submarine cable infrastructure. Should the Commission also adopt a categorical qualifying condition based on other U.S. Government determinations that certain individuals and entities pose national security or other risks, such as the Consolidated Screening List from the Departments of Commerce, State, and Treasury? [71]

65. Specifically, the Commission proposes to adopt a presumption that any entity whose application for international section 214 authority was previously denied or whose domestic or international section 214 authority was previously revoked in view of national security and law enforcement concerns, and its current and future affiliates and subsidiaries, shall not be qualified to become a new cable landing licensee. The Commission proposes to apply the definitions of affiliate and subsidiary that are set out in § 2.903(c) of the rules and seeks comment on this approach.[72] The Commission proposes that such entities shall bear the burden of overcoming this presumption if they file an application for a cable landing license. Accordingly, the Commission proposes to adopt this presumption with respect to the following entities and their current and future affiliates and subsidiaries—China Mobile USA, CTA, CUA, Pacific Networks, and ComNet.[73] In the *China Mobile USA Order, China Telecom Americas Order on Revocation and Termination, China Unicom Americas Order on Revocation,* and *Pacific Networks and ComNet Order on Revocation and Termination,*[74] the Commission found that these entities are subject to exploitation, influence, and control by the Chinese government, and that mitigation would not address the national security and law enforcement concerns. Further, in the *2024 Open internet Order* (89 FR 45404, May 22, 2024), the Commission excluded China Mobile USA, CTA, CUA, Pacific Networks, ComNet, and their current and future affiliates and subsidiaries from grant of blanket section 214 authority for the provision of broadband internet access service (BIAS). Consistent with the Commission's findings in those proceedings, it believes that allowing entities whose authorizations have been denied or revoked on national security and law enforcement grounds to access critical communications infrastructure would present significant and unacceptable risks.[75] Furthermore, the Commission proposes to adopt this presumption with respect to any entity whose application (including an application for any authorization or license) is or was previously denied or whose authorization or license is or was previously revoked and/or terminated on national security or law enforcement grounds, and its current and future affiliates and subsidiaries.

66. The Commission tentatively finds that its proposal to adopt a presumption that these entities shall not be qualified to become a new cable landing licensee is consistent with the Commission's statutory authority to withhold cable landing licenses under the Cable Landing License Act and Executive Order 10530. The Cable Landing License Act sets forth, among other things, that the President ''may withhold or revoke such license when he shall be satisfied after due notice and hearing that such action . . . will promote the security of the United States.'' [76] The authority vested in the President is delegated to the Commission pursuant to Executive Order 10530.[77] The Commission tentatively finds that it has authority to adopt this presumption with respect to a class of entities, and to assign them the burden of overcoming the presumption in any cable landing license application, where it relates to the Commission's evaluation as to whether withholding a cable landing license from such entities would ''promote the security of the United States.'' The Commission seeks comment on these tentative findings.

67. In the recent section 214 denial proceeding and revocation proceedings, the Commission extensively evaluated national security and law enforcement considerations raised by existing section 214 authorizations and determined, based on thorough record development, that the present and future public interest, convenience, and necessity was no longer served by those carriers' retention of their section 214 authority. The Commission believes the same national security and law enforcement concerns identified in those proceedings equally exist with respect to these entities seeking to land or operate a submarine cable in the United States. The Commission therefore believes that its determinations in those proceedings are directly relevant to the determination as to whether grant of a new cable landing license to the identified entities and their current and future affiliates and subsidiaries would serve the public interest. The Commission seeks comment on this proposal.

68. The Commission also proposes to presume that any entity whose

[71] The Consolidated Screening List is a list of parties for which the United States Government maintains sanctions or restrictions on certain exports, reexports, or transfers of items.

[72] 47 CFR 2.903(c) (defining ''affiliate'' as ''an entity that (directly or indirectly) owns or controls, is owned or controlled by, or is under common ownership or control with, another entity; for purposes of this paragraph, the term 'own' means to have, possess, or otherwise control an equity interest (or the equivalent thereof) of more than 10 percent''); *id.* (defining ''subsidiary'' as ''any entity in which another entity directly or indirectly: (i) Holds de facto control; or (ii) Owns or controls more than 50 percent of the outstanding voting stock'').

[73] The Commission's proposed approach would not modify the cable landing licenses currently held by affiliates of these identified entities. The Commission retains the authority to revoke a licensee's cable landing license when warranted.

[74] *See China Telecom Americas Order on Revocation and Termination; China Unicom Americas Order on Revocation; Pacific Networks and ComNet Order on Revocation and Termination.*

[75] *2024 Open Internet Order* at *131, paras. 339–340; *see also id.* at para. 32 (''There can be no question about the importance to our national security of maintaining the integrity of [the Commission's] critical infrastructure, including communications networks . . . Disruptions of communications can easily have significant cascading effects on other critical infrastructure sectors that rely on communications.'').

[76] 47 U.S.C. 35 (''The President may *withhold* or revoke such license when he shall be satisfied after due notice and hearing that such action will assist in securing rights for the landing or operation of cables in foreign countries, or in maintaining the rights or interests of the United States or of its citizens in foreign countries, *or will promote the security of the United States* . . . .'') (emphasis added).

[77] Executive Order 10530, section 5(a) (The Federal Communications Commission is hereby designated and empowered to exercise, without the approval, ratification, or other action of the President, all authority vested in the President by the act of May 27, 1921, ch. 12, 42 Stat. 8 (47 U.S.C. 34 to 39), including the authority to issue, withhold, or revoke licenses to land or operate submarine cables in the United States: *Provided,* That no such license shall be granted or revoked by the Commission except after obtaining approval of the Secretary of State and such advice from any executive department or establishment of the Government as the Commission may deem necessary. The Commission is authorized and directed to receive all applications for the said licenses.).

application for a Commission authorization is or was previously denied, or whose license or authorization for any service is or was previously revoked and/or terminated, for national security and/or law enforcement reasons, and their current and future affiliates and subsidiaries, is presumptively unqualified to hold a cable landing license. The Commission notes this approach would supplement the Commission's existing character qualifications policy, which looks to whether an applicant has violated the Communications Act or Commission rules, has been convicted of a felony, or has engaged in other specified types of misconduct indicating that the applicant is not trustworthy or reliable. The Commission also seeks comment on whether there are other types of entities that also pose national security, law enforcement, or other concerns and to which the Commission should apply a similar presumption that such entities shall not be qualified to become cable landing licensees and must overcome such a presumption in any cable landing license application that they file with the Commission. What factors or criteria should inform the Commission's determination of any such types of entities and whether they pose national security, law enforcement, and other concerns that warrant adoption of such a presumption? The Commission also seeks comment on whether it should apply a standard in assessing whether such entities have overcome this presumption in any application that is filed for a new cable landing license.

69. The Commission seeks comment on whether it should instead adopt a categorical qualifying condition that would preclude grant of any submarine cable application—including an application for a cable landing license or the modification, assignment, transfer of control, or renewal or extension of such license—filed by any applicant that is directly and/or indirectly owned or controlled by, or subject to the influence of, (1) a government organization of a ''foreign adversary'' country, and/or (2) an individual or entity that has a citizenship(s) or place(s) of organization in a ''foreign adversary'' country, as defined under 15 CFR 791.4. If so, what ownership threshold should the Commission apply to any categorical condition precluding the grant of a cable landing license application filed by applicants that are owned by foreign interest holders associated with a foreign adversary country? For example, should the Commission preclude grant of a cable landing license application filed by any applicant that is directly and/or indirectly majority-owned by such foreign interest holders? Or should the Commission preclude grant of a cable landing license application filed by any applicant that has a direct and/or indirect 10% or greater foreign interest holder associated with a foreign adversary country? Is 10% the appropriate threshold, or should the Commission adopt a greater or lesser threshold?

70. The Commission seeks comment on whether it should prohibit cable landing licensees from entering into arrangements for IRUs or leases for capacity on submarine cables landing in the United States, with any entity that has a citizenship(s) or place(s) of organization in a ''foreign adversary'' country, as defined under 15 CFR 791.4. The Commission also seeks comment on whether it should prohibit cable landing licensees from entering into such arrangements with any entity that is directly and/or indirectly owned or controlled by, or subject to the influence of, (1) a government organization of a foreign adversary country, and/or (2) any individual or entity that has a citizenship(s) or place(s) of organization in a ''foreign adversary'' country, as defined under 15 CFR 791.4. What ownership threshold should the Commission apply to the extent it prohibits cable landing licensees from entering into arrangements for IRUs or leases for capacity with entities that are owned by foreign interest holders associated with a foreign adversary country? For example, should the Commission prohibit licensees from entering into such arrangements with any entity that is directly and/or indirectly majority-owned by such foreign interest holders? Or should the Commission prohibit licensees from entering into such arrangements with any entity that has a direct and/or indirect 10% or greater foreign interest holder associated with a foreign adversary country? Is 10% the appropriate threshold, or should the Commission adopt a greater or lesser threshold? Additionally, the Commission seeks comment on whether to adopt rules that prohibit cable landing licensees from landing a cable licensed by the Commission in certain locations, such as landing points in a ''foreign adversary'' country, as defined under 15 CFR 791.4.

3. Five (5) Percent Threshold for Reportable Interests

71. The Commission seeks comment on whether to lower the current 10% ownership reporting threshold to five percent (5%) or greater direct and indirect equity and/or voting interests in the applicant(s) and licensee(s). The 5% threshold would apply to initial applications for cable landing licenses and applications for modification, assignment, transfer of control, and renewal or extension of submarine cable licenses. Currently, applicants for a submarine cable landing license must submit the information required in § 63.18(h) of the rules, including identification of ''any individual or entity that directly or indirectly owns ten percent or more of the equity interests and/or voting interests, or a controlling interest, of the applicant, and the percentage of equity and/or voting interest owned by each of those entities (to the nearest one percent).''

72. The Commission believes that greater insight into the ownership of applicants and licensees who own, control, and operate submarine cable systems is crucial to responding to the evolving threat environment, and that the current reporting threshold of 10% may not capture all interests that may present national security and policy concerns. When the Commission adopted the Standard Questions in the *2021 Standard Questions Order* (86 FR 68428, December 2, 2021), it incorporated input from the Committee staff recommending a 5% ownership reporting threshold. The Commission noted the views of the Committee staff that it was important because ''when ownership is widely held, five percent can be a significant interest'' and ''a group of foreign entities or persons, each owning nine percent and working together, could easily reach a controlling interest in a company without having to disclose any of their interests.''

73. Moreover, both the Commission and other Federal Government entities use a 5% reporting threshold. The Commission notes that the Commission uses a 5% ownership threshold in the broadcast context.[78] Additionally, a reporting threshold of 5% applies to information that U.S. public companies and their shareholders provide to the Securities and Exchange Commission (SEC). The regulation at 17 CFR 240.13d–1 (Exchange Act Rule 13d–1) requires a person or ''group'' that becomes, directly or indirectly, the

[78] 47 CFR 73.3555, n.2 (''[t]he sum of the interests other than those held by or through 'passive investors' is equal to or exceeds 5 percent.''); *FCC Form 323 Instruction for Ownership Reports for Commercial Broadcast Stations,* at 5 (''Each officer, director, and owner of stock accounting for 5 percent or more of the issued and outstanding voting stock of the Respondent is considered the holder of an attributable interest, and must be reported.''), *https://www.fcc.gov/sites/default/files/323.pdf* (last visited Oct. 22, 2024).

''beneficial owner'' of more than 5% of a class of equity securities registered under section 12 of the Exchange Act to report the acquisition to the SEC. The Commission notes that various SEC forms filed by issuers, including their annual reports (or proxy statements) and quarterly reports, require the issuer to include a beneficial ownership table that contains, among other things, the name and address of any individual or entity, or ''group,'' who is known to the issuer to be the beneficial owner of more than 5% of any class of the issuer's voting securities. A reporting threshold of 5% would also be consistent with that required by the Committee on Foreign Investment in the United States (CFIUS) [79] from parties to a voluntary notice filed with CFIUS. The 5% threshold thus appears to be a generally accepted benchmark for understanding the investors in an entity. The Commission also anticipates, based on this fact, that entities generally will or should already know their 5% interest holders. Thus, the Commission tentatively concludes that its proposal to adopt a reporting threshold of 5% would be consistent with the reporting requirements of other Federal agencies and would impose minimal burdens on applicants.

74. The Commission seeks comment on whether a reporting threshold of 5% equity and/or voting interest adequately captures the relationship, association, and/or extent of influence that an investor may have in an applicant. Would a reporting threshold of 5% equity and/or voting interests sufficiently account for powers held by shareholders with less than 5% equity and/or voting interests but who may hold other special privileges or powers in the corporate structure? For instance, would the reporting threshold account for a situation where a foreign government interest holder with a smaller ownership and/or voting interest, below the 5% threshold, may wield a disproportionately significant influence on the applicant through ''golden shares?'' [80] Should the Commission require additional information about an applicant's reportable interest holders? Should the Commission expand the reportable interests beyond percentages of equity and/or voting interests, for example, by requiring applicants to identify other types of interests or interest holders, such as management agreements? What other indicia of significant influence or control should the Commission consider in order to fully identify interest holders that are either foreign governments or foreign state-owned entities? What additional information would fully inform and assist the Commission's assessment of any national security, law enforcement, foreign policy, and/or trade policy risks raised by such interest holders?

75. The Commission seeks comment on what, if any, potential burdens would be imposed on applicants if they were required to report direct and indirect equity and/or voting interests at a 5% threshold. The Commission also seeks comment on ways for the Commission to minimize those burdens. While the Commission anticipates that most entities should readily be able to identify their 5% interest holders given other existing reporting requirements at that threshold, the Commission seeks comment on this belief. The Commission likewise invites comment on whether this lower reporting threshold will generally result in the identification of a substantially, or only marginally, greater number of interest holders.[81]

76. Commenters should also address whether there are any privacy concerns implicated by the lower reporting threshold, and whether this information is ''financial information'' of a privileged and confidential nature. Do licensees and interest holders view this information as confidential? What, if any, privacy or other harms, would result from disclosure of these interest holders? [82] The Commission tentatively concludes that the privacy interest of 5% interest holders, if any, in not being identified in applications and any interest in withholding privileged and confidential financial information of this nature is outweighed by national security and other public interest benefits from such reporting. Moreover, the Commission believes that these interests can be otherwise protected. For instance, if the Commission adopts a 5% reporting threshold, filers can seek confidential treatment, as is the case under the Commission's current reporting threshold. The Commission seeks comment on whether it should instead treat the disclosure of certain ownership interests of 5% and up to less than 10% as presumptively confidential,[83] without requiring the applicant to file a request for confidentiality. The Commission notes that the ownership information must not be publicly available elsewhere either in this country or another country for us to treat it as presumptively confidential. Alternatively, should the Commission require public disclosure of ownership interests of 5% and up to less than 10% of only those interest holders that are citizens, entities, or government organizations of foreign adversary countries, as defined in the Department of Commerce's rule, 15 CFR 791.4?

4. Submarine Cable Infrastructure Information

77. Consistent with the Commission's goal of ensuring it has sufficient information concerning this critical infrastructure, the Commission proposes to require applicants [84] for a cable

[79] CFIUS is ''an interagency committee authorized to review certain transactions involving foreign investment in the United States and certain real estate transactions by foreign persons, in order to determine the effect of such transactions on the national security of the United States.''

[80] *See, e.g., In re Franchise Services of North America, Inc.* v. *U.S. Trustee,* 891 F.3d 198, 205 (5th Cir. 2018) (''Generally speaking, a 'golden share' is '[a] share that controls more than half of a corporation's voting rights and gives the shareholder veto power over changes to the company's charter.' *E.g.,* Golden Share, Black's Law Dictionary (10th ed. 2014); *see also* Mariana Pargendler, *State Ownership and Corporate Governance,* 80 Fordham L. Rev. 2917, 2967 (2012) (noting that in the context of formerly stated-owned entities, '[g]olden shares are essentially a special class of stock issued to the privatizing government that grants special voting and veto rights that are disproportionate to, or even independent of, its cash-flow rights in the company').''); *see also* Reuters, *Fretting about data security, China's government expands its use of* ''*golden shares*'' (Dec. 15, 2021), *https://www.reuters.com/article/china-regulationdata-idCAKBN2IU2B7* (''Seeking influence, Beijing began taking golden shares in private online companies—usually about 1% of a firm—some five years ago. The stakes are bought by government-backed funds or companies which gain a board seat and/or veto rights for key business decisions.'').

[81] To the extent that the lower reporting threshold results in a substantial increase in the number of interest holders identified—or as otherwise required by other proposals in the *NPRM*—the Commission will make necessary changes to applicable Privacy Act System of Records Notices (SORNs).

[82] Commenters should identify any harms from disclosure that would warrant the withholding of this information under the Commission's rules and the Freedom of Information Act (FOIA).

[83] Other Commission requirements, such as supply chain annual reporting, provide for a checkbox certification and the submission of information that is presumptively confidential. *2020 Protecting Against National Security Threats Order,* 86 FR 2904, January 13, 2021, 35 FCC Rcd at 14369–70, para. 214 (''We believe that the public interest in knowing whether providers have covered equipment and services in their networks outweighs any interest the carrier may have in keeping such information confidential . . . . Other information, such as location of the equipment and services; removal or replacement plans that include sensitive information; the specific type of equipment or service; and any other provider specific information will be presumptively confidential.''). In order to request confidential treatment of the Circuit Status Report (the predecessor of the Circuit Capacity Report), a submitter simply has to check a box that appears on the certification form accompanying all submissions.

[84] For purposes of the information requirements proposed in the *NPRM,* unless otherwise indicated, the Commission uses the terms ''applicant'' or

landing license or modification, assignment, transfer of control, and renewal or extension of a license, and licensees seeking to submit their periodic reports, to provide additional detailed information concerning the submarine cable infrastructure. Currently, § 1.767(a)(4) of the Commission's rules requires applicants for a cable landing license to provide ''[a] description of the submarine cable, including the type and number of channels and the capacity thereof[.]''

78. The Commission proposes to also require that the detailed information regarding the submarine cable system include (1) the states, territories, or possessions in the United States and the foreign countries where the cable will land;[85] (2) the number of segments in the submarine cable system and the designation of each (*e.g.,* Segment A, Main Trunk, A–B segment); (3) the length of the cable by segment and in total; (4) the location, by segment, of branching units; (5) the address and county or county equivalent of each U.S. and non-U.S. cable landing station, (6) the number of optical fiber pairs, by segment, of the submarine cable; (7) the design capacity, by segment, of the cable system, and (8) anticipated time frame when the applicant intends to place the submarine cable system into service. The Commission also proposes to modify the requirement for applicants and licensees to provide the geographic coordinates of cable landing stations as well as beach manholes, to the extent they differ from cable landing station coordinates.[86] Under the Commission's proposal, applicants would provide a specific description of the submarine cable system, including a map and geographic data in generally accepted Geographic Information Systems (GIS) formats or other formats. The Commission seeks comment on the specific information and the file formats and specific data fields that should be submitted. For example, applicants could provide a specific description of the dry plants, including geographic data in generally accepted GIS formats (*e.g.,* GeoJSON, Shapefile, Geopackage, etc.) with a map that specifies the location of (1) each beach manhole, (2) each cable landing station, including locations of each PFE and each SLTE, and (3) each Network Operations Center (NOC)[87] providing remote access to the submarine cable system. For example, the GIS data could include the routing of the optical fiber cable from the beach manhole to the cable landing station or like facility/facilities and location of the PFE, SLTE, and NOC. The map could specify the geographic coordinates (longitude and latitude) and street address, county and county equivalent, if applicable, of each beach manhole and cable landing station or similar facility. Should applicants provide maps and geographic coordinates of the location of the dry plant components that are located at the U.S. and foreign ends of the submarine cable system? The Commission proposes to delegate authority to OIA, in coordination with the Office of Economics and Analytics, to determine the file formats and specific data fields in which data will ultimately be collected. The Commission seeks comment on the proposals and approaches above.

79. *Route Position Lists.* Relatedly, the Commission seeks comment on whether it should require applicants for cable landing licenses and cable landing licensees to file with the Commission route position lists containing the geographic coordinates of the wet segment of the submarine cable. The Commission notes that maps showing the exact location of submarine cables are treated as presumptively confidential under the Commission's rules.[88] The Commission's rules require applicants for cable landing licenses to submit ''a map showing specific geographic coordinates . . . of each landing station'' and ''the coordinates of any beach joint where those coordinates differ from the coordinates of the cable station.'' Should the Commission also require applicants and licensees to submit the geographic coordinates of the entire wet segment of the submarine cable (for example, including the U.S. and foreign portions of the cable) and/or other components of the cable? Would such data enhance the ability of the Commission and other Federal agencies to identify, prevent, or mitigate spatial conflicts affecting submarine cables and further ensure the protection of this critical infrastructure?

80. *Confidential Treatment of Submarine Cable Landing Geographic Coordinates and Other Information.* The Commission proposes to provide confidential treatment for the exact addresses and specific geographic coordinates of cable landing stations, beach manholes, and other location information associated with a submarine cable system under the Commission's rules. Given the risks associated with the public availability of critical aspects of these cable systems, the Commission believes the exact addresses and geographic coordinates and other specific location information should be treated as presumptively confidential. The Commission seeks comment on the extent to which, if any, this information is treated as privileged and confidential, and what impacts might the public availability of this information have on the commercial interests of cable system owners and users.

81. Among the most sensitive parts of a submarine cable system are the wet segment as it approaches the shore, the submarine cable as it reaches the beach manhole, and the dry segment including the cable landing station(s), such as where the SLTE is located. At present, several applicants for initial cable landing licenses have requested that such information should be confidential and filed under a request for

''applicants'' to refer to an applicant or licensee that files an application or notification under § 1.767 of the Commission's rules, as well as the proposed rules for certain types of applications: (1) applicants that file an initial application for a cable landing license or an application for modification, substantial assignment, substantial transfer of control, or renewal or extension of a cable landing license; (2) cable landing licensees that file a notification of *pro forma* assignment or transfer of control of a cable landing license; and/or (3) applicants that file a request for an STA related to the operation of a submarine cable. 47 CFR 63.24(e) (referring to ''substantial'' transactions); 47 CFR 63.24(d) (defining ''Pro forma assignments and transfers of control''). Unless otherwise indicated, the Commission uses the term ''application'' or ''submarine cable application'' to refer to an initial application for a cable landing license; an application for modification, substantial assignment, substantial transfer of control, or renewal or extension of a cable landing license; and a *pro forma* assignment or transfer of control notification.

[85] Section 1.767(a)(5) of the rules requires, among other things, ''[a] specific description of the cable landing stations on the shore of the United States and in foreign countries where the cable will land.'' In addition to revisions to § 1.767(a)(5) on which the Commission seeks comment below, the Commission proposes to specifically require that applicants must include in their description of the submarine cable the states, territories, or possessions in the United States and the foreign countries where the cable will land.

[86] The Commission seeks comment on whether it should modify the part of that rule that states, ''[t]he applicant initially may file a general geographic description of the landing points; however, grant of the application will be conditioned on the Commission's final approval of a more specific description of the landing points, including all information required by this paragraph, to be filed by the applicant no later than ninety (90) days prior to construction. . . .'' The Commission proposes to redesignate this part of § 1.767(a)(5) under a new § 1.70005(f)(1).

[87] A NOC is a centralized location where information technology administrators can continuously monitor the performance of the wet and dry segments of the submarine cable system, either on site or from a remote location. The role of a NOC is to ''provide full visibility'' into the infrastructure and equipment. *Id.* (''From a security perspective, the NOC functions as the first line of defense that enables the organization to monitor network security and recognize and address any attacks or disruptions to the network.'').

[88] 47 CFR 0.457(c)(1)(i) (withholding from public inspection ''[m]aps showing the exact location of submarine cables'').

confidential treatment.[89] The Commission proposes to withhold the exact location information from public inspection. The Commission proposes to only release publicly more general location information, such as the city, state/province/department, and country in which the submarine cable system will land. The Commission seeks comment on applicants' commercial interests in this information, the extent to which such information is treated as confidential by the applicants, and what harms would result to applicants' commercial interests if the information were disclosed to the public. The Commission seeks comment on how to treat such information if it is already publicly available from another source.

82. *Sharing with Federal Agencies.* To the extent confidential treatment is requested for submarine cable infrastructure information, any sharing of the information with other Federal agencies would be subject to the procedures set out in § 0.442 of the rules. Under § 0.442, the Commission may disclose to other Federal agencies, upon the Commission's own motion or another agency's request, records that have been submitted to the Commission in confidence, subject to providing the filer notice of the proposed sharing and ten (10) days to object. In general, under Federal law, the Commission may share information it has collected pursuant to an information collection with other Federal Government agencies. If it does, all provisions of law that relate to the unlawful disclosure of information apply to the employees of the agency to which the information is released ''to the same extent and in the same manner'' as they do to employees of the collecting agency. The Commission seeks comment on whether to adopt a rule that would allow the Commission to share submarine cable landing geographic coordinates, the route position lists, and other information with relevant Federal agencies, including information for which confidential treatment is requested, without the pre-notification procedures of § 0.442(d). The Commission notes that it is seeking comment on this same process for sharing cybersecurity risk management plans and annual circuit capacity data. The Commission seeks comment generally on this process to ensure the Commission and other Federal agencies have adequate information on submarine cable infrastructure to assess for any national security, law enforcement, and other concerns.

5. Current and Future Service Offerings

83. The Commission proposes to require applicants for an initial application for a cable landing license or an application for modification, assignment, transfer of control, and renewal or extension of such license to include in their application information about the capacity services they currently provide or plan to provide through the submarine cable system. This information includes the capacity they currently own or lease, the amount of capacity they intend to sell or lease, and the capacity management services they will provide. The Commission also proposes to require applicants for a cable landing license, licensees, assignees, and transferees (as appropriate) to disclose current and expected future service offerings as part of their application for a cable landing license or modification, assignment, transfer of control, and renewal or extension of a submarine cable landing license. Collecting such information will help the Commission properly evaluate national security and other risks and the robustness of submarine cable infrastructure on an ongoing basis. Such requirements would bring the Commission's approach for submarine cable landing licenses in line with proposals for international section 214 authorization holders in the *Evolving Risks NPRM,* and incorporate insights from the executive branch agencies' efforts to obtain information about services from applicants with reportable foreign ownership.[90]

84. Specifically, the Commission proposes to require applicants to provide the following information regarding services that they currently provide and/or will provide through the submarine cable system: (1) identify and describe the capacity services and capacity management services, including the amount of fiber, spectrum, or capacity by selling, leasing, or swapping; (2) identify the types of customers that currently are served and/or will be served, including those with whom the applicant leases, sells, shares, or swaps fiber, spectrum, or capacity and/or plans to lease, sell, share, or swap fiber, spectrum, or capacity; (3) identify whether the applicant currently owns or controls and/or will own or control the U.S. portion of the submarine cable system, including the submarine cable landing station(s), through an IRU or leasehold interest; (4) identify where the applicant currently markets, offers, and provides services and/or expects to market, offer, and provide services; and (5) identify the general terms and conditions that currently apply and/or will apply to the services, such as contract duration, minimum capacity/bandwidth requirements, IRU requirements, termination clauses, security requirements, delivery or Service Level Agreement (SLA) requirements, dispute resolution, and other applicable provisions. This information might be provided as service tiers, ranges, or other applicable frames of reference. The Commission seeks comment on whether this information should be considered presumptively confidential, similar to the Commission's proposal with respect to the exact addresses and specific geographic coordinates of certain sensitive components of a submarine cable system, such as the cable landing stations and beach manholes, among others. If so, what is the basis for why the information should be treated as presumptively confidential under the Commission's rules and the FOIA?[91] In other words, to what extent does this information constitute privileged or confidential trade secrets or commercial or financial information? To what extent, if any, is this information already publicly available?

6. Regulatory Compliance Certifications

85. Given concerns about ensuring the security and integrity of this critical infrastructure, the Commission proposes new certifications to protect against national security, law enforcement, and other risks. The Commission tentatively

[89] *See, e.g.,* Letter from Craig J. Brown, Assistant General Counsel, Lumen to Marlene H. Dortch, Secretary, Federal Communications Commission at 1 (Feb. 15, 2023) (requesting confidential treatment of coordinate information, citing security risks to the cable) (on file in File No. SCL–LIC–20230222–00005); Letter from Ulises R. Pin and Brett P. Ferenchak, Counsel for GU Holdings, Inc., to Marlene H. Dortch, Secretary, Federal Communications Commission at 1–2 (June 9, 2023) (requesting confidential treatment of coordinate and address information, citing security risks to the cable) (on file in File No. SCL–LIC–20230511–00013); Letter from Ulises R. Pin and Brett P. Ferenchak, Counsel for Starfish Infrastructure Inc., to Marlene H. Dortch, Secretary, Federal Communications Commission at 1–2 (July 8, 2024) (requesting confidential treatment of coordinate and address information, citing security risks to the cable) (on file in File No. SCL–LIC–20240621–00030).

[90] *See, e.g., 2021 Standard Questions Order,* 36 FCC Rcd at 14912, Attach. C (stating in the Instructions for Standard Questions for a Submarine Cable Landing License Application, ''[t]he questions seek further details regarding the Applicant and its security-related practices, and some questions are particularly directed at identifying and assessing the complete scope of the equipment that the Applicant will be operating and the services the Applicant will be offering should the FCC grant those authorities'').

[91] Commenters should identify any harms from disclosure that would warrant the withholding of this information under the Commission's rules and the FOIA.

concludes that such requirements would help mitigate national security, economic security, law enforcement, and other concerns associated with threats to the security of submarine cable infrastructure. The Commission also expects that requiring applicants to provide these certifications will help to expedite Commission review. The Commission seeks comment on the proposals below.

86. *Compliance with FCC Rules.* The Commission proposes that all applicants seeking a cable landing license or modification, assignment, transfer of control, and renewal or extension of such license, and licensees filing their three-year periodic reports, must certify in the applications and the reports whether or not they are in compliance with the Cable Landing License Act, the Communications Act, the Commission's rules, and other laws. Specifically, the Commission proposes to require each applicant to certify in its application whether or not the applicant has violated the Cable Landing License Act, the Communications Act, or Commission rules, including making false statements or misrepresentations to the Commission; whether the applicant has been convicted of a felony; and whether there is an adjudicated determination that the applicant has violated U.S. antitrust or other competition laws, has been found to have engaged in fraudulent conduct before another government agency, or has engaged in other non-FCC misconduct the Commission has found to be relevant in assessing the character qualifications of a licensee or authorization holder. The Commission seeks comment on these proposals. The Commission also seeks comment on whether it should require applicants to disclose any pending FCC investigations, including any pending Notice of Apparent Liability, and any adjudicated findings of non-FCC misconduct. In addition, the Commission seeks comment on whether it should require applicants to disclose any violations of the Communications Act, Commission rules, or U.S. antitrust or other competition law, or any other non-FCC misconduct only where there has been adjudication or notification of a violation by an agency or court.

87. *Cybersecurity Certifications.* The Commission proposes to require all applicants for a cable landing license or modification, assignment, transfer of control, and renewal or extension of a cable landing license, and licensees filing their three-year periodic reports, to certify in the application or report that they have created, updated, and implemented cybersecurity risk management plans. The Commission also proposes to require that existing licensees shall certify to the same for the first time based on the prioritization schedule set out in the *NPRM.* To facilitate the Commission's review of existing cable landing licenses, the Commission proposes to require that existing licensees provide this cybersecurity certification in their respective periodic reports consistent with the categories and deadlines to be established by OIA as proposed in the *NPRM.* The Commission also proposes to require these applicants and licensees to certify that they take reasonable measures to protect the confidentiality, integrity, and availability of their systems and services that could affect their provision of communications services. In this regard, the Commission proposes that applicants' and licensees' cybersecurity risk management plans must identify the cyber risks they face, the controls they use or plan to use to mitigate those risks, and how they ensure that these controls are applied effectively to their operations. The plans would also describe how the applicant or licensee employs its organizational resources and processes to ensure the confidentiality, integrity, and availability of its systems and services. The Commission seeks comment on these proposals.

88. Given the importance of cybersecurity, the Commission believes that the operation of submarine cable systems should meet baseline security requirements to safeguard systems against threats. The Commission believes these proposals are consistent with the National Cybersecurity Strategy and, in that connection, are in keeping with a whole-of-government effort to ''establish cybersecurity requirements to support national security and public safety.'' [92] The Commission expects that creating, updating, and implementing cybersecurity risk management plans would help protect applicants' and licensees' systems and services from serious threats to national security, public safety, and the economy. These proposals would require specific actions to protect communications networks and infrastructure and collaborating with communications sector industry members to identify best practices. The Commission seeks comment on these expectations and on any national security, economic, or public safety benefits of effective cybersecurity practices and cybersecurity risk management for applicants and licensees.

89. The Commission proposes that each applicant or licensee have flexibility to structure its cybersecurity risk management plan in a manner that is tailored to its organization, provided that the plan demonstrates that the applicant or licensee is taking affirmative steps to analyze security risks and improve its security posture. While the Commission believes there are many ways that applicants or licensees may satisfy this requirement, the Commission proposes that they could successfully demonstrate compliance with this proposed requirement by following an established risk management framework, such as the National Institute of Standards and Technology (NIST) Cybersecurity Framework (CSF). The NIST CSF is designed to be scalable and adaptable to the needs and capabilities of companies both large and small, is well understood by industry, and is flexible. The Commission seeks comment on this flexible approach, including whether it would reduce the costs imposed on applicants and licensees. What other risk management frameworks do applicants and licensees implement other than the NIST CSF? To the extent commenters believe the Commission should mandate a particular risk management framework or take a less flexible approach, the Commission seeks comment on their proposed alternative, as well as their rationale and why it would serve the public interest. For example, should the Commission require applicants and licensees to apply the NIST CSF, as the Commission has done in other proceedings? [93] The

[92] Other Federal agencies are likewise either requiring or proposing to require their regulated entities to take cybersecurity measures to protect their systems. For example, the Commodity Futures Trading Commission (CFTC) requires registrants to establish and maintain information security controls as part of their mandatory system safeguards and to implement five types of security testing through ongoing risk assessments and board oversight: (1) vulnerability testing; (2) penetration testing; (3) controls testing; (4) security incident response plan testing; and (5) enterprise technology risk assessment. The SEC has proposed periodic cybersecurity reporting requirements that include disclosing a registrant's policies and procedures to identify and manage cybersecurity risks. The SEC adopted cybersecurity reporting requirements that include disclosing a registrant's policies and procedures to identify and manage cybersecurity risks.

[93] *See Connect America Fund: A National Broadband Plan for The Commission's Future High-Cost Universal Service Support et al.,* WC Docket No. 10–90 et al., Report and Order, Notice of Proposed Rulemaking, and Notice of Inquiry, 38 FCC Rcd 7040, 7086–87 para. 111 (2023) (*Enhanced A–CAM Order*); (requiring Enhanced A–CAM support recipients to implement cybersecurity risk management plans that reflect the latest version of the NIST CSF as a condition of receiving support); *Establishing a 5G Fund for Rural America,* GN Docket No. 20–32, Second Report and Order, Order on Reconsideration, and Second Further Notice of

Continued

Commission further seeks comment on how an applicant should demonstrate that it has taken affirmative steps to analyze security risks and improve its security posture after it has implemented a cybersecurity risk management plan.

90. The Commission proposes that an applicant's Chief Executive Officer (CEO), Chief Financial Officer (CFO), Chief Technology Officer (CTO), or a similarly situated senior officer responsible for governance of the organization's security practices would be required to sign the applicant's cybersecurity risk management plan. The Commission believes that a signatory with visibility into the full network and organization is essential to ensure the plan encompasses all necessary elements and is executed throughout the organization. In recommendations made to Microsoft after the Cyber Safety Review Board's investigation of an incident resulting in compromise of Microsoft's systems as a result of a threat actor associated with the Chinese government, the Board noted the importance of ''rigorous risk management'' and focus on security at the executive level. The Commission seeks comment on this approach. Are there additional steps that the Commission should take to ensure that cybersecurity is an integral part of corporate governance for applicants and licensees?

91. The Commission seeks comment on whether to require applicants' and licensees' cybersecurity risk management plans to include provisions for identifying, assessing, and mitigating supply chain cybersecurity threats. According to NIST, ''[g]iven the complex and interconnected relationships in this ecosystem, supply chain risk management . . . is critical for organizations.'' To what extent do applicants' and licensees' cybersecurity risk management plans already identify and mitigate supply chain cybersecurity risks? The Commission notes that the Commission already requires participants in the Enhanced A–CAM and 5G Fund programs to submit separate supply chain risk management plans that incorporate best practices published by NIST, such as those discussed in *Key Practices in Cyber Supply Chain Risk Management: Observations from Industry (NISTIR 8276),* and *Cybersecurity Supply Chain Risk Management Practices for Systems and Organizations (NIST 800–161),* in addition to cybersecurity risk management plans. Should the Commission require all applicants and licensees to certify to having created, updated, and implemented cybersecurity supply chain risk management plans, either as part of their cybersecurity risk management plan or as a separate document?

92. The Commission proposes to require applicants and licensees to describe in their risk management plans their implementation of security controls sufficient to ensure the confidentiality, integrity, and availability of all aspects of their communications systems and services. While the Commission believes there are many ways for applicants and licensees to satisfy this aspect of the requirement, the Commission proposes that applicants and licensees will satisfy it if they demonstrate they have successfully implemented an established set of cybersecurity best practices, such as the Cybersecurity and Infrastructure Security Agency's (CISA) Cross-Sector Cybersecurity Performance Goals (CPGs) or the Center for internet Security Critical Security Controls (CIS Controls).[94] The Commission expects that compliant cybersecurity risk management plans will not be limited to a predetermined set of specific measures, but instead plans will vary based on individual applicants' and licensees' needs and circumstances sufficient to protect against cyber threats.[95] The Commission seeks comment on this proposal.

93. In conjunction with this proposal, the Commission seeks comment on whether to require applicants and licensees to implement specific security controls sufficient to protect the confidentiality, integrity, and availability of their systems and services. In the *Alerting Security NPRM,* the Commission proposed to require alerting participants to implement the following six controls, among other measures: (1) changing default passwords prior to operation; (2) installing security updates in a timely manner; (3) securing equipment behind properly configured firewalls or using other segmentation practices; (4) requiring multifactor authentication, where applicable; (5) addressing the replacement of end-of-life equipment; and (6) wiping, clearing, or encrypting user information before disposing of old devices.[96] These six controls were drawn from CISA's common baseline of cybersecurity controls. The Commission seeks comment on whether it should require the implementation of these or some other subset of common security controls to protect applicants' and licensees' systems and services.

94. The Commission observes that applicants and licensees can benefit from free and low-cost resources that are available to help identify and implement best practices and improve their security over time without requiring the hiring of outside experts. NIST publishes guidance that could assist organizations with measuring their safeguards, including how to address ransomware, malware, malicious code, spyware, distributed denial of service (DDoS) attacks, phishing, securing networks, and threats to mobile phones. CISA offers vulnerability scanning at no cost for critical infrastructure, which includes communications providers, and also provides CPG Assessment Training with regional cybersecurity experts that will help communications providers better understand CPGs and the cybersecurity risk assessment process. The Commission assumes that these resources, along with any number of other publicly available resources that the Commission has not specifically identified or that may arise in the future, will assist applicants' and licensees' employees and their existing technical contractors in identifying and implementing appropriate security controls without needing specialized cybersecurity expertise. The Commission seeks comment on this assumption.

95. The Commission proposes that applicants and licensees submit cybersecurity risk management plans to the Commission upon request. The

Proposed Rulemaking, FCC 24–89, at 64–65, para. 122 (Aug. 14, 2024) (*5G Fund Second Report and Order*) (requiring 5G Fund support recipients to implement cybersecurity risk management plans that reflect the NIST CSF as a condition of receiving 5G Fund support).

[94] *See* Center for internet Security, *Critical Security Controls Version 8, https://www.cisecurity.org/controls* (last visited Oct. 22, 2024) (providing security controls grouped by priority and feasibility for different sizes and resources of businesses in Implementation Groups).

[95] The Commission notes that it has also sought comment on whether applicants for international section 214 authority and modification, assignment, transfer of control, and renewal of international section 214 authority should be required to certify in the application that they will undertake to implement and adhere to baseline cybersecurity standards based on universally recognized standards such as those provided by CISA or NIST. The Commission seeks comment on this assessment.

[96] On August 22, 2022, PSHSB advised EAS participants to promptly secure their equipment against potential internet-based risks, emphasizing the importance of updating software, changing default passwords, and implementing security measures to prevent unauthorized access. The advisory addressed a vulnerability identified by the Federal Emergency Management Agency and underscored the responsibility of EAS participants to ensure proper functioning during operational times to avoid enforcement consequences. These requirements are grounded in the guidance provided in that Public Notice.

Commission proposes to delegate to OIA, in coordination with the Public Safety and Homeland Security Bureau (PSHSB), the authority to request, at its discretion, submission of such cybersecurity risk management plans and to evaluate them for compliance against the rules that are adopted under this proceeding. Access to applicants' and licensees' cybersecurity risk management plans would allow the Commission to confirm whether plans are being regularly updated, review a specific plan as needed, or proactively review a sample of applicants' and licensees' plans to confirm they identify the cybersecurity risks to those applicants' and licensees' communications systems and services. The Commission would treat the cybersecurity risk management plans as presumptively confidential under the Commission's rules. The Commission seeks comment on this approach, including the types of information included in these plans that warrant confidential treatment and the reasons why that information should be considered confidential. Do providers treat this information as confidential when it is used in other contexts? What harms could befall a provider if its plan was publicly disclosed? In addition, the Commission seeks comment on whether to adopt a rule that would allow the Commission to share the plans with relevant Federal agencies, including information for which confidential treatment is requested, without the pre-notification procedures of § 0.442(d). The Commission seeks comment on whether the Commission should share the plans with Federal agencies, such as CISA and other components of the Department of Homeland Security (DHS), and give notice to the applicant or licensee. Under § 0.442, the Commission may disclose to other Federal agencies, upon the Commission's own motion or another agency's request, records that have been submitted to the Commission in confidence, subject to providing the filer notice of the proposed sharing and ten (10) days to object.[97] The Commission believes that forgoing these pre-notification procedures when sharing plans with relevant Federal agencies would more rapidly facilitate the Federal Government's response to cyber incidents affecting the communications sector. The Commission seeks comment on this approach.

96. The Commission also proposes that applicants and licensees must preserve data and records related to their cybersecurity risk management plans, including any information that is necessary to show how the cybersecurity risk management plan is implemented, for two years from the submission of the related risk management plan certification to the Commission. The Commission seeks comment on this approach. Should the Commission require applicants and licensees to retain prior versions of their cybersecurity risk management plans for a shorter or longer period of time? If so, why?

97. The Commission believes it would promote neither public safety nor national security if applicants and licensees could escape responsibility for the cybersecurity of their systems and services by outsourcing the provision of those systems and services to third parties. Accordingly, if an applicant relies on a third-party contractor for provision of a communications system or service, the Commission proposes to require the applicant's cybersecurity risk management plan to cover the systems and services offered by the third-party contractor. The Commission proposes to hold applicants and licensees responsible for the acts, omissions, or failures of third-party contractors that impact the cybersecurity of the applicant's systems and services. In connection with the Commission's requirement to take reasonable measures to protect the confidentiality, integrity, and availability of its communications systems and services, if an applicant relies on a third-party contractor to provide equipment or services, and an unreasonable act or omission of that third-party contractor results in the applicant's failure to protect the confidentiality, integrity, or availability of its systems and services, the Commission proposes to hold the applicant responsible for that act or omission. The Commission seeks comment on this approach. The Commission also seeks comment on the extent to which applicants and licensees currently include minimum cybersecurity requirements in their contracts with third parties.

98. ''*Covered List*'' *Certification for Applicants.* To protect U.S. communications networks and the communications supply chain against national security threats, the Commission proposes to require that applicants, as a condition of the potential grant of their application, certify that the submarine cable system will not use covered equipment or services identified on the Commission's ''Covered List'' that the Commission maintains pursuant to the Secure and Trusted Communications Networks Act.[98] Such equipment and services have been deemed to pose an unacceptable risk to the national security of the United States or the security and safety of United States persons. The Commission proposes that this certification would apply to covered equipment or services purchased, rented, leased, or otherwise obtained on or after August 14, 2018 (in the case of Huawei, ZTE, Hikvision, Dahua, and Hytera), or on or after 60 days after the date that any equipment or service is placed on the Covered List. Given the national security and law enforcement risks to submarine cable systems, the Commission also proposes to adopt a rule prohibiting use of such equipment or services in the submarine cable system. The Commission seeks comment on this proposal, the financial burdens on applicants, and any alternatives to this proposal.

99. ''*Covered List*'' *Certification for Licensees.* Additionally, the Commission proposes to require that licensees certify as to whether or not they use, for the relevant submarine cable system, equipment or services identified on the ''Covered List.'' The Commission also proposes that this certification would apply to covered equipment or services purchased, rented, leased, or otherwise obtained on or after August 14, 2018 (in the case of Huawei, ZTE, Hikvision, Dahua, and Hytera), or on or after 60 days after the date that any equipment or service is placed on the Covered List. Further, the Commission proposes requiring licensees to provide this certification within sixty (60) days of the effective date of any rule adopted in this proceeding, following approval by OMB.

100. In the event that existing licensees use such equipment or services, the Commission seeks comment on whether it should require those licensees to remove such equipment or services to ensure the security and reliability of submarine

[97] In general, under Federal law, the Commission may share information it has collected with other Federal Government agencies information it has collected pursuant to an information collection and, if it does, all provisions of law that relate to the unlawful disclosure of information apply to the employees of the agency to which the information is released ''to the same extent and in the same manner'' as they do to employees of the collecting agency.

[98] Pursuant to sections 2(a) and (d) of the Secure and Trusted Communications Networks Act, and §§ 1.50002 and 1.50003 of the Commission's rules, PSHSB publishes a list of communications equipment and services that have been determined by one of the sources specified in that statute to pose an unacceptable risk to the national security of the United States or the security and safety of United States persons (''covered'' equipment).

cable systems. Should the Commission require those licensees to develop plans to address the removal of such equipment and services with specified timelines? If so, should the Commission require licensees to submit their plans with the Commission? Additionally, the Commission seeks comment on whether the Commission should prohibit licensees from purchasing, obtaining, maintaining, improving, modifying, or otherwise supporting any equipment or services produced or provided by entities on the Covered List. If so, what penalties would apply for non-compliance? To what extent should the Commission's framework for requiring the recipients of reimbursement funds under section 4 of the Secure Networks Act and carriers receiving Universal Service Fund support to remove and replace equipment and services that are included on the ''Covered List'' from the submarine cable system inform the Commission's approach here? What would be the Commission's source of legal authority for applying a prohibition on covered equipment and services on cable landing licensees? Are there scenarios in which replacement of removed equipment and services is not necessary? Are there networks in which there is sufficient redundancy that, if removed, the covered equipment and services need not be replaced? The Commission seeks comment on the timing and deadlines for removal of covered equipment and services. The Commission specifically seeks comment on the amount of time that may be necessary to remove covered equipment and services and the financial cost to cable landing licensees. The Commission also seeks comment on whether there are other sources of information that the Commission should consider to inform its decisions on removal timing and deadlines and to understand the scope of the effort. The Commission seeks comment on these approaches and generally on what other certifications the Commission should adopt concerning the ''Covered List.''

101. The Commission seeks comment on whether it should rely solely on the ''Covered List'' or consider other lists or sources of information to identify equipment or services that should be prohibited, including but not limited to the Department of Commerce's Entity List and the Department of Defense's List of Chinese Military Companies (1260H List).[99] Are there gaps or limitations with the ''Covered List''? What alternative sources would reduce those gaps or limitations? What information or guidelines would assist applicants and licensees in providing certifications regarding the ''Covered List''? Should applicants and licensees certify, in addition or as an alternative to these proposed certifications, that they will not use vendors for equipment or services from certain countries, such as any foreign country that is a ''foreign adversary'' as defined in the Department of Commerce's rule, 15 CFR 791.4? The Commission seeks comment generally on how best to promote the security and integrity of the communications supply chain with respect to submarine cable systems.

102. *Interrupt Traffic on Submarine Cable System Certification.* Mitigation agreements associated with submarine cable landing licenses typically include a provision requiring the licensee entering into the agreement to have the ability to physically or logically interrupt, in whole or in part, traffic to and from the United States on the submarine cable system by disabling or disconnecting circuits at the U.S. cable landing station or at other locations within the United States and to configure all necessary systems to ensure the licensee can suspend or interrupt the optical signal or all communications functionality of the licensed submarine cable system. Given the importance of submarine cables, the Commission seeks comment on whether and how the Commission should incorporate this requirement into the Commission's rules. Should the Commission incorporate this requirement as a certification or a routine condition under the Commission's rules? The Commission tentatively concludes that every submarine cable application should include an assurance from the applicant(s) that, upon any grant of the application, the licensee will be able to suspend or interrupt the optical signal or all communications' functionality. The Commission seeks comment on whether joint licensees may appoint one party to be responsible for complying with this requirement.

7. Third-Party Access

103. National security and law enforcement risks can and do arise with third-party access to a submarine cable system, whether that access involves physical or logical access to the cable system. In this regard, the Commission is concerned about the risks posed by non-licensee individuals and entities with access to U.S.-licensed submarine cable systems. This includes, but is not limited to, owners of the buildings that house submarine cable systems, the cable landing station, co-tenants of the submarine cable system's location, contractors hired by the licensee to manage the cable system, including MNSPs, and other third-party entities with access to the cable system's NOC.

104. *Physical Access to Submarine Cable Systems.* The physical security of a submarine cable system, including its sturdiness and impenetrability and prevention of unauthorized access into the cable landing station, is important to the safety of the cable system,[100] and knowledge of who has physical access to a submarine cable system, including the cable landing station, is important for determining vulnerabilities. The Commission seeks comment on whether to require basic information about an applicant's lessors of submarine cable landing stations and/or data center housing hardware. Additionally, the Commission seeks comment on the overlap between physical and logical access to submarine cable systems. Are there aspects of the physical operation of submarine cable systems that can be controlled or managed remotely?

105. *Logical Access to the Submarine Cable Systems.* The Commission is interested in understanding and addressing the vulnerabilities posed by third-party individuals and entities with logical access to submarine cable systems.[101] The Commission seeks comment generally on ways it can

[99] *See* Press Release, U.S. Department of Defense, DOD Releases List of People's Republic of China (PRC) Military Companies in Accordance With Section 1260H of the National Defense Authorization Act for Fiscal Year 2021 (Jan. 31, 2024), *https://www.defense.gov/News/Releases/Release/article/3661985/dod-releases-list-of-peoples-republic-of-china-prc-military-companies-in-accord/* (releasing an update to the names of ''Chinese military companies'' operating directly or indirectly in the United States in accordance with the statutory requirement of section 1260H of the National Defense Authorization Act for Fiscal Year 2021 and providing the list at *https://media.defense.gov/2024/Jan/31/2003384819/-1/-1/0/1260H-LIST.PDF*).

[100] Communications Security, Reliability, and Interoperability Council, Working Group 4A Submarine Cable Resiliency, Final Report—Clustering of Cables and Cable Landings at 5 (Aug. 2016), *https://transition.fcc.gov/bureaus/pshs/advisory/csric5/WG4A_Final_091416.pdf* (highlighting the importance of protecting a cable landing station from physical threats such as ''intrusion, ballistic, [and] surveillance.'').

[101] United States Government Accountability Office, CYBERSECURITY—Internet Architecture Is Considered Resilient, but Federal Agencies Continue to Address Risks, Report to the Committee on Armed Services, House of Representatives, GAO–22–104560 at 13 (Mar. 2022), *https://www.gao.gov/assets/gao-22-104560.pdf* (identifying ''[m]alicious insider(s),'' defined as ''[a]n individual or group with authorized access . . . that has the potential to harm an information system or enterprise through destruction, disclosure, modification of data, and/or denial of service,'' as a threat to submarine cable systems.).

address vulnerabilities associated with such logical access.

106. *Remote Access Services.* The Commission understands submarine cable landing licensees sometimes employ third parties' services to remotely manage the submarine cable networks. Such access to a submarine cable system can pose a vulnerability, not only from the third-party itself but from any hostile actor that breaches the third-party's remote management system. On September 30, 2021, the Commission adopted the *2021 Standard Questions Order* that requires certain applicants and petitioners with reportable foreign ownership to provide answers to a set of standardized national security and law enforcement questions.[102] The Standard Questions ask applicants about applicants' capabilities to ''control or monitor operations . . . via Remote Access'' and whether any ''third-party vendors, associated companies, or Owners have Remote Access.'' The Commission seeks comment on the challenges posed by submarine cable landing licensees' use of remote service vendors and their services and steps the Commission could take to mitigate those challenges.

107. *Foreign-Owned Managed Network Service Providers.* The Commission proposes to require all applicants/licensees, with or without reportable foreign ownership, to report whether or not they use and/or will use foreign-owned MNSPs in the operation of the submarine cable. The Commission proposes to require this information in the initial licensing application, in subsequent submarine cable applications upon grant of a license, and as an ongoing requirement in the three-year periodic reports. The Commission seeks comment on how often to require such information in the event the Commission shortens the license term. Below, the Commission proposes and seeks comment on criteria for how the Commission proposes to define ''foreign-owned.'' The Commission proposes to define an MNSP as any entity other than the applicant(s) or licensee(s) (*i.e.,* third-party entity) with whom the applicant(s) or licensee(s) contracts to provide, supplement, or replace certain functions for the U.S. portion of the submarine cable system (including any cable landing station and SLTE located in the United States) that require or may require access to the network, systems, or records of the applicant(s) or licensee(s). Such functions could include, but are not limited to operations and management support; network operations and service monitoring, including intrusion testing; network performance, optimization, and reporting; installation and testing; network audits, provisioning and development; and the implementation of changes and upgrades.[103]

108. The Standard Questions adopted in the *2021 Standard Questions Order*[104] define the term ''Managed Services'' (or ''Enterprise Services'') as ''the provision of a complete, end-to-end communications solutions to customers.'' Specifically, the Standard Questions associated with submarine cable landing license applications require applicants to respond whether any ''third-party vendors, associated companies, or Owners will have Remote Access/monitoring of the network, systems, or records to provide Managed Services,'' and if so, to ''provide additional details, *i.e.,* third party identifying information, role, and reason for their access.''

109. The Standard Questions require an applicant to submit answers directly to the Committee, and applicants without reportable foreign ownership are not routinely referred to the Committee or to other relevant executive branch agencies. Applicants whose applications are not referred to the Committee or to other executive branch agencies nevertheless may reach contractual agreements or have other arrangements with foreign-owned MNSPs, thereby providing the foreign-owned MNSPs with access to the submarine cable system and potentially allowing them to act in ways that are contrary to U.S. interests without the Commission or Committee ever being informed.

110. The Commission proposes to require all applicants for submarine cable landing licenses, regardless of reportable foreign ownership, to report in their application whether or not they use and/or will use foreign-owned MNSPs. The Commission also proposes to require such disclosure of foreign-owned MNSP use in applications to modify, assign, transfer control of, and renew or extend a submarine cable license. The Commission notes that the Standard Questions associated with applications for assignments and transfers of control ask whether ''any third-party vendors, associated companies, or Owners have Remote Access/monitoring to the network, systems, or records to provide Managed Services.'' The Commission proposes to direct the Office of International Affairs to draft, update as appropriate, and make available on a publicly available website, a standardized set of national security and law enforcement questions that elicit information related to MNSPs (MNSP Standard Questions) in accordance with any new rules adopted in this proceeding, following OMB approval. The Commission proposes that any applicant/licensee that indicates in the application that it uses and/or will use a foreign-owned MNSP will need to answer the MNSP Standard Questions and those applications would be routinely referred to the executive branch agencies, including the Committee. The Commission seeks comment on whether all applicants, regardless of reportable foreign ownership, should be required to answer all of the existing Standard Questions, or only those existing Standard Questions relating to MNSPs, or a new set of questions devised by the Office of International Affairs.

111. The Commission proposes and seeks comment on the specific criteria for considering an MNSP to be ''foreign-owned,'' such that an applicant would have to report its use. The Commission proposes that an MNSP be considered ''foreign-owned'' if it is majority-owned and/or controlled (1) by a foreign individual or entity or (2) in the aggregate by foreign individuals or entities. The Commission seeks comment on whether it should require applicants to explain in detail the foreign individuals' or entities' involvement and management roles in the foreign-owned MNSP.[105] In addition, the Commission seeks comment on whether any MNSPs also possess physical access to the submarine cable system. Relatedly, the Commission seeks comment on which

[102] *See 2021 Standard Questions Order,* 36 FCC Rcd at 14920 (inquiring, ''[w]hat, if any, capability do Applicants have to control or monitor operations over the network (*e.g.,* audit mechanisms, record access monitoring) via Remote Access'' and ''[w]ill any third-party vendors, associated companies, or Owners have Remote Access/monitoring to the network, systems, or records to provide Managed Services? If so, provide additional details, *i.e.,* third party identifying information, role, and reason for their access'').

[103] This proposed definition is based on the definitions of ''Managed Network Service Provider'' articulated by the Departments of Justice, Homeland Security, and Defense in recent National Security Agreements with cable landing licensees.

[104] In the *2021 Standard Questions Order,* the Commission adopted a set of standardized national security and law enforcement questions (Standard Questions) that certain applicants and petitioners with reportable foreign ownership will be required to answer as part of the executive branch review process of their applications and petitions.

[105] *2021 Standard Questions Order,* 36 FCC Rcd at 14920, Attach. C (Requesting of applicants that they provide, for ''any third-party vendors, associated companies, or Owners [that] have Remote Access/monitoring to the network, systems, or records to provide Managed Services,'' additional details such as ''third party identifying information, role, and reason for their access.'').

functions of the submarine cable system can be controlled remotely. Further, are there other functions of a submarine cable system that are managed by third-party entities, including MNSPs, that the Commission has not addressed in the *NPRM* but should consider? If submarine cables use MNSPs, should the Commission work with providers to recommend standards or best practices regarding the use of foreign-owned MNSPs to help reduce risk? What should be included in any standards?

112. The Commission generally seeks comment on its proposed definition of MNSP and the use of MNSPs and managed network services by submarine cable operators. The Commission seeks information as to whether its proposed identification of functions offered by an MNSP is sufficiently comprehensive. Are there other vulnerabilities associated with contracted services that the Commission should consider?

113. *Network Operations Centers.* The Commission is interested in logical access to and control of NOCs, the locations and facilities where network management, monitoring, maintenance, performance measurement, or other operational functions are performed for the submarine cable system. The Standard Questions require applicants with reportable foreign ownership to provide ''a list of the anticipated addresses or physical locations'' for ''[t]he NOC (and back-up NOC, if any).'' The Commission proposes to require all applicants, regardless of foreign ownership, to supply this information in generally accepted GIS formats or other formats, on a presumptively confidential basis in the initial application for a cable landing license and application for modification, assignment, transfer of control, and renewal or extension of a cable landing license, and in the periodic reports.[106] The Commission proposes to delegate authority to OIA, in consultation with the Office of Economics and Analytics, to determine the file formats and specific data fields in which data will ultimately be collected. Should the requirement to report the locations of NOCs also encompass other components of the submarine cable system, such as cable landing stations and/or main distribution facilities? [107] What is the basis for why the information should be treated as presumptively confidential under the Commission's rules and the FOIA? Is this information publicly available, or is it treated as confidential information by the submarine cable industry? To what extent, if any, does this information constitute privileged or confidential trade secrets or commercial or financial information? What harms to commercial interests could result from public disclosure of this information?

114. The Commission also seeks comment on whether ownership of NOCs by third parties may be encompassed by the Commission's proposed definition of an MNSP and whether there are benefits or consequences to including or excluding such third-party owners of NOCs from the proposed definition of an MNSP.

8. Other Risks to Submarine Cable Infrastructure

115. The Commission seeks comment generally on how the Commission can take action to strengthen the security and resilience of submarine cable infrastructure, pursuant to its legal authority, including activities in coordination with its Federal partners. In particular, the Commission seeks comment on what actions it can take to mitigate risks and strengthen the security and resilience of this critical infrastructure, pursuant to its legal authority, including activities in coordination with its Federal partners. Given the role of submarine cables to the Nation's communications networks and other vital infrastructure and assets, it is important to ensure the protection, security, and resilience of this critical infrastructure. Accordingly, damage to submarine cable infrastructure would affect other critical infrastructure sectors that rely on communications and would have a debilitating impact on the Nation's economic and national security. The Commission's responsibilities in securing communications networks are well established. Congress created the Commission, among other reasons, ''for the purpose of the national defense, [and] for the purpose of promoting safety of life and property through the use of wire and radio communication.'' Furthermore, the President's recent National Security Memorandum, NSM–22, directs the Commission, among other things, to ''assess communications sector risks and work to mitigate those risks by requiring, as appropriate, regulated entities to take specific actions to protect communications networks and infrastructure'' and to ''collaborate with communications sector industry members, foreign governments, international organizations, and other stakeholders to identify best practices and impose corresponding regulations,'' to the extent permitted by law and in coordination with DHS and other Federal departments and agencies.[108] As an initial matter, to further these efforts, the Commission seeks comment on risks to submarine cable infrastructure, including human and natural risks, and what steps the Commission can take to mitigate such threats of damage and ensure the protection of this critical infrastructure.

116. *Malicious Threats.* The Commission observes that NSM–22 addresses malicious threats to U.S. critical infrastructure, stating, ''[t]he United States also faces an era of strategic competition with nation-state actors who target American critical infrastructure and tolerate or enable malicious actions conducted by non-state actors.'' The Commission has reason to believe that adversaries and other malicious actors may be targeting submarine cables landing and operated in the United States and invite comments providing examples, details about geography, extent, and frequency of such targeting. What measures are implemented by the submarine cable industry to protect submarine cable infrastructure against malicious threats? How can the Commission facilitate information sharing between national security agencies and industry, consistent with NSM–22? The Commission seeks comment on any actions it can take to mitigate those threats pursuant to its legal authority, including in coordination with its Federal partners. The Commission also seeks comment on what measures are implemented by the submarine cable industry to mitigate such risks.

117. *Spatial Conflicts.* The Commission seeks comment as to whether, and to what extent, close spatial proximity between submarine cables and other marine infrastructure and activities presents risks of damage to submarine cables landing in the United States. In 2014, the Communications, Security, Reliability, and Interoperability Council (CSRIC) [109] issued a report examining risks to

[106] *See 2021 Standard Questions Order,* 36 FCC Rcd at 14932, Attach. D. (requiring applicants to provide ''addresses or physical locations'' for ''[t]he NOC (and back-up NOC, if any).'').

[107] *GU Holdings Firmina LOA* at 5 (requiring disclosure of network management information including ''locations and functions of any NOCs, data centers, Points of Presence (PoPs) and main distribution facilities'' ''[w]ithin 60 days of the execution of [the] LOA, and, thereafter, within 30 days upon . . . request.'').

[108] NSM–22 at 33 (defining critical infrastructure as ''systems and assets, whether physical or virtual, so vital to the United States that the incapacity or destruction of such systems and assets would have a debilitating impact on national security, national economic security, national public health or safety, or any combination of those matters'').

[109] The purpose of CSRIC, an advisory committee established under the Federal Advisory Committee Act, is to provide recommendations to the Commission regarding ways it can help to ensure security, reliability, and interoperability of communications systems.

submarine cable infrastructure, including activities that ''pose direct risks to submarine cables by threatening installed cables with equipment, anchors, infrastructure installation and operation, and resource exploration, exploitation, and transport.'' [110] CSRIC identified ''traditional risks'' including commercial fishing,[111] anchoring,[112] sand and gravel dredging and beach replenishment,[113] and oil and gas development,[114] among other things.[115] CSRIC also identified ''emerging risks'' such as offshore renewable energy development—namely, offshore wind projects, marine and hydrokinetic (MHK) projects, and ocean thermal energy conversion (OTEC) projects—and deep-sea mining, while noting the risks remain uncertain.[116]

118. Given the passage of time, the Commission seeks updated information on any new facts or circumstances that can inform the Commission's evaluation of the equities, risks of damage, and mitigation measures associated with spatial relationships between submarine cables and other marine infrastructure and activities. What, if any, spatial conflicts today present the most significant risks of damage to submarine cables landing in the United States? To the extent other marine infrastructure and activities cross or are in close proximity to submarine cables, what spatial distance is necessary to reduce or eliminate the risk of damage to submarine cables? Are there examples of how installation or maintenance of marine infrastructure and activities near or over submarine cable infrastructure resulted in damage to submarine cables landing in the United States, or affected the maintenance or repair of such submarine cables? Where do such incidents, if any, occur geographically? What is the extent and frequency of any damage to submarine cables?

119. The Commission also seeks comment on what measures the submarine cable industry has implemented/will implement to protect submarine cable infrastructure in the event of any spatial conflicts with wind farms, or electric or other infrastructure or activities that may affect submarine cables. For example, do cable landing licensees coordinate with other industries and establish crossing agreements to mitigate risks of damage to each respective infrastructure? Do cable landing licensees consult and address these risks with Federal agencies that authorize other marine infrastructure and activities? If so, at what stage of the permitting or licensing process or deployment of such marine projects do cable landing licensees coordinate with other industries or Federal agencies?

9. Interagency Coordination and Submarine Cable Protection

120. The Commission seeks comment on what actions it can take to mitigate both the risks identified previously in the *NPRM* and any other risks and strengthen the security and resilience of submarine cable infrastructure, pursuant to its legal authority, including activities in coordination with its Federal partners. Should the Commission play a more active role in coordinating with other agencies that have jurisdiction over other marine infrastructure that may impact submarine cables, or other agencies that regulate or oversee the installation and protection of submarine cables? In particular, the Commission has previously recognized that ''interagency coordination is very important to protect submarine cable infrastructure.'' [117] With regard to spatial conflicts, in addition to submarine cables, CSRIC addressed how various Federal agencies regulate a number of other marine infrastructure and activities, including offshore renewable energy projects,[118] oil and natural gas development,[119] dredging and coastal replenishment,[120] and other matters.[121] The Commission asks

[110] CSRIC IV Report at 2 (''Although damage to submarine cables is rare, it is most often caused by human activities such as commercial fishing (in which trawl nets, clam dredges, and other bottom-contact gear ensnare cables), vessel anchoring, dredging related to sand and mineral extraction, petroleum extraction, pipeline construction and maintenance, renewable energy construction and maintenance, and other cable activity.''). CSRIC identified ''traditional risks'' including commercial fishing, anchoring, sand and gravel dredging and beach replenishment, and oil and gas development, among other things. CSRIC also identified ''emerging risks'' such as offshore renewable energy development—namely, offshore wind projects, marine and hydrokinetic (MHK) projects, and ocean thermal energy conversion (OTEC) projects—and deep-sea mining, while noting the risks remain uncertain.

[111] While the CSRIC IV Report stated, ''[h]istorically, commercial fishing has accounted for more than 40 percent of all submarine cable faults worldwide,'' it also noted that ''it is relatively rare in the U.S. territorial sea and [outer continental shelf (OCS)], as the mitigation strategies pursued by submarine cable operators have proved very effective in the United States.''

[112] CSRIC IV Report at 32 (''Anchoring accounts for approximately 15 percent of cable faults worldwide'').

[113] *See id.* at 32 (''These practices can be highly incompatible with submarine cables, which can be damaged by the dredging process itself and by anchors used by vessels, barges, and pipelines used to recover, transport, and pump dredged material back onto shore.'').

[114] *See id.* at 34 (''Although the submarine cable and offshore oil and gas industries have a long history of working with each other, the renewed focus on U.S. domestic energy production and possible opening of the U.S. Atlantic OCS regions to oil and gas development (in the event the current development moratorium expires in 2017) will increase the risks to submarine cables.'').

[115] *See id.* at 35–36 (addressing risks associated with clustering of submarine cable systems, earthquakes and tsunamis, sea floor geology, and weather conditions).

[116] *Id.* at 36 (noting, ''[b]ecause offshore renewable energy is an emerging industry, the risks remain uncertain. Consequently, submarine cable operators, offshore renewable energy developers, and regulators have yet to develop systematic risk minimization strategies and consultation and coordination mechanisms, which has resulted in some unresolved conflicts.''); *id.* at 41 (''At present, deep-sea mining present a low risk to installed cables, as the mining of particular marine minerals has not yet proved economic. Nevertheless, it is very likely that improved (and cheaper technologies) and increasing demand for particular minerals (and/or a more stable supply thereof) will pose greater threats to installed submarine cables and limit routes for future cables.''); CSRIC V Report at 9 (stating, ''[i]t remains to be seen whether other marine infrastructure, such as oil and gas exploration or marine renewable energy will have a significant effect on the routing of submarine cables or the selection of landing sites for those cables.'').

[117] *2016 Submarine Cable Outage Report and Order,* 81 FR 52354 (August 8, 2016), 31 FCC at 7976, para. 80 (''To this end, the International Bureau, in coordination with the Public Safety and Homeland Security Bureau, will continue to lead interagency coordination efforts to help increase transparency and information sharing among the government agencies, cable licensees, and other stakeholders and promote improved interagency coordination processes to mitigate threats to undersea cables and facilitate new projects to improve geographic diversity.'').

[118] For example, the Federal Energy Regulatory Commission (FERC), among other things, licenses non-Federal hydropower projects, which includes marine and hydrokinetic (MHK) projects. FERC, *Hydrokinetic Projects* (last updated Aug. 15, 2024), *https://www.ferc.gov/licensing/hydrokinetic-projects* (defining hydrokinetic projects as ''[p]rojects that generate electricity from waves or directly from the flow of water in ocean currents, tides, or inland waterways''). The Outer Continental Shelf Lands Act of 1953, as amended (OCSLA), authorizes the Bureau of Ocean Energy Management (BOEM) to grant leases and prescribe regulations that govern mineral and renewable energy development on the U.S. outer continental shelf (OCS). BOEM, among other things, issues leases, easements and rights of way on the OCS for projects that generate electricity from offshore wind, wave and currents and for renewable energy transmission projects.

[119] For example, under the OCSLA, BOEM authorizes leases, easements and rights of way for oil and natural gas development and other marine minerals such as sand and gravel for coastal restoration activity.

[120] CSRIC IV Report at 32–33 (stating that ''[t]he Army Corps of Engineers and the Bureau of Ocean Energy Management of the U.S. Department of the Interior ('BOEM') frequently authorize sand and gravel dredging in the U.S. territorial sea and OCS.'').

[121] For example, the National Marine Sanctuaries Act allows the National Oceanic and Atmospheric Administration (NOAA) to identify, designate and protect areas of the marine and Great Lakes environment with special national significance due to their conservation, recreational, ecological, historical, scientific, cultural, archaeological, educational, or aesthetic qualities as national marine sanctuaries. If a submarine cable system will traverse a national marine sanctuary, the cable

Continued

commenters whether interagency consultation, information-sharing, and other coordination could help to mitigate risks of damage to submarine cable infrastructure that arise from its spatial relationship to other marine infrastructure and activities. In addition, the Commission seeks comment on whether coordination with states that regulate marine infrastructure and activities could help to mitigate risks of damage to submarine cable infrastructure. What are examples of how the Commission could coordinate with relevant agencies to protect submarine cable infrastructure while taking into consideration the U.S. government's equities in other critical marine infrastructure and resources? For example, do Federal statutes provide any source of authority for the Commission to take regulatory and operational actions to mitigate or reduce risks of damage to submarine cables in marine areas subject to U.S. jurisdiction, including in coordination with other Federal or state agencies? [122]

10. Streamlining Procedures To Expedite Cable Processing

121. The Commission seeks comment on ways to modify its streamlining procedures to expedite submarine cable processing while ensuring national security and law enforcement concerns are addressed. The Commission seeks comment on actions or measures the Commission or Committee can take to expedite the review and licensing process. The Commission originally adopted streamlining procedures for processing applications for submarine cable landing licenses in the *2001 Cable Report and Order*. The intent was to adopt rules that ''are designed to facilitate the expansion of capacity and facilities-based competition in the submarine cable market . . . [and] to enable submarine cable applicants and licensees to respond to the demands of the market with minimal regulatory oversight and delay, saving time and resources for both industry and government, while preserving the Commission's ability to guard against anti-competitive behavior.'' The Commission assessed that this framework would result in a reduction of costs for deploying submarine cables and ultimately benefit U.S. consumers. It created a procedure and competitive safeguards that were aligned with those adopted for section 214 authorizations, whereby applications qualifying for streamlining generally would be acted on in a 45-day period. In addition to adopting specific criteria for streamlining eligibility, the Commission also sought to ensure that those entities having a significant ability to affect the operation of a cable system would be applicants for a cable landing license and thus would become licensees upon any grant of an application so that they are subject to the conditions and responsibilities that are associated with a cable landing license, and otherwise provided that ''entities that do not own or control a landing station in the United States or have a five percent or greater interest in the proposed cable system generally will not be required to become licensees.'' [123] The Commission also allowed for post-transaction notifications of *pro forma* assignments or transfers of control in cable landing licenses. Over time, the Commission modified these rules to address changes in Commission policy and to assist in the expeditious review of applications.[124]

122. In 2020, the Commission adopted rules that sought to codify the timeframes set forth under Executive Order 13913 and Commission procedures for the referral of applications for cable landing licenses or assignment or transfer of control of submarine cable landing licenses, among other types of applications, to the executive branch agencies including the Committee, for their feedback on any national security, law enforcement, foreign policy, and/or trade policy issues associated with the foreign ownership of applicants.[125] The Commission codified its policy that it would continue referring applications to the executive branch agencies where the applicant has reportable foreign ownership, *i.e.* ''when an applicant has a 10% or greater direct or indirect foreign investor[.]'' The Commission further noted that it ''retains discretion to determine which applications it will refer to the [executive branch] agencies [including the Committee] for review.''

123. *Eligibility for streamlining.* Under the Commission's rules, each applicant for a cable landing license seeking streamlining must request such processing in its application, follow the procedure set out under 47 CFR 1.767(i) and (j), and provide the following information and certifications:

- Certifying that it is not a foreign carrier and it is not affiliated with a foreign carrier in any of the cable's destination markets;
- Demonstrating pursuant to § 63.12(c)(1)(i) through (iii) that any such foreign carrier or affiliated foreign carrier lacks market power; or
- Certifying that the destination market where the applicant is, or has an affiliation with, a foreign carrier is a World Trade Organization (WTO) Member and the applicant agrees to accept and abide by the reporting requirements set out in § 1.767(l). An application that includes an applicant that is, or is affiliated with, a carrier with market power in a cable's non-WTO Member destination country is not eligible for streamlining.
- Certifying that for applications for a license to construct and operate a submarine cable system or to modify the construction of a previously approved submarine cable system the applicant is not required to submit a consistency certification to any state pursuant to

owner must also obtain a permit from NOAA's Office of National Marine Sanctuaries under the National Marine Sanctuaries Act.

[122] The Commission notes that the national laws of countries such as Australia and New Zealand authorize the establishment of submarine cable protection zones within specific geographic areas. Telecommunications Act 1997, Schedule 3A—Protection of submarine cables; Submarine Cables and Pipelines Protection Act 1996, Part 2—Protection and enforcement, 12(1) (''Protected areas''). Additionally, the national laws and regulations of some countries establish minimum spatial distance requirements with regard to submarine cables. *See, e.g.,* CSRIC IV Report at 50–51 (identifying ''foreign governments [that] have established default or minimum separation distances to protect submarine cables'').

[123] *See also 2001 Cable Report and Order,* 16 FCC Rcd at 22194, para. 54 (''Specifically, we conclude that only the following entities must be required to be applicants for a cable landing license: an entity that (1) owns or control a U.S. landing station or (2) owns or controls a five percent or greater interest in the cable system and will use the U.S. points of the cable system.''). The 2001 proceeding focused on capacity expansion and facilities-based competition and, although it adopted safeguards against anti-competitive conduct associated with market power in foreign markets where U.S.-licensed cable systems land and operate, to the detriment of competition in U.S. markets, it did not otherwise address specific national security concerns.

[124] In 2014, the Commission adopted rules that eliminated the effective competitive opportunities (ECO) test that was previously adopted in 1995 ''as a condition to entry into the U.S. international telecommunications services market by foreign carriers that possess market power on the foreign end of a U.S.-international route on which they seek to provide service pursuant to section 214 of the Communications Act of 1934, as amended[.]'' The Commission determined that it was no longer necessary to apply the ECO test to non-World Trade Organization (WTO) members, or otherwise, to protect competition and found that a market based approach, where the applicant or notification filer from a non-WTO Member country must demonstrate whether or not it has market power in the country where the cable lands, would reduce regulatory burdens and provide for an expeditious review of foreign entry to benefit U.S. consumers.

[125] In the *Executive Branch Review Report and Order,* the Commission adopted an additional requirement that entities seeking streamlining must demonstrate eligibility by further certifying that all ten percent or greater direct or indirect equity and/or voting interests, or a controlling interest, in the applicant are U.S. citizens or entities organized in the United States. The Commission also adopted timeframes for the executive branch agencies to complete their review consistent with Executive Order 13913.

section 1456(c)(3)(A) of the Coastal Zone Management Act (CZMA), 16 U.S.C. 1456.

• Certifying that all ten percent or greater direct or indirect equity and/or voting interests, or a controlling interest, in the applicant are U.S. citizens or entities organized in the United States.

124. The rules provide that, for applications that are eligible for streamlined processing, the Commission will take action upon such application within 45 days after release of the public notice announcing the application was acceptable for filing and eligible for streamlining. The Commission will publish a public notice indicating if an application is ineligible for streamlined processing. The rules also provide that the Commission will take action upon a non-streamlined application within 90 days or provide public notice of additional time, which may be further extended, if an application raises questions of extraordinary complexity. Applications that involve foreign ownership or control of the applicants and may present national security, law enforcement, foreign policy, and/or trade policy issues are referred to the executive branch agencies for their review and feedback. Since the beginning of 2016, on average, more than 10 submarine cable applications per year are referred to the executive branch agencies, including the Committee, for review of national security, law enforcement, foreign policy, and/or trade policy concerns.[126] For the five-year period from 2016 through June 2020, the pre-Committee agencies took on average of 367 days to complete review after receiving all answers to preliminary questions.[127] From July 2020 to the November 2024, the Committee has taken on average 237 days to complete review of submarine cable applications.[128] The average time for review by the Committee once an application starts the review clock has dropped significantly from the average time for review by the executive branch agencies prior to the establishment of the Committee, but the Commission understands that this process can be improved.

125. The Commission seeks comment on measures it can take to provide a streamlining process that is effective and beneficial to both industry and government, while ensuring national security review. The Commission understands that applying for a cable landing license can be a lengthy and complex process that requires considerable advanced planning on the part of submarine cable owners and operators. The Commission understands that submarine cable systems can take years to plan, finance, license, construct, test, and prepare for operation. The Commission seeks to identify mechanisms to reduce the time it takes to review and take action on a submarine cable application in the current environment in which hostile threats and malicious actors pose significant risks to critical infrastructure. For example, if an applicant for a cable landing license is a frequent filer with the Commission because it has numerous submarine cable projects, are there mechanisms the Commission can adopt to reduce the time it takes to review and act on an application for a cable landing license from such filer? What additional steps can the Commission take to streamline its review of an application? Are there specific certifications or other filings that applicants can provide to the Committee in order to expedite the review of a referred application? Should the Commission revisit the Standard Questions associated with submarine cable applications? Should the Commission create a program that would distinguish the review of applicants' ownership and cable management qualifications, barring any significant changes in ownership as of its prior review, from the investigation of specific risk factors associated with each cable system's route, landing stations, and equipment? How should the related risk factors associated with resiliency, trusted supply chains, and national competitiveness be assessed while minimizing the time it takes to review applications? Should the Commission identify classes of risk (such as a nexus to a country of concern)? In order to speed the deployment of submarine cables that connect points solely within the United States and its territories and possessions, should the Commission consider streamlining review of applications that connect domestically unless there is a nexus to a country of concern or foreign adversary? The Commission seeks comment on this question as well as on other mechanisms that may reduce the time it takes to process a submarine cable application while providing for assessment of national security and other risks and ensuring that any grant of an application is in the public interest. Should the Commission work with applicants and stakeholders to share risk information and threat alerts with trusted providers on a regular basis, consistent with National Security Memorandum 22? What would be the benefits of doing so?

11. Other Changes to Current Requirements

126. The Commission seeks to improve and formalize its current application requirements set forth in § 1.767(a) of the rules. The Commission believes modifications to the rules would, among other things, reduce uncertainty for applicants by clarifying application requirements and address any gaps in the Commission's rules that impact the national security of the United States. The Commission also proposes to adopt new and updated information requirements and certification requirements. The Commission proposes specific requirements for other types of applications, including applications to modify, assign, transfer control of, or renew or extend cable landing licenses, requests for special temporary authority, and *pro forma* assignment and transfer of control notifications, among other matters as applicable. In this regard, and to further improve the clarity of the rules, the Commission proposes to create a new subpart in part 1 of the rules to address each type of application. The Commission seeks comment generally on whether there are specific rules applicable to submarine cable applications and notifications where the benefits do not outweigh the burdens and whether the Commission should eliminate or modify such rules.

127. *Contact Information.* The Commission's rules currently require applicants for cable landing licenses and for assignments and transfers of control of such licenses to provide ''[t]he name, address, and telephone number(s) of the applicant'' and ''[t]he name, title, post office address, and telephone number of the officer and any other contact point'' in the applications. Additionally, the rules require that, while an application is pending for purposes of § 1.65 of the rules, the applicant is responsible for the continuing accuracy and completeness of all information submitted and that ''the applicant agrees to inform the Commission and the Committee of any

[126] Since the beginning of 2016 through the end of 2020, a total of 84 submarine cable applications, including initial applications for cable landing license and application for modification, assignment, transfer of control, and renewals or extension of a cable landing license were referred to the executive branch agencies for review of national security, law enforcement, foreign policy, and/or trade policy concerns.

[127] From 2016 to June 2020, the Commission referred 52 submarine cable applications to the executive branch agencies.

[128] From July 2020 to November 2024 the Commission has referred 32 submarine cable applications to the executive branch agencies.

substantial and significant changes while an application is pending.'' The rules also require that, after the application is no longer pending for purposes of § 1.65 of the rules, ''the applicant must notify the Commission and the Committee of any changes in the . . . licensee information and/or contact information promptly, and in any event within thirty (30) days.'' The Commission proposes to amend the submarine cable rules to expressly apply these requirements to applications for modification and renewal or extension of cable landing licenses. The Commission also proposes to require applicants for cable landing licenses and for modification, assignment, transfer of control, and renewal or extension of licenses to provide an email address on behalf of the applicant and an email address on behalf of the officer and any other contact point, to whom correspondence regarding the application can be addressed.

128. *Renewal Applications.* To provide regulatory certainty, the Commission proposes to adopt rules for cable landing licensees that seek to renew or extend the term of their license. Under the Commission's rules, a cable landing license expires ''twenty-five (25) years from the in-service date, unless renewed or extended upon proper application.'' Although § 1.767(e) of the rules requires that an application must be filed with respect to each submarine cable system for which a renewal or extension of an existing license is requested,[129] the rules do not set out specific requirements for such applications. In addition, the rules do not expressly address the Commission's longstanding policy of considering national security, law enforcement, foreign policy, and/or trade policy considerations in its review of such applications.

129. The Commission proposes, as a baseline, to require applicants seeking to renew or extend a cable landing license to provide in the application the same information and certifications required in an application for a new cable landing license under §§ 1.767(a) and 63.18(h), (o), (p), and (q) of the rules, as well as any new requirements adopted in this proceeding. Specifically, the current application rules for a new cable landing license require important information and attestations concerning an applicant's contact information, the submarine cable (including the landing locations), and whether the cable will be operated on a common carrier or non-common carrier basis, among other things. The Commission proposes to adopt rules applying these provisions of §§ 1.767(a) and 63.18(h), (o), (p), and (q) to applications to renew or extend a cable landing license (collectively, ''renewal applications''). To the extent the Commission adopts any new or modified information and certification requirements in this proceeding with respect to applications for a new cable landing license, the Commission proposes to similarly apply those requirements to renewal applications and thus harmonize the application requirements. The Commission further proposes to codify the Commission's longstanding practice that applicants must demonstrate how grant of the renewal application will serve the public interest, convenience, and necessity. The Commission seeks comment on these approaches.

130. *Renewal Streamlined Processing Procedures.* The Commission seeks comment on whether the Commission should adopt streamlined processing for renewal applications in certain situations. For instance, § 1.767(i) of the rules provide that, ''[t]he Commission will take action upon an application eligible for streamlined processing, as specified in paragraph (k) of this section, within forty-five (45) days after release of the public notice announcing the application as acceptable for filing and eligible for streamlined processing.'' In current practice, once filed, Commission staff review the renewal application for compliance with the Commission's rules and place the application on an Accepted for Filing public notice once it is acceptable for filing. Should the Commission adopt similar streamlined processing procedures for renewal applications in certain situations, subject to the State Department's approval of any proposed grant of a renewal application? Specifically, the Commission seeks comment on whether the Commission should place a renewal application on streamlined Accepted for Filing public notice and grant such application within forty-five (45) days after release of the public notice if: (1) the Commission does not refer the application to the executive branch agencies because the applicant does not have reportable foreign ownership and the application does not raise other national security, law enforcement, or other considerations warranting executive branch review; (2) the application does not raise other public interest considerations, including regulatory compliance; (3) the executive branch agencies do not separately request during the comment period that the Commission defer action and remove the application from streamlined processing; (4) no objections to the application are timely raised by an opposing party; and (5) any proposed grant of a renewal application is approved by the State Department.

131. *Licenses Pending Renewal.* As with title III licensees pursuant to section 307(c) of the Act, and consistent with the Administrative Procedure Act, the Commission proposes to adopt a rule that an applicant that has timely applied for renewal or extension of its cable landing license may continue operating the submarine cable system while its renewal application is pending review.[130] The Commission proposes that the Commission may deny the renewal application, for instance, if an applicant fails to provide any information that is required by the rules or is reasonably requested by staff in its review of the renewal application. The Commission tentatively concludes that this proposal is consistent with the Administrative Procedure Act, and seeks comment on this tentative conclusion. The Commission also proposes to amend § 1.767(g)(15) by providing that, upon expiration, all rights granted under the license shall be terminated if the licensee has not timely filed a renewal application.[131] Should the Commission further amend the rule by expressly requiring the filing of a renewal application before the cable landing license expires? Alternatively, to the extent a licensee fails to timely file a renewal application, should the Commission allow the licensee to continue operating the submarine cable following the expiration of a license if the licensee files a request for an STA, either prior to or after such expiration and pending the filing of an application to renew or extend the cable landing license? Or should the Commission require the filing of a waiver demonstrating good cause to allow a late

[129] Section 1.767(e) of the rules states that ''[a] separate application shall be filed with respect to each individual cable system for which a license is requested or a modification of the cable system, *renewal, or extension of an existing license is requested.* Applicants for common carrier cable landing licenses shall also separately file an international section 214 authorization for overseas cable construction.''

[130] *See* 5 U.S.C. 558(c) (''When the licensee has made timely and sufficient application for a renewal or a new license in accordance with agency rules, a license with reference to an activity of a continuing nature does not expire until the application has been finally determined by the agency.''); *id.* 551(8) (''license'' defined to mean ''the whole or a part of an agency permit, certificate, approval, registration, charter, membership, statutory exemption or other form of permission'').

[131] 47 CFR 1.767(g)(15) (stating that, ''[u]pon expiration, all rights granted under the license shall be terminated'').

filing of a renewal application? In any instance where a licensee fails to timely file a request for an STA or a renewal application and seeks to continue operating the submarine cable, the Commission proposes that it shall reserve the right to take enforcement action for unauthorized operations following expiration of the license and the filing of a request for an STA or renewal application. The Commission seeks comment on these approaches.

132. *Modification Applications.* The Commission proposes to adopt rules for cable landing licensees that seek to modify a cable landing license. Additionally, the Commission seeks comment on whether it should amend the rules by clarifying the types of facts and circumstances that warrant the filing of an application to modify a cable landing license. Section 1.767 of the rules addresses certain cases where a modification application is required, including situations where a licensee seeks to add a new licensee to the cable landing license, or relinquish its interest in a cable landing license, or add a new landing point that is not included in the grant of authority for the submarine cable system.[132] The Commission proposes to codify the Commission's practice in a new paragraph of the rules that will address requirements related to modifying a cable landing license, including the current requirement that licensees must obtain prior Commission approval of certain changes to a license such as the addition or removal of a licensee and the addition of a new landing point. The Commission also proposes that licensees must obtain prior approval to remove or otherwise change the location of a landing point previously authorized by the Commission. Further, the Commission proposes that licenses must obtain prior approval to construct or add a new connection, such as a segment or a branching unit, to an FCC-licensed submarine cable system.

133. Additionally, the Commission proposes to codify its longstanding practice by specifying in the rules the required contents of a modification application. The Commission proposes to require that applicants seeking to modify a cable landing license must include in the application a narrative description of the modification(s) that is being requested, including relevant facts and circumstances. The Commission proposes to adopt application requirements and certifications from §§ 1.767(a) and 63.18(h), (o), (p), and (q) of the rules that are tailored to the type of modification requested, such as a modification to (1) add a cable landing station, a segment, or other material change to the cable system; (2) add a new licensee to the cable landing license; (3) remove a licensee from the cable landing license; or (4) add, modify, or remove a condition on the cable landing license. For instance, the Commission proposes that it would require information about the change to the submarine cable system, specifically the location of the new landing point, the ownership and control of the landing point, and other information, whereas, for a modification to add a licensee to a cable landing license, the Commission would seek information about the applicant and its ownership, among other information. What other information should the Commission require from an applicant that seeks to modify a cable landing license by adding or removing a licensee, adding or removing a landing point, or adding, modifying, or removing a condition on a cable landing license? To the extent the Commission adopts any new or modified information and certification requirements in this proceeding with respect to applications for a new cable landing license, the Commission proposes to similarly apply those requirements to modification applications. The Commission further proposes to codify longstanding practice that applicants must demonstrate how grant of the modification application will serve the public interest, convenience, and necessity. The Commission seeks comment on these approaches.

134. Over the years, Commission staff have received questions as to whether a modification application must be filed for the construction or addition of new segments or branching units to FCC-licensed submarine cable systems, which may not always involve the addition of new landing points. The Commission understands that many cable systems are constructed with branching units to allow new connections in the future. These connections are often to new landings or sometimes to other cable systems. The Commission proposes to adopt a specific rule prescribing that if a new connection to a branching unit is to be made after the Commission has issued a license, the licensee must file an application to modify the license before constructing, landing, and operating the new connection. The Commission sets forth two examples where a modification application would be required of a licensee under the Commission's proposed rule.

135. *Adding a Segment Connecting Two FCC-Licensed Cables.* In this example, there are two separately owned and FCC-licensed submarine cable systems that connect two separate points in the United States to two separate foreign countries. The licensees of the cable systems (Company A and Company B, respectively) both seek to install a new segment in the deep waters that will connect to each other's cable via a branching unit. There would be no new landing points in the United States, no new foreign landing points, and no change in the ownership of either cable. Company A would hold capacity, through an IRU, on Company B's cable to reach Company B's U.S. landing point (via the new segment), but would not have access to Company B's foreign landing point. Company B would not have access to Company A's U.S. or foreign landing points. Under the Commission's proposed rule, the licensees would be required to obtain prior approval for the new connection by such segment of the two separately owned and FCC-licensed submarine cable systems in deep waters by filing a modification application with the Commission.

136. *Adding a New Foreign Landing Point.* In this example, Company D is the licensee of an FCC-licensed submarine cable system that connects a U.S. landing point to a foreign landing point in Country D. A portion of the cable system is deployed in waters near another foreign country, Country C. Company C from Country C has constructed a cable landing station on its shores and deployed a submarine cable with the intent to connect its cable to Company D's cable system through a branching unit. Company D will not own any portion of Company C's cable system and will not use Company C's landing point in Country C. In turn, Company C will not own any portion of Company D's cable system, including the portion connecting a U.S. landing point to the landing point in Country D. Company C plans to purchase from Company D capacity on the portion of Company D's cable system from the new branching unit (*i.e.,* located in the waters near Country C) to the landing point in Country D. Under the

[132] *See* 47 CFR 1.767(a)(5) (''The applicant initially may file a general geographic description of the landing points; however, grant of the application will be conditioned on the Commission's final approval of a more specific description of the landing points, including all information required by this paragraph, to be filed by the applicant no later than ninety (90) days prior to construction.''); 47 CFR 1.767 (g)(8) (''Unless the licensee has notified the Commission in the application of the precise locations at which the cable will land, as required by paragraph (a)(5) of this section, the licensee shall notify the Commission no later than ninety (90) days prior to commencing construction at that landing location.'').

Commission's proposed rule, Company D, as the FCC licensee, would be required to obtain prior approval for the new connection of its cable to Company C's cable system by such branching unit by filing a modification application with the Commission.

137. *Assignment and Transfer of Control Applications.* The Commission proposes to amend § 1.767(a)(11) of the rules to incorporate changes consistent with the approach the Commission proposes in the *NPRM.* The rules currently require, as a condition of a cable landing license, that the license and rights granted in the license shall not be transferred or assigned without prior approval by the Commission.[133] Applicants seeking authority to assign or transfer control of an interest in a submarine cable system are required to file an application that contains information in accordance with § 1.767(a)(11) of the rules.[134] As an initial matter, the Commission proposes to amend § 1.767(a)(11)(i) of the rules to clarify that applicants seeking to assign or transfer control of a cable landing license must include the percentage of voting and ownership interests being assigned or transferred ''including in the U.S. portion of the cable system, which includes all U.S. cable landing station(s).'' Currently, § 1.767(a)(11)(i) refers more narrowly to ''a U.S. cable landing station'' by stating that applicants must provide, on a segment specific basis, ''the percentage of voting and ownership interests being transferred or assigned in the cable system, including in a U.S. cable landing station.'' The Commission believes its proposed change to expressly state ''including in *the U.S. portion of the cable system* (which includes all U.S. cable landing station(s))'' (emphasis added) would improve the clarity of the rule and is also consistent with the approaches on which the Commission seeks comment in the *NPRM,* including a definition of a submarine cable system and the Commission's proposed amendments to the application requirements for new cable landing licenses. Additionally, the Commission proposes to amend § 1.767(a)(11)(i) to codify the long-standing requirement that applicants must demonstrate that grant of the transaction will serve the public interest, convenience, and necessity. To the extent the Commission adopts any new or modified information and certification requirements in this proceeding with respect to applications for a new cable landing license, the Commission proposes to similarly apply those requirements to assignment and transfer of control applications. The Commission seeks comment on these approaches and whether it should adopt other changes to the rules to improve clarity or ensure consistency with the Commission's overall objectives in this proceeding.

138. *Pro Forma Assignment and Transfer of Control Post-Transaction Notifications.* The Commission proposes to amend the rules applicable to *pro forma* assignments and transfers of control of cable landing licenses by clarifying what information must be provided in such notifications. To improve the organization and clarity of the rules applicable to *pro forma* assignment and transfer of control notifications, the Commission proposes to create a new paragraph that would address the specific requirements. The Commission proposes to eliminate the distinction in § 1.767(g) that applies the routine conditions—including the *pro forma* condition under § 1.767(g)(7)—only ''to each licensee of a cable landing license granted on or after March 15, 2002,'' [135] and to apply the routine conditions to all cable landing licensees.[136] Section 1.767(g)(7) of the rules requires, as a condition of a cable landing license, that ''[a] *pro forma* assignee or person or company that is the subject of a *pro forma* transfer of control must notify the Commission no later than thirty (30) days after the assignment or transfer of control is consummated,'' and such notification ''must certify that the assignment or transfer of control was *pro forma,* as defined in § 63.24 of this chapter and, together with all previous pro forma transactions, does not result in a change of the licensee's ultimate control.'' As part of the Commission's proposed reorganization of the rules, the Commission proposes to move the text of § 1.767(g)(7) that specifically addresses the information requirements of *pro forma* assignment and transfer of control notifications into the new paragraph.[137] With respect to § 1.767(g)(7), the Commission proposes to retain the outstanding text of the routine condition, while adding a statement that the *pro forma* assignment and transfer of control notifications must be filed in accordance with the requirements set forth in the new paragraph applicable to *pro forma* transactions. The Commission proposes to incorporate into this new paragraph the text of § 63.24(d), to which § 1.767(g)(7) currently refers, and further clarify references contained therein to other parts of the Commission's rules.[138]

139. Upon receiving a *pro forma* assignment or transfer of control notification, Commission practice involves reviewing the notification for

[133] A *pro forma* assignee or person or company that is the subject of a *pro forma* transfer of control of a cable landing license is not required to seek prior approval for the *pro forma* transaction to the extent the cable landing license was granted on or after March 15, 2002, or modified to incorporate § 1.767(g)(7) of the routine conditions. 47 CFR 1.767(g) (''Except as otherwise ordered by the Commission, the following rules apply to each licensee of a cable landing license granted on or after March 15, 2002 . . . .''). A *pro forma* assignee or person or company that is the subject of a *pro forma* transfer of control must notify the Commission no later than thirty (30) days after the assignment or transfer of control is consummated.

[134] *See* 47 CFR 1.767(a)(11)(i).

[135] 47 CFR 1.767(g) (''Routine conditions. Except as otherwise ordered by the Commission, the following rules apply to each licensee of a cable landing license granted on or after March 15, 2002 . . . .'').

[136] In the *2001 Cable Report and Order,* the Commission determined that ''[t]he rules we adopt today carve out a limited exception to this condition for pro forma transactions for all cable landing licenses that the Commission grants after the effective date of this Report and Order,'' and ''[f]or cable landing licenses granted prior to the effective date of this Report and Order, a licensee may file an application with the Commission seeking a modification of its license to incorporate this limited exception to the prior approval requirement currently set forth in the applicable license condition.'' As discussed below, the Commission believes this distinction in § 1.767(g) between cable landing licenses granted prior to and on or after March 15, 2002 is no longer meaningful given that licenses granted prior to March 15, 2002, including those that have not been modified to incorporate the exception to § 1.767(g)(6) as applied to *pro forma* transactions, either have expired or are nearing the expiration of their 25-year term. Where a renewal of a cable landing license is granted, it is Commission practice to apply the routine conditions of § 1.767(g)(6) to the terms of the new license.

[137] Specifically, the Commission proposes to move to the new paragraph the text of § 1.767(g)(7) that states the notification must certify that the assignment or transfer of control was *pro forma,* as defined in 47 CFR 63.24, and, together with all previous *pro forma* transactions, does not result in a change of the licensee's ultimate control. The licensee may file a single notification for an assignment or transfer of control of multiple licenses issued in the name of the licensee if each license is identified by the file number under which it was granted.

[138] *See* 47 CFR 63.24(d) (providing that transfers of control or assignments that do not result in a change in the actual controlling party are considered non-substantial or pro forma. Whether there has been a change in the actual controlling party must be determined on a case-by-case basis with reference to the factors listed in note 1 to § 63.24(d). The types of transactions listed in note 2 to § 63.24(d) shall be considered presumptively pro forma and prior approval from the Commission need not be sought.). By incorporating the text of § 63.24(d) into a new § 1.767(a), the Commission proposes to specify that ''note 1 to this paragraph (d)'' and ''note 2 to this paragraph (d)'' refer to those respective notes in § 63.24(d) of the rules. The Commission's proposed approach is limited to the new paragraph that it proposes to adopt in § 1.767(a). The Commission does not propose amendments to § 63.24(d) in the *NPRM.* In the *Evolving Risks NPRM,* the Commission proposed, among other administrative changes, the conversion of certain Notes into respective paragraphs for consistency with the Office of Federal Register requirements, including notes 1 and 2 of § 63.24(d).

compliance with the rules, including whether it contains information required under § 1.767(a)(11)(i) and whether the assignment or transfer of control was in fact *pro forma* and, accordingly, issuing an ''Actions Taken'' public notice. To reduce regulatory uncertainty, the Commission proposes to codify existing Commission practice by clarifying that the requirements under § 1.767(a)(11)(i) are not only applicable to substantial assignments and transfers of control, but also apply to *pro forma* assignment and transfer of control notifications. Therefore, a *pro forma* assignee or person or company that is the subject of a *pro forma* transfer of control must also submit information consistent with such requirements.[139] Accordingly, the Commission proposes that the new aforementioned paragraph will incorporate the requirements set out in § 1.767(a)(11)(i) by requiring that *pro forma* assignment and transfer of control notifications shall (1) provide information as required under § 1.767(a)(1) through (3) of the rules for both the assignor/transferor and the assignee/transferee; (2) provide information as required under § 1.767(a)(8) and (9) of the rules for only the assignee/transferee; (3) include both the pre-transaction and post-transaction ownership diagram of the licensee as required under § 1.767(a)(8)(i) of the rules; (4) include a narrative describing the means by which the *pro forma* assignment or transfer of control occurred, and (5) specify, on a segment specific basis, the percentage of voting and ownership interests that were assigned or transferred in the cable system, including in *the U.S. portion of the cable system* (which includes all U.S. cable landing station(s)). The Commission reserves the right to request additional information concerning the transaction to aid it in making its public interest determination. Additionally, the Commission proposes to make administrative changes to § 1.767(a)(11) by changing ''transferor/assignor'' and ''transferee/assignee'' to instead reflect ''assignor/transferor'' and ''assignee/transferee,'' consistent with the overall structure of § 1.767(a)(11). The Commission tentatively finds that these approaches are consistent with the Commission's longstanding practice. The Commission seeks comment on these proposals and whether there are additional ways that the Commission should clarify the rules applicable to *pro forma* assignment and transfer of control notifications.

140. *Requests for an STA.* To provide clarity in the rules and reduce regulatory uncertainty, the Commission proposes to adopt a framework for applicants requesting an STA to allow, at the applicant's own risk, the construction, testing, or operation of a submarine cable. Generally, the Commission may receive requests for an STA from applicants: (1) seeking to commence construction of or commercial service on a cable system while the cable landing license application is pending Commission approval; (2) seeking to continue operating a cable system following the expiration of a license and pending the filing of an application to renew or extend the cable landing license; (3) who are operating a cable system without first obtaining a license; (4) that consummated a transaction without prior Commission consent; or (5) seeking to provide emergency service arising from a need occasioned by conditions unforeseen by, and beyond the control of, the licensee(s), among other examples. It is the Commission's current practice to place a request for an STA on Accepted for Filing public notice and to send a courtesy copy of such public notice to the Committee for STA requests where the applicant has reportable foreign ownership. The Commission may consult with the Committee on a particular request for an STA, where appropriate, prior to releasing the public notice. Any grant of a request for an STA does not prejudice action by the Commission on any underlying application, including enforcement action, as is set forth in public notices issued in association with the request.[140]

141. The Commission proposes to adopt rules based on its current practice. The Commission proposes to require that any person or entity seeking an STA with respect to the construction, testing, or operation of a submarine cable must expeditiously file all requisite applications related to the request for an STA—including any application(s) for a cable landing license or modification, assignment, transfer of control, or renewal or extension of such license—before or immediately upon submitting the request for an STA. The Commission proposes to require that applicants requesting an STA must identify the file number(s) of any pending application(s) associated with the request for an STA. The Commission seeks comment on whether it should impose any other requirements related to filing a request for an STA.

142. The Commission proposes to adopt rules requiring that applicants requesting an STA related to the construction, testing, or operation of a submarine cable must provide the following information in its request: (1) applicant and contact information as required under § 1.767(a)(1) through (3) of the rules; (2) a description of the request for an STA, the reason why applicants seek an STA, and the justification for such request; (3) the name of the cable system for which applicants request an STA; (4) the name(s) and citizenship(s) or place(s) of organization of each applicant requesting an STA with respect to the submarine cable, including the licensees that jointly hold a cable landing license; (5) a statement as to whether or not any individual or entity directly or indirectly owns 5% or more of the equity interests and/or voting interests, or a controlling interest, of any applicant requesting an STA (or 10% or more to the extent the Commission retain the current ownership reporting threshold); (6) the type of request for an STA, such as a new request for an STA, a request to extend or renew an STA, or other type; (7) whether or not the request for an STA is associated with an application(s) pending with the Commission, and if so, identification of the related file number(s); (8) the date by which applicants seek grant of the request for an STA; (9) the duration for which applicants seek an STA.

143. In addition to these proposed requirements, the Commission seeks comment on whether it should require applicants requesting an STA to provide any information required by § 63.25 of the Commission's rules. While § 63.25 addresses requirements relating to temporary or emergency service by international carriers, it has been the Commission's long-standing practice to rely on § 63.25 to review and act on requests for STAs involving submarine cables.[141] The Commission seeks

[139] 47 CFR 1.767(a)(11)(i).

[140] *See, e.g.,* File No. SCL–STA–20220318–00011, *Non-Streamlined Submarine Cable Landing License Applications Accepted for Filing,* Public Notice, Report No. SCL–00371NS (IB Apr. 22, 2022) (releasing an ''Accepted for Filing'' public notice and stating that the applicant ''acknowledges that grant of such STA will not prejudice action by the Commission on the underlying application, and that the STA is subject to cancellation or modification upon notice without a hearing''); File No. SCL–STA–20220318–00011, *Actions Taken Under Cable Landing License Act,* Public Notice, Report No. SCL–00374, 37 FCC Rcd 6065 (IB 2022) (granting the request for an STA and stating that the applicant ''acknowledges that grant of the STA will not prejudice action by the Commission on the underlying application and that the STA is subject to cancellation or modification upon notice without a hearing.'').

[141] Section 63.25(a)(1) defines ''[t]emporary service'' as ''a period not exceeding 6 months.'' Section 63.25(a)(2) defines ''[e]mergency service'' as ''service for which there is an immediate need occasioned by conditions unforeseen by, and

Continued

comment on whether it should continue to rely on § 63.25 instead of adopting new rules specifically for submarine cables. To the extent the Commission integrates the provisions of § 63.25 into the proposed framework, should the Commission require applicants to comply with the requirements set out in § 63.25 to the extent they are applicable? The Commission seeks comment on whether certain requirements in § 63.25 are inapplicable in the submarine cable context.[142]

144. The Commission also proposes to require applicants requesting an STA related to the construction, testing, or operation of a submarine cable to provide certain certifications in such request. Specifically, the Commission proposes to adopt in the Commission's rules the following certification requirements: (1) applicants must provide the same certifications required in an application for a new cable landing license, including the certification required in § 63.18(o) of the rules,[143] as well as any new certification requirements adopted in this proceeding; (2) applicants must acknowledge that any grant of the request for an STA does not prejudice action by the Commission on any underlying application(s); (3) applicants must acknowledge that any grant of the request for an STA is subject to revocation/cancellation or modification by the Commission on its own motion without a hearing; and (4) applicants must acknowledge that any grant of the request for an STA does not preclude enforcement action for non-compliance with the Cable Landing License Act, the Communications Act, or the Commission's rules. In addition, the Commission proposes to codify the Commission's long-standing practice of requiring applicants requesting an STA to demonstrate that grant of such request would serve the public interest, convenience, and necessity. The Commission seeks comment on these proposed requirements. Should the Commission require applicants requesting an STA to provide additional information or certifications for the Commission's assessment?

145. *Amendments.* The Commission proposes to codify the Commission's longstanding practice to set forth in the rules that any submarine cable application may be amended as a matter of right prior to the date of any final action taken by the Commission or designation for hearing. The Commission also proposes to require that amendments to applications shall be signed and submitted in the same manner as was the original application. Further, the Commission proposes to require that if a petition to deny or other formal objection has been filed in response to the application, the amendment shall be served on the parties.

12. Routine Conditions Applicable to All Licensees

146. Below, the Commission proposes to amend the routine conditions that are attached to cable landing licenses under § 1.767(g) of the rules, which provide a set of public, standard requirements and procedures to ensure that licensees consistently certify that they will comply with the conditions imposed on the license following grant of an application. The routine conditions provide the Commission with important information about licensee status and updated points of contact for the submarine cables licensed by the Commission, and other updated information for purposes of assessing any national security, law enforcement, and other concerns.

147. *Eliminate 2002 Distinction.* The Commission proposes to eliminate the distinction in § 1.767(g) that applies the routine conditions only ''to each licensee of a cable landing license granted on or after March 15, 2002.'' [144] The Commission believes that this distinction is no longer meaningful given that cable landing licenses granted prior to March 15, 2002, either have expired or are nearing the expiration of their 25-year term. Further, to the extent the Commission grants applications to renew the license of a submarine cable, the Commission's current practice is to issue a new cable landing license based on the rules that were effective as of March 15, 2002, instead of renewing the terms of the license that were in effect prior to this date. Therefore, the Commission proposes to amend § 1.767(g) by eliminating the text ''granted on or after March 15, 2002'' and to apply the routine conditions, as they may be amended in this proceeding, ''to each licensee of a cable landing license'' irrespective of the date of grant. The Commission seeks comment on this proposal.

148. *Points of Contact.* The Commission proposes to amend its rules by adding a new routine condition requiring cable landing licensees to notify the Commission of any changes to their contact information within thirty (30) days of such change, consistent with the information requirements on which the Commission seeks comment in this proceeding. It is essential for the Commission to maintain updated contact information for the appropriate points of contact to whom any matters concerning a licensed submarine cable may be addressed. Specifically, the Commission proposes that cable landing licensees must inform the Commission of any changes to the contact information provided in their most recent submarine cable application—including the application for a new cable landing license or any modification, assignment, transfer of control, or renewal or extension of the license—and the most recent three-year periodic report. The Commission seeks comment on this proposal.

149. *Notification of Changes to the Name of the Licensee or Submarine Cable System.* The Commission proposes to amend its rules by adding a new routine condition requiring licensees to notify the Commission of any changes to the name of the licensee (including the name under which it is doing business) or the name of its submarine cable within thirty (30) days of such change. If there are multiple licensees of the submarine cable, the Commission proposes that the lead

beyond the control of, the carrier.'' Section 63.25(c) provides that an application may be filed to request continuing authority to provide temporary or emergency service.

[142] *See, e.g.,* 47 CFR 63.25(c) (providing that any carrier may request continuing authority ''to provide temporary or emergency service by the construction or installation of facilities where the estimated construction, installation, and acquisition costs do not exceed $35,000 or an annual rental of not more than $7,000 provided that such project does not involve a major action under the Commission's environmental rules''); *id.* (requiring that any carrier to which continuing authority has been granted must file, following the end of each 6-month period covered by such authority, certain information with the Commission, including ''[t]he type of facility constructed, installed, or leased,'' ''[t]he route kilometers thereof (excluding leased facilities),'' ''[t]he terminal communities served and the airline kilometers between terminal communities in the proposed project,'' ''[t]he cost thereof, including construction, installation, or lease,'' and ''[w]here appropriate, the name of the lessor company, and the dates of commencement and termination of the lease'').

[143] *See* 47 CFR 63.18(o) (requiring ''[a] certification pursuant to §§ 1.2001 through 1.2003 of this chapter that no party to the application is subject to a denial of Federal benefits pursuant to Section 5301 of the Anti-Drug Abuse Act of 1988. See 21 U.S.C. 853a.''); *see* 47 CFR 1.2002(b) (explaining the meaning of ''party to the application'' for purposes of this section); *Id.* 1.2002(c) (''The provisions of paragraphs (a) and (b) of this section are not applicable to the Amateur Radio Service, the Citizens Band Radio Service, the Radio Control Radio Service, to users in the Public Mobile Services and the Private Radio Services that are not individually licensed by the Commission, or to Federal, State or local governmental entities or subdivisions thereof.'').

[144] 47 CFR 1.767(g) (''Routine conditions. Except as otherwise ordered by the Commission, the following rules apply to each licensee of a cable landing license granted on or after March 15, 2002 . . . .'').

licensee must file the notification with the Commission within the 30-day timeframe. It is important for the Commission to maintain updated information that is critical to identifying the licensees and the licensed submarine cable system. The Commission seeks comment on this proposal.

150. *Covered List Equipment.* The Commission proposes to amend its rules by adding a new routine condition prohibiting licensees from using, for the relevant submarine cable system, equipment or services identified on the ''Covered List.'' The Commission also proposes that this prohibition would apply to covered equipment or services purchased, rented, leased, or otherwise obtained on or after August 14, 2018 (in the case of Huawei, ZTE, Hikvision, Dahua, and Hytera), or on or after 60 days after the date that any equipment or service is placed on the Covered List.

151. *Commencement of Service Requirement.* Currently, an entity can obtain a cable landing license and then not construct, land, or operate the cable pursuant to the license. This may occur because business plans change or the entity goes out of business, and it has resulted in the retention of cable landing licenses in the Commission's records where the license likely was not used to construct or operate the cable. Section 1.767(g)(15) of the rules requires that ''the licensee must notify the Commission within thirty (30) of the date the cable is placed into service.'' In addition, § 1.767(g)(15) sets forth that ''[t]he cable landing license shall expire twenty-five (25) years from the in-service date, unless renewed or extended upon proper application.'' However, there currently is no rule requiring licensees to notify the Commission that they have not utilized the licenses and, as a result, there are a few licenses associated with submarine cable systems that likely were not built, but are reflected as current licenses in ICFS. The Commission notes that it has requirements for other licensees of regulated services where the licensee must begin providing service within a set period of time or its license is cancelled.[145] The Commission proposes to adopt similar requirements for cable landing licensees. This proposed requirement would provide the Commission with more accurate information as to which license grants were not utilized to construct and operate submarine cables and improve the administration of the Commission's rules.

152. The Commission tentatively concludes that cable landing licensees should retain their license only if they construct and operate the submarine cable under that license. Consequently, the Commission proposes to adopt a rule requiring a cable landing licensee to commence commercial service on the cable under its license within three years following the grant. The Commission proposes that if a cable landing licensee seeks a request for a waiver of the three-year time period, the licensee must identify the projected in-service date and reasons for the delay and demonstrate good cause for grant of a waiver.[146] The Commission also seeks comment on whether the Commission should instead allow a licensee to request an extension of the three-year time period rather than requesting a waiver. The Commission proposes that if a cable landing licensee does not notify the Commission of the commencement of service or file a request for a waiver within three years following the grant of the license, such failure to meet this condition will result in automatic cancellation of the license. Other Commission rules have similar automatic cancellations. The Commission seeks comment on this proposal, including whether three years after license grant is sufficient time to commence commercial operation or if another time period may be appropriate. The Commission's records in ICFS indicate that most licensees of operating submarine cables commenced service within this timeframe.

13. Foreign Carrier Affiliation Notifications

153. The Commission proposes to amend § 1.768(e)(4) of the rules to require that licensees must include in a notification of a foreign carrier affiliation voting interests, in addition to the equity interests, and a diagram of individuals or entities with a 10% or greater direct or indirect ownership in the licensee. Currently, a licensee is required to include, among other things, in a foreign carrier affiliation notification ''[t]he name, address, citizenship, and principal business of any person or entity that directly or indirectly owns at least ten percent (10%) of the equity of the licensee, and the percentage of equity owned by each of those entities (to the nearest one percent (1%)).'' The Commission proposes revisions to § 1.768(e)(4) that would be consistent with the ownership reporting requirements of other submarine cable applications and notifications. Specifically, the Commission proposes to amend § 1.768(e)(4) to require that licensees must provide the name, address, citizenship, and principal businesses of any individual or entity that directly or indirectly owns 10% or more of the equity interests and/or voting interests, or a controlling interest, of the licensee, and the percentage of equity and/or voting interest owned by each of those entities (to the nearest one percent). Where no individual or entity directly or indirectly owns ten percent or more of the equity interests and/or voting interests, or a controlling interest, of the licensee, the Commission proposes that the license must provide a statement to that effect. The Commission further proposes to amend § 1.768(e)(4) by integrating the provisions set out in § 63.18(h)(1)(i) and (ii) of the rules, which address calculation of indirect equity interests and voting interests, respectively, and are applicable to other submarine cable applications and notifications.

154. Additionally, the Commission proposes to amend § 1.768(e) by requiring that licensees must provide an ownership diagram that illustrates the licensee's vertical ownership structure, including individuals or entities with a 10% or greater direct or indirect ownership (equity and voting) interests, or a controlling interest, in the licensee. To the extent the Commission adopts a 5% ownership reporting threshold as a requirement of applications for a cable landing license and modification, assignment, transfer of control, and renewal or extension of the license, as discussed above, the Commission proposes that it amend § 1.768(e)(4) by similarly adopting a 5% ownership reporting threshold and thus harmonize the requirements. The Commission seeks comment on this proposal.

14. Other Changes to the Rules

155. The Commission proposes to amend § 1.767 of the rules by eliminating certain provisions that the Commission tentatively concludes are

[145] 47 CFR 1.946(c) (requiring, with regard to a licensee in the Wireless Radio Services, ''[i]f a licensee fails to commence service or operations by the expiration of its construction period or to meet its coverage or substantial service obligations by the expiration of its coverage period, its authorization terminates automatically (in whole or in part as set forth in the service rules), without specific Commission action, on the date the construction or coverage period expires''); *see also* 47 CFR 1.955(a)(2) (''Authorizations automatically terminate (in whole or in part as set forth in the service rules), without specific Commission action, if the licensee fails to meet applicable construction or coverage requirements.'').

[146] Under the ''good cause'' standard, waiver is appropriate only if both (1) special circumstances warrant a deviation from the general rule, and (2) such deviation better serves the public interest. *See also WAIT Radio* v. *FCC,* 418 F.2d 1153, 1157 (D.C. Cir. 1969) (''An applicant for waiver faces a high hurdle even at the starting gate.'').

no longer applicable or consistent with its current rules or practice. Specifically, the Commission proposes to eliminate § 1.767(c), which states that original files relating to submarine cable landing licenses and applications for licenses since June 30, 1934, are kept by the Commission. Such applications for licenses (including all documents and exhibits filed with and made a part thereof, with the exception of any maps showing the exact location of the submarine cable or cables to be licensed) and the licenses issued pursuant thereto, with the exception of such maps, shall, unless otherwise ordered by the Commission, be open to public inspection in the offices of the Commission in Washington, DC. Additionally, the Commission proposes to eliminate § 1.767(d), which states that original files relating to licenses and applications for licenses for the landing operation of cables prior to June 30, 1934, were kept by the Department of State, and such files prior to 1930 have been transferred to the Executive and Foreign Affairs Branch of the General Records Office of the National Archives. Requests for inspection of these files should, however, be addressed to the Federal Communications Commission, Washington, DC 20554; and the Commission will obtain such files for a temporary period in order to permit inspection at the offices of the Commission. The Commission notes that the requirements set forth in § 1.767(c) and (d) are not required under the Cable Landing License Act or section 5 of Executive Order 10530. Furthermore, the Commission does not implement these recordkeeping practices with respect to other Commission records. The Commission tentatively finds that it should maintain consistent recordkeeping practices with respect to its records, including records relating to cable landing licenses and applications for cable landing licenses. In addition, the Commission tentatively concludes that the requirements under § 1.767(c) and (d) are inconsistent with the electronic filing requirements set out in § 1.767(n)(1) of the rules, which states that, ''[w]ith the exception of submarine cable outage reports, and subject to the availability of electronic forms, all applications and notifications described in this section must be filed electronically through the International Communications Filing System (ICFS).'' The Commission seeks comment on these proposals.

156. The Commission also proposes to eliminate § 1.767(f), which requires that ''[a]pplicants shall disclose to any interested member of the public, upon written request, accurate information concerning the location and timing for the construction of a submarine cable system authorized under this section. This disclosure shall be made within 30 days of receipt of the request.'' The Commission tentatively finds that this requirement under § 1.767(f) is inconsistent with § 0.457(c)(1)(i) of the rules, which provides that ''[m]aps showing the exact location of submarine cables'' should be withheld from public inspection. Further, this requirement is inconsistent with the Commission's proposal in the *NPRM* to provide confidential treatment for the exact addresses and specific geographic coordinates of cable landing stations, beach manholes, and other sensitive locations associated with a submarine cable system. The Commission seeks comment on this proposal.

15. Other Administrative Modifications

157. *New Subpart FF.* The Commission proposes to reorganize the submarine cable rules codified in §§ 1.767 and 1.768 by relocating those rules from subpart E of part 1 to a new subpart in part 1. Specifically, the Commission proposes to redesignate those rules under a new subpart FF. Currently, subpart E addresses ''Complaints, Applications, Tariffs, and Reports Involving Common Carriers'' and the submarine cables are identified in that subpart as a specific type of application under title II of the Communications Act. In light of changes in the submarine cable industry, the Commission believes this designation of submarine cable applications is no longer applicable. Additionally, the Commission tentatively concludes that reorganizing the submarine cable rules into a separate subpart will provide clarity for applicants seeking to file any type of submarine application with the Commission. To the extent the Commission amends any rule provisions currently set forth under §§ 1.767 and 1.768, the Commission proposes to codify such changes under subpart FF. Further, the Commission proposes to improve the clarity and structure of § 1.767 by reorganizing existing rules and implementing any new rules adopted in this proceeding into specific paragraphs by topic.

158. *Other Administrative Changes.* Throughout the proposed rules, the Commission has proposed various ministerial, non-substantive changes not individually discussed in the *NPRM.* These changes include, among other things, the conversion of Notes into respective paragraphs for consistency with the Office of Federal Register requirements. The Commission seeks comment on whether to require applicants file a copy of a submarine cable application with CISA, DHS. The Commission also seeks comment on whether it should add certain existing requirements in the submarine cable subpart rather than a cross reference to other rules.

C. Three-Year Periodic Reporting Requirement

159. Below, the Commission discusses the information it proposes to require that all licensees to file in the three-year periodic reports. The Commission proposes to codify, as a routine condition a requirement that all cable landing licensees must provide to the Commission updated information about their ownership, points of contact, description of the submarine cable system, and other critical information every three years.[147] Specifically, the Commission proposes that all licensees must provide in their periodic reports updated information and certifications identical to what is required in an application, including new information and certification requirements that the Commission may adopt in this proceeding. The Commission also seeks comment on whether to require additional information as part of the periodic reporting requirement. The Commission seeks comment on the nature and extent of the potential burdens of this proposed reporting requirement.

160. *Reports Must Provide Current Information.* The Commission generally proposes to require cable landing licensees to provide in the periodic reports updates every three years. The information will be updated from the time they submitted their application for the cable landing license or any modification, assignment, transfer of control, or renewal or extension of the license or the last periodic report, whichever is most recent, consistent with the application requirements. The Commission proposes that these periodic reports must contain information that is current as of thirty (30) days prior to the date of the submission. To the extent that certain information has not changed since last filed in an application for the cable landing license or the modification, substantial assignment, transfer of control, and renewal or extension of the license or last periodic report, should the Commission allow the cable landing

[147] As needed, the Commission proposes that Commission staff may require licensees to submit information required as part of the periodic filing prior to the three-year reporting deadline.

licensee to include a certification attesting that its current information is identical to the information contained in such application?

161. *Submarine Cable Infrastructure Information.* The Commission proposes to require licensees to provide additional detailed information concerning the submarine cable infrastructure in their periodic reports. The Commission proposes among other things that licensees must provide updated submarine cable system information including the length of the cable by segment and in total, the location of branching units, the location, address, and county or county equivalent of U.S. and non-U.S. cable landing points, the number of optical fiber pairs in the cable, and the design capacity of the system. The Commission also proposes to modify requirement for applicants and licensees to provide the geographic coordinates of cable landing stations as well as beach manholes, to the extent they differ from cable landing station coordinates.

162. *Current and Future Service Offerings.* The Commission proposes to require licensees to submit as part of the periodic report information about the capacity services they currently offer or plan to offer through the submarine cable system. The service includes the capacity it currently owns, the amount of capacity it intends to sell and the capacity management services. The Commission also proposes to require applicants, licensees, transferees, and assignees (as appropriate) to disclose current and expected future service offerings as part of their applications for modification, assignment, transfer of control, and renewal or extension of submarine cable landing licenses.

163. *Regulatory Compliance Certifications.* The Commission proposes to require cable landing licensees to certify in the report whether or not they are in compliance with the Cable Landing License Act, the Communications Act, the Commission's rules, and other laws. Specifically, the Commission proposes to require each licensee to certify in its report whether or not the licensee has violated the Cable Landing License Act of 1921, the Communications Act of 1934, or Commission rules, including making false statements or misrepresentations to the Commission; whether the applicant has been convicted of a felony; and whether there is an adjudicated determination that the applicant has violated U.S. antitrust or other competition laws, has been found to have engaged in fraudulent conduct before another government agency, or has engaged in other non-FCC misconduct the Commission has found to be relevant in assessing the character qualifications of a licensee or authorization holder. The Commission also seeks comment on whether the Commission should require cable landing licensees to disclose any pending FCC investigations, including any pending Notice of Apparent Liability, and any adjudicated findings of non-FCC misconduct. In addition, the Commission seeks comment on whether the Commission should require cable landing licensees to disclose any violations of the Communications Act, Commission rules, or U.S. antitrust or other competition law, or any other non-FCC misconduct only where there has been adjudication or notification of a violation by an agency or court.

164. *Cybersecurity Certifications.* The Commission proposes to require cable landing licensees to provide in the report cybersecurity certifications. Among other things, the Commission proposes that licensees certify in the report that they have created, updated, and implemented cybersecurity risk management plans. The Commission also proposes to require these applicants and licensees to certify that they take reasonable measures to protect the confidentiality, integrity, and availability of their systems and services that could affect their provision of communications services.

165. ''*Covered List*'' *Certification.* The Commission proposes to require cable landing licensees to make the ''covered list'' certifications described above. The Commission proposes to require that licensees, in their periodic reports, certify that they have not purchased and/or used, and will not purchase and/or use, equipment or services produced or provided by entities (and their subsidiaries and affiliates) identified on the Commission's ''Covered List'' deemed pursuant to the Secure and Trusted Communications Networks Act [148] to pose an unacceptable risk to the national security of the United States or the security and safety of United States persons. The Commission proposes that this certification would apply to covered equipment or services purchased, rented, leased, or otherwise obtained on or after August 14, 2018 (in the case of Huawei, ZTE, Hikvision, Dahua, and Hytera), or on or after 60 days after the date that any equipment or service is placed on the Covered List. This periodic reporting certification would ensure licensees continue to comply with the rule and the licensees' routine condition that protects against national security, law enforcement, and other risks.

166. *Foreign-Owned MNSPs.* The Commission proposes to require cable landing licensees, with or without reportable foreign ownership, to report whether or not they use and/or will use foreign-owned MNSPs in the operation of the submarine cable, as described above.

167. *Licensee Information and Points of Contact.* The Commission proposes to require cable landing licensees to include in their periodic reports updated information concerning: (1) the name, address, telephone number, and email address of the licensee, and (2) the name, title, address, telephone number, email address, of the officer and any other contact point, such as legal counsel, to whom correspondence concerning the cable landing license is to be addressed. The Commission further proposes to require cable landing licensees to provide any updated information concerning the Government, State, or Territory under the laws of which the licensee is organized.

168. In addition to the proposals above, the Commission seeks comment on whether to require other information as part of the periodic reporting requirement. The Commission also seeks comment on the nature and extent of the potential burdens of this proposed reporting requirement.

169. *Ownership of the Submarine Cable System.* The Commission seeks comment on whether, as part of the periodic reporting requirement, the cable landing licensee should provide information identifying any individuals or entities that hold an ownership interest in the submarine cable system that does not meet the threshold eligibility requirements requiring them to be licensees of the cable, including the proposed eligibility requirements on which the Commission seeks comment in this proceeding. To the extent the Commission requires this information, should the Commission also require the cable landing licensee to provide additional information about those other owners of the submarine cable, such as (1) their citizenship(s) and place(s) of organization and (2) identification of any individuals and entities that hold a certain threshold of direct and/or indirect equity and/or voting interests (*e.g.,* 10% or greater), or a controlling interest, in those other owners of the

[148] Pursuant to sections 2(a) and (d) of the Secure and Trusted Communications Networks Act, and §§ 1.50002 and 1.50003 of the Commission's rules, PSHSB publishes a list of communications equipment and services that have been determined by one of the sources specified in that statute to pose an unacceptable risk to the national security of the United States or the security and safety of United States persons (''covered'' equipment).

submarine cable? Would information concerning other owners of the submarine cable system that are not licensees better ensure that the Commission can more fully account for evolving national security, law enforcement, foreign policy, and/or trade policy risks to submarine cable infrastructure? Should the criteria for identification of any individuals and entities that hold a certain threshold of direct and/or indirect equity and/or voting interests in those other owners of the submarine cable be set at 5% or greater instead? Should the Commission inquire about U.S. citizens' other non-U.S. citizenships, as in other Commission proceedings?

170. *Ownership of Licensees.* The Commission seeks comment on whether the cable landing licensee should provide updated ownership information. For example, if the Commission adopts a 5% reportable ownership threshold, licensees would be required to provide updated ownership as required by the rules. The Commission seeks comment on whether an ongoing reporting requirement every three years should be broader and include additional information about ownership, control, and/or influence by foreign governments or foreign state-owned entities. If so, how should the Commission define ''influence''?

171. *Other Information.* The Commission seeks comment on what other information it should require generally in the periodic reports so that the Commission can address evolving national security, law enforcement, foreign policy, and/or trade policy risks. The Commission seeks comment on the types of ongoing information that the Commission should refer to the executive branch agencies for review. For example, should the Commission require cable landing licensees to periodically notify the Commission of any criminal convictions involving the licensee? The Commission notes that a similar requirement applies to broadcast licensees.[149]

172. *Application Fees.* The Commission seeks comment on whether to require cable landing licensees to pay a fee when submitting the three-year periodic reports that the Commission proposes in the *NPRM.* Section 8(a) of the Communications Act states that ''[t]he Commission shall assess and collect application fees at such rates as the Commission shall establish in a schedule of application fees to recover the costs of the Commission to process applications.'' [150] The Commission has adopted a schedule of fees based on the cost of processing applications, with cost determined based on direct labor costs.[151] The Commission uses time and staff compensation estimates to establish the direct labor costs of application fees, which are, in turn, based on applications processed by Commission staff found to be typical in terms of the amount of time spent on processing each type of application. The Commission has broadly construed the term ''applications'' to apply to a wide range of submissions for which filing fees are required. For example, the Commission notes that the Commission applies an application fee for the Biennial Ownership Report as applied to Full Power TV Stations, Commercial AM Radio Stations, and Commercial FM Radio Stations.[152]

173. The Commission anticipates that staff review of the periodic reports will require a significant investment of labor hours. The Commission also envisions a substantive filing comprising not only certifications but substantive updates of the infrastructure used in the cable system including locations of dry plants, the services being offered by the licensees, ownership of the cable and ownership of the licensees. Such submissions must be carefully reviewed by Commission staff to determine if they are complete and provide the required information, including specific descriptions of the cable system and services. The review will also need to determine the significance of any changes to the information previously filed with the Commission and whether the changes had been properly and timely reported to the Commission and appropriately sought approval when necessary, such as changes in ownership. The review will also require a determination as to whether the information provided in the report provides a basis for referring the license to the Committee for review for national security or law enforcement concerns. Such review would require staff resources, including analysts to review each filing, attorneys to perform compliance assessments, specialists to process the GIS location data and to review the cybersecurity certifications, and a supervisory attorney to oversee the process and coordinate the referral to the Committee, other Federal agencies or other bureaus and offices within the Commission. The total amount of staff hours could be approximately two hours of review by an analyst, two hours of review by a GIS specialist, 20 hours of review by an attorney and 5 hours of supervisory attorney review. The Commission therefore seeks comment on adding a new category of fees in § 1.1107 of the rules, and to set that application fee based on the Commission's final cost estimate.

174. The Commission seeks comment on whether any fee adopted for the periodic reports should be consistent with the fee for applications for a renewal of a cable landing license because the periodic report, similar to a renewal application, will require the licensee(s) to update information about

[149] *See* 47 CFR 1.65(c) (''All broadcast permittees and licensees must report annually to the Commission any adverse finding or adverse final action taken by any court or administrative body that involves conduct bearing on the permittee's or licensee's character qualifications and that would be reportable in connection with an application for renewal as reflected in the renewal form . . . .''); *see Policy Regarding Character Qualifications in Broadcast Licensing, Amendment of Part 1, the Rules of Practice and Procedure, Relating to Written Responses to Commission Inquiries and the Making of Misrepresentations to the Commission by Applicants, Permittees, and Licensees, and the Report of Information Regarding Character Qualifications,* MD Docket No. 81–500, Policy Statement and Order, 5 FCC Rcd 3252, para. 4 (1990) (''[E]vidence of any conviction for misconduct constituting a felony will be relevant to [the Commission's] evaluation of an applicant's or licensee's character.'').

[150] The Commission has the authority to assess application fees under section 8 of the Communications Act and has assessed application fees since 1986. In 2018, Congress revised the Commission's application fee authority by amending section 8 and adding section 9A to the Communications Act. In doing so, Congress modified section 8 of the Communications Act to change the application fee program from a statutory schedule of application fees to a requirement that the Commission update and amend the existing schedule of application fees by rule to recover its costs to process applications. Section 8(c) of the Act also requires the Commission to, by rule, amend the application fee schedule if the Commission determines that the schedule requires amendment to ensure that: (1) such fees reflect increases or decreases in the costs of processing applications at the Commission or (2) such schedule reflects the consolidation or addition of new categories of applications. In order to implement the RAY BAUM'S Act, the Commission sought comment on and adopted a new streamlined schedule of application fees that aligns with the types of applications received by the Commission in 2020. *Amendment of the Schedule of Application Fees Set Forth in Sections 1.1102 through 1.1109 of the Commission's Rules,* MD Docket No. 20–270, Report and Order, 86 FR 15026 (March 19, 2021), 35 FCC Rcd 15089 (2020) (*2020 Application Fee Report and Order*) (the *2020 Notice of Proposed Rulemaking* (85 FR 65566, October 15, 2000) and the *2020 Application Fee Report and Order* collectively explain the statutory changes and the methodology for adopting and maintaining the new schedule of application fees and discussing how it will be maintained) (collectively *2020 Application Fee Proceeding*).

[151] In reviewing any particular methodology, it is important to note that the agency is not required to calculate its costs with ''scientific precision.'' Instead, reasonable approximations will suffice.

[152] The fee is calculated based on the number of stations for which the report is filed. It is currently $95 per station.

the cable system.[153] The Commission seeks comment on whether the new fee should be added to the established fee category of ''International Service'' and follow the fee calculation methodology adopted by the Commission in the *2020 Application Fee Report and Order.*[154] Currently, the fee for an application for a renewal of cable landing license is $2,725.[155] The Commission seeks comment on whether a fee of $2,725 is appropriate for review of the periodic reports. The Commission seeks comment on whether there are other filings that commenters consider analogous to the proposed periodic report. And if so, would the Commission's processes for those filings suggests that the Commission adopt a different fee here? The Commission generally seeks comment on what fee calculation methodology should be adopted to determine a fee amount, if any, for the three-year periodic reports for cable landing licensees. In so doing, the Commission reminds commenters that fees collected pursuant to its section 8 authority are deposited in the general fund of the U.S. Treasury. Thus, while the determination of the fee amount will be based on cost, the collected fees are not used to fund Commission activities. In crafting comments, the Commission asks that commenters explain whether their proposals are supported by the statute.

D. Improving the Quality of the Circuit Capacity Data

175. The Commission receives two types of annual circuit capacity reports regarding U.S.-international submarine cables.[156] First, licensees of a submarine cable between the United States and any foreign point must report the capacity of the submarine cable as of December 31 of the reporting period (*i.e.,* available capacity) and two years from the reporting period (*i.e.,* planned capacity). Second, cable landing licensees and common carriers must report their capacity on submarine cables between the United States and any foreign point as of December 31 of the reporting period.[157] The Commission has found that the data from the circuit capacity reports are necessary for the Commission to fulfill its statutory obligations and serve a vital public interest role for other Federal agencies.[158] The Committee regularly requests this data for its work on national security and law enforcement issues,[159] as has DHS for its national security and homeland security functions.[160] The Commission has honored these requests for access to the data that has been filed on a business confidential basis after giving the filers an opportunity to comment.

176. In light of the Commission's goal in this proceeding to strengthen the Commission's ability to assess national security, law enforcement, and other concerns relating to submarine cable infrastructure and its ownership and operation, the Commission seeks comment on how the Commission could improve the collection of circuit capacity data. The Commission also seeks comment on streamlining the process for sharing the confidential data provided in the reports with other Federal agencies for national security, law enforcement, and emergency preparedness purposes. Below the Commission discusses and seeks comment on how to improve the quality and usefulness of the data and provide greater clarity on the reporting requirements to Filing Entities.[161]

1. Cable Operators Report

a. Who Should File a Cable Operator Report

177. Section 43.82 of the Commission's rules requires the licensee or licensees to report the available and planned capacity of the cable. The current Filing Manual requires that, ''[w]here there are multiple licensees for a cable, only one cable landing licensee may file the Cable Operator Report for that cable. The licensees shall determine which licensee will file the capacity data for that submarine cable.'' This requirement is based on a rule that the Commission initially adopted in the *2013 Part 43 Second Report and Order* (78 FR 15615, March 12, 2013).[162] Subsequently, in the *2017 Part 43.62 Report and Order,* the Commission removed this requirement from the rules, noting the concerns raised in the proceeding ''that allowing only one licensee to file the Cable Capacity Report for a consortium cable requires licensees to share information about their capacity and planned upgrades that may be competitively sensitive.'' The Commission directed the International Bureau ''to consult with stakeholders on appropriate changes to the Filing Manual to allow for more than one licensee to file a cable operator report for a submarine cable if appropriate.'' [163]

---

[153] Section 8(c)(2) of the Act does not mandate that the Commission update its fee schedule to reflect ''the consolidation or addition of new categories of applications'' within any particular timeframe. Rather, the Commission has determined that if the application fee schedule may require an amendment pursuant to section 8(c), the Commission will initiate a rulemaking to seek comment on any proposed amendment(s) to the application fee schedule. The Commission does so here.

[154] *2020 Application Fee Report and Order,* 35 FCC Rcd 15089, 15092, para. 11 (adopting the methodology proposed in the *2020 Application Fee Notice of Proposed Rulemaking* to ''base the application fees on an estimate of direct labor costs where possible,'' as modified therein); *id.* at 15132, para. 137 (''We adopt the proposed cost-based cable landing license fees in the [*2020 Application Fee Notice of Proposed Rulemaking*] with one change to reduce the cost of a pro forma assignment or transfer of control.''); *2020 Application Fee Notice of Proposed Rulemaking,* 36 FCC Rcd 1618, 1654–55, para. 140.

[155] This fee rate became effective on March 2, 2023.

[156] The requirement to file submarine cable circuit capacity data dates back to the 1970s when it was included as a condition in many of the international section 214 authorizations granted by the Commission. *R* The requirement was subsequently incorporated into the Commission's rules and extended to all facilities-based international common carriers and to cable landing licensees. Pursuant to § 43.82 of the rules, authority is delegated to the Chief of the Office of International Affairs to prepare instructions and reporting requirements for the filing of these reports prepared and published as a Filing Manual.

[157] Any U.S. international common carrier or cable landing licensee that owned or leased capacity on a submarine cable between the United States and any foreign point on December 31 of the reporting period is required to file capacity amounts for the following categories: (1) owned capacity; (2) net indefeasible rights-of-use (IRUs); (3) net inter-carrier leaseholds (ICLs); (4) net capacity held (*i.e.,* the total of categories (1) through (3)); (5) activated capacity; and (6) non-activated capacity.

[158] *2017 Part 43.62 Report and Order,* 82 FR 55323 (November 21, 2017), 32 FCC Rcd at 8118, para. 5 (''The circuit capacity data provide information on ownership of submarine cable capacity that is used for national security and public safety purposes.'').

[159] *See, e.g.,* Letter from David Plotinsky, Acting Chief, Foreign Investment Review Section, National Security Division, U.S. Department of Justice, to Denise Coca, Chief, Telecommunications and Analysis Division, International Bureau, FCC (Jul. 19, 2021) (on file in IB Docket No. 21–439) (requesting access to circuit capacity data for the 2015 to 2020 reporting periods, including data for which confidential treatment has been requested).

[160] *See* Letter from Bryan S. Ware, Assistant Director, Cybersecurity Division, Cybersecurity and Infrastructure Security Agency, DHS, and Scott Glabe, Assistant Secretary for Trade and Economic Security Office of Strategy, Policy, and Plans, DHS, to Denise Coca, Chief, Telecommunications and Analysis Division, International Bureau, FCC (Mar. 5, 2020) at 1 (DHS March 5, 2020 Letter) (on file in IB Docket No. 19–32) (requesting access to circuit capacity data for the 2015 to 2019 reporting periods, including data for which confidential treatment has been requested).

[161] For purposes of this section, the Commission uses the term ''Filing Entities'' to refer to a person or entity that is required to file information with the Commission pursuant to § 43.82.

[162] *2013 Part 43 Second Report and Order,* 28 FCC Rcd at 629–630, Appx. C, para. 5 (adopting a requirement under § 43.62 of the rules that ''[o]nly one cable landing licensee shall file the capacity data for each submarine cable. For cables with more than one licensee, the licensees shall determine which licensee will file the reports'').

[163] *2017 Part 43.62 Report and* Order, 32 FCC Rcd at 8132, para. 34 (''We agree that the consortium cable reporting requirement raises issues requiring modification of the Commission's rules'').

178. The Commission seeks comment on whether the Filing Manual should be revised to allow more than one licensee of a submarine cable to file a cable operator report for a submarine cable that has multiple licensees. The Commission seeks comment on whether and how it can retain the single-filer requirement set out in the Filing Manual while addressing any cable landing licensee concerns about sharing of competitively sensitive information with other joint licensees. As the Commission has previously stated, the data are critical for analyzing international transport markets and for national security, defense, and public safety responsibilities.[164] The Commission also notes that it has found there are no alternative reliable third party commercial sources for the reported data.[165] The Commission contemplates that requiring each joint licensee to submit a cable operator report capturing its own available capacity and planned capacity on the cable may not produce reliable information about the overall cable capacity given that joint licensees may report their data inconsistently. Such an approach may also be duplicative of how those licensees report their owned capacity on that cable in the capacity holder report.[166] Given the important public interest benefits of the cable operator reports, is it in the public interest to retain the current requirement in the Filing Manual that only one licensee of a submarine cable may file the cable operator report for that cable?

179. To the extent commenters propose alternative methods, the Commission requests detailed explanation of how such methods would ensure the dataset fully accounts for the available capacity and planned capacity of each submarine cable. Are there alternative methods that would enable the Commission and the Committee to obtain reliable and accurate data about the capacity of submarine cables, while responding to any concerns of joint licensees about sharing competitively sensitive information? Should the Commission allow joint licensees of a submarine cable to separately report the available and planned capacity of fiber pairs if they each own and operate their own fiber pair on the cable? Should the Commission also require each licensee to identify in the report all other licensees, if any, on whose behalf it submits the capacity information for the cable? [167]

b. What Data Should Be Reported in a Cable Operator Report

180. Section 43.82 requires licensees to report ''the capacity of the submarine cable'' and ''the planned capacity of the submarine cable.'' While § 43.82 does not define the term ''capacity of the submarine cable,'' in the *2013 Part 43 Second Report and Order,* the Commission explained that cable landing licensees will be required to report the ''available capacity'' and ''planned capacity'' of an international submarine cable. The Commission stated that ''[a]vailable capacity is all of the capacity currently available on the cable using equipment currently used on the cable'' and that ''[p]lanned capacity is the intended capacity of the international submarine cable two years out from the reporting date (December 31 of the reporting period plus two years) based on the plans of the cable operators for upgrades to the technology used with the cable.'' On December 28, 2018, the International Bureau released a revised Filing Manual which, among other things, clarified the definition of ''available capacity'' to ensure that the cable operator reports capture all of the capacity of the cable.[168] Specifically, the revised Filing Manual defined the term ''available capacity'' as ''also known as design capacity,'' noting that ''[a]vailable capacity, also known as design capacity, is all of the capacity (both lit and unlit capacity) on the cable as of the reporting date (December 31 of the reporting period).'' [169]

181. Based on Commission staff review of the annual cable operator data and questions that staff receive from Filing Entities, the Commission believes that clarifying the term ''available capacity'' would improve the consistency of data submitted in the cable operator reports. The Commission seeks comment on whether the Commission should use a different definition of ''available capacity'' than set out in the Filing Manual. If so, how should the Commission define ''available capacity''? Should the definition be codified in the rules or is it appropriate to define the term in the Filing Manual? Would adopting a definition in the rule rather than the Filing Manual better ensure that Filing Entities use a consistent method of reporting the capacity of a submarine cable?

182. The Commission seeks comment on whether it should continue to use the definition in the Filing Manual, where ''available capacity'' of a submarine cable is also referred to as ''design capacity.'' Alternatively, the Commission seeks comment on whether to distinguish between ''available capacity'' and ''design capacity'' to the extent this distinction is consistent with current developments in the submarine cable market and technology. The Commission seeks comment on whether the ''design capacity'' of a submarine cable is more appropriately understood as the maximum theoretical capacity based on equipment currently used on the cable, or as the maximum theoretical capacity based on the current plans of a cable operator to upgrade the technology used with the cable.

183. The Commission assesses regulatory fees on submarine cables based on the lit capacity of the cable.[170] The Commission seeks comment on whether the Commission should collect information though the circuit capacity reports on the lit capacity of each

[164] *See also id.* at 8130, para. 29, n.111 (stating, among other things, ''[t]he data on submarine cable capacity by region that the Commission collects and makes available provide potential entrants or new investors with an accurate industry overview showing where cable capacity connecting the United States to foreign points is presently deployed [and] provide potential new entrants, investors, and other small business entities with business planning data for assessing potential market demand'').

[165] In the *2017 Part 43.62 Report and Order,* the Commission stated, ''[a]lthough certain cable capacity data may be available through other sources, those sources are not as reliable as information that has been submitted to a federal agency and verified by officials in the company.'' *Id.,* 32 FCC Rcd at para. 29 (''For example, TeleGeography's submarine cable reports include capacity information, but the data are not verified by company officials.'').

[166] Moreover, discrepancies in the data indicate that aggregation of data from the capacity holder reports, such as aggregation of owned capacity by cable, would not be an adequate or reliable substitute for the available capacity data that are collected in the cable operator reports.

[167] The Filing Manual currently advises that ''[i]f a Filing Entity is filing a Cable Operator Report on behalf of other cable landing licensees on the cable, the Filing Entity should email the International Bureau with the list of licensees for which it is filing data.''

[168] In 2017, the Commission streamlined the international reporting requirements and eliminated the traffic and revenue reports and the requirement to file terrestrial and satellite circuit data, but retained the requirement to file submarine cable operator and capacity holder reports under a newly codified § 43.82. The rule changes went into effect in April 2018. By Public Notice, the International Bureau released a revised Filing Manual that included only the instructions for filing the § 43.82 circuit capacity reports, in light of the elimination of the traffic and revenue reports and terrestrial and satellite data, and also stated, ''[b]ased on questions received from Filing Entities this year, the revised Filing Manual also clarifies the definition of 'available capacity' in the submarine cable operator reports.''

[169] The current Filing Manual contains this definition of ''available capacity'' for purposes of the cable operator report.

[170] *See 2024 Regulatory Fee Second Report and Order* at para. 87(7) (regulatory fees for submarine cable are assessed on a per cable landing license basis based on lit circuit capacity as of December 31 of the relevant fiscal year).

licensed and operating cable system that can be used to determine tiers for assessing regulatory fees for submarine cable operators and the fee amount for each tier.[171]

184. The Commission seeks comment as to how Filing Entities are measuring available capacity, given that the current and potential capacity of fiber optic submarine cables depends on the equipment currently used on a submarine cable and developments in the latest technology. The capacity of fiber optic submarine cables in the current market can change significantly (*e.g.,* by orders of magnitude) and quickly (*e.g.,* in a matter of days), depending on the latest technology and the equipment that is attached on those cables. The Commission seeks comment on whether it needs to update its circuit capacity rules and reporting requirements to reflect the current dynamics of the submarine cable market.

185. The Commission also seeks comment on how and to what degree the initial design capacity of a submarine cable is subject to change over time due to planned upgrades. How frequently do cable operators upgrade or plan to upgrade equipment on a submarine cable, such as SLTEs, and how does this implementation affect assessment of current and future capacity on the cable? Should the Commission reconsider the definition in the Filing Manual and instead define ''available capacity'' of a submarine cable as all of the capacity (both lit and unlit capacity) on the cable based on equipment currently used on the cable? If so, should the Commission include an additional category in the cable operator report for reporting ''design capacity,'' separate from reporting ''available capacity'' and ''planned capacity''? Or should the Commission require Filing Entities to report ''design capacity,'' ''current equipped capacity,'' and ''planned capacity'' in the cable operator report? The Commission also seeks comment on whether the concept of ''design capacity'' is similar to or distinct from the ''planned capacity'' data collected by the Commission.[172] The Commission asks commenters to provide detailed comments, including any relevant facts and circumstances related to the technology, the market, or other factors, that can inform these proposed definitions and the assessment of whether to revise the reporting methodology in the cable operator report.

2. Capacity Holders Report

a. Who Should File a Capacity Holder Report

186. Section 43.82 requires cable landing licensees and common carriers to report their capacity on international cables. Because this reporting requirement only applies to licensees and common carriers, there exists a gap in the Commission's knowledge of the entities that hold capacity on a particular cable as other entities that hold capacity on that cable are not required to report their capacity. This is borne out by the Commission's circuit capacity data. According to the annual capacity holder data, there is substantial capacity leased or purchased from cable landing licensees and common carriers that is not accounted for in the data.[173] The Commission seeks comment on the scope of this issue, whether this raises national security concerns, and whether the Commission should and under what authority require other entities to report their capacity.

187. The Commission seeks comment on whether it should require all entities that hold capacity on cables landing in the United States to file capacity holder reports. Would requiring the filing of circuit capacity data by all entities that hold capacity on submarine cables—including capacity held through ownership in a cable, an IRU, an ICL, or on a fiber or spectrum basis—reduce the gap in the data and provide the Commission and its Federal partners with greater insight into the ownership and use of capacity on submarine cables? Are there certain entities, such as the U.S. Government, that should be exempt from reporting their capacity holdings? If the Commission requires other entities to report their capacity, should there be a threshold for the reporting requirement (*e.g.,* 1 Gbps)? Alternatively, or in addition to requiring all holders of capacity on submarine cables landing in the United States to annually file data regarding their capacity holdings, the Commission seeks comment on whether it should require cable landing licensees and common carriers to include in their annual capacity holder reports a list of customers to whom they sold or leased capacity as of December 31 of the reporting period. To the extent the Commission adopts these approaches, the Commission proposes to share with its Federal partners the information that is collected pursuant to such requirements, including any information for which confidential treatment is requested, through the procedures the Commission proposes in the *NPRM* with respect to sharing annual circuit capacity data with the Committee and DHS. The Commission seeks comment on these approaches and on the potential burdens on affected entities. The Commission seeks comment as to which of these approaches would be less burdensome, and whether any such information requirements could be designed to minimize the burdens on potential new filers, including small entities. The Commission also seeks comment generally on the potential benefits associated with any collection of information under these approaches.

188. The Commission seeks comment on whether the Commission has legal authority pursuant to the Cable Landing License Act, the Communications Act, or any other sources of authority, to require capacity holders not already subject to § 43.82, to submit data regarding their capacity on submarine cables landing in the United States. The Commission has long determined that it has authority to require the filing of circuit capacity data from cable landing licensees and common carriers pursuant to the Cable Landing License Act and Executive Order 10530 and section 214 of the Communications Act.[174] While the Commission adopted the circuit capacity reporting requirements for a specific class of non-common carriers in the *2013 Part 43 Second Report and Order,* the Commission noted that the provisions of the Cable Landing License Act ''do not distinguish between common carriage and non-common carriage of services over licensed cables.'' The Commission seeks comment on whether the Commission's authority to require the filing of circuit

[171] The Commission uses ''lit capacity'' for assessing regulatory fees because ''that is the amount of capacity that submarine cable operators are able to provide services over and the regulatory fee is in part recovering the costs related to the regulation and oversight of such services.''

[172] The Filing Manual states that ''[p]lanned capacity is the entire intended capacity (both lit and unlit capacity) of the cable two years out from the reporting date (December 31 of the reporting period plus two years) based on current plans to upgrade the capacity of the cable.''

[173] For example, the capacity holder data for the 2022 reporting period reflect total net IRUs of −315,566.7 Gbps and total net ICLs of −120,988.1 Gbps, including net IRUs of −92,977.3 Gbps and net ICLs of −45,232.2 Gbps in the Americas region, net IRUs of −192,593.3 Gbps and net ICLs of −63,050.1 Gbps in the Atlantic region, and net IRUs of −29,996.1 Gbps and net ICLs of −12,705.8 Gbps in the Pacific region. In addition, the capacity holder data for the 2021 reporting period reflect total net IRUs of −248,551.6 Gbps and total net ICLs of −120,477.4 Gbps, including net IRUs of −78,865.1 Gbps and net ICLs of −38,099.7 Gbps in the Americas region, net IRUs of −161,244.7 Gbps and net ICLs of −54,614.6 Gbps in the Atlantic region, and net IRUs of −8,441.8 Gbps and net ICLs of −27,763.1 Gbps in the Pacific region.

[174] *See 2017 Part 43.62 Report and Order,* 32 FCC Rcd at 8130, para. 30; *2013 Part 43 Second Report and Order,* 28 FCC Rcd at 606, para. 104.

capacity data extends to any and all entities—beyond cable landing licensees and title II common carriers—holding capacity on submarine cables landing in the United States.[175] The Commission seeks comment on whether this information is necessary for the Commission to make informed decisions on matters within its jurisdiction and to carry out its statutory duties. This includes, for example, assessing whether to grant or deny applications for cable landing licenses or revoke licenses in the interest of national security or competition. Further, the Commission seeks comment on whether the Commission could rely on ancillary authority in conjunction with other primary sources of legal authority in adopting such a requirement.[176]

189. *BIAS Providers.* In the *2024 Open internet Order,* the Commission reclassified BIAS as a telecommunications service under title II of the Communications Act. In that Order, the Commission waived the current rules implementing section 214(a) through (d) of the Communications Act with respect to BIAS to the extent they are otherwise applicable, including § 43.82,[177] stating that it ''expects to release a Further Notice of Proposed Rulemaking at a future time to examine whether any section 214 rules specifically tailored to BIAS, including for small providers, are warranted.'' Although the *2024 Open internet Order* was stayed by the Sixth Circuit pending judicial review, the Commission seeks comment on whether and to what extent the Commission should depart from the regulatory framework contemplated by that Order insofar as the Order becomes operative after judicial review. Given that all title II common carriers are required to file annual circuit capacity reports under § 43.82(a)(2) of the rules, the Commission seeks comment generally on whether the Commission should consider retaining or removing the waiver of § 43.82 of the rules as applied to BIAS providers, subject to judicial review of that Order. Do the important public interest benefits of the circuit capacity data collection warrant the collection of capacity holder data from entities providing *only* BIAS? The Commission seeks comment, for example, on whether such information would provide the Commission and its Federal partners important insight into the ownership and use of submarine cable capacity for national security and public safety purposes.

190. Further, if the Commission were to eliminate the waiver, should the Commission adopt the same requirements applicable to all other reporting entities or tailored requirements as applied to entities providing only BIAS? For example, should a transition period be provided for entities providing only BIAS to submit an initial capacity holder report? What potential burdens, if any, would be imposed on such BIAS providers if they were required to file data regarding their submarine cable capacity, including capacity held through ownership in a cable, an IRU, an inter-carrier lease (ICL), or on a fiber or spectrum basis? To the extent the Commission adopts any changes to § 43.82 of the rules and the current reporting requirements as addressed in the *NPRM,* the Commission seeks comment on whether those changes should similarly be applied to entities providing only BIAS as well as the potential burdens, if any, that would be imposed upon such BIAS providers.

b. What Data Should Be Filed in a Capacity Holder Report

191. Section 43.82 does not specify the data to be reported in the capacity holder report. The Commission, however, stated in the *2013 Part 43 Second Report and Order* that cable landing licensees and common carriers should report their available capacity on a cable ''by the type of ownership interest they have in the capacity—ownership in the cable, an indefeasible right of use (IRU) or an inter-carrier lease (ICL).'' The Commission further explained that available capacity consists of the sum of (1) capacity that a Filing Entity owns; (2) the net of IRUs leased from other capacity holders less IRUs leased to other capacity holders; and (3) the net of ICLs leased from other capacity holders less ICLs leased to other capacity holders. These requirements are reflected in the Filing Manual.[178]

192. As discussed above in the context of cable operator reports, the Commission seeks comment on how the Commission should define ''available capacity.'' The Commission also seeks comment on whether it should require Filing Entities to use the same definition of ''available capacity'' when reporting their owned capacity in their capacity holder reports. To assess the accuracy of reported data, the Commission's current practice is to compare the total available capacity reported in the cable operator reports with the total owned capacity reported in the capacity holder reports by region.[179] Should the Commission ensure that these data continue to be consistent and comparable for purposes of the Commission's assessment and use of the data for national security and public safety purposes? [180] The Commission also seeks comment on whether any approach the Commission may adopt with regard to defining the ''available capacity'' of a submarine cable should similarly be applied to other data submitted in the capacity holder report, including the net amount of IRUs,[181] net amount of ICLs,[182] and net capacity, and whether the net capacity is activated (*i.e.,* lit) or non-activated (*i.e.,* unlit). Overall, would requiring Filing Entities to apply the approach used to define ''available

[175] In this document, the Commission addresses separately whether to apply the circuit capacity reporting requirements to entities that provide only broadband internet access service (BIAS).

[176] To exercise ancillary authority ''two conditions [must be] satisfied: (1) the Commission's general jurisdictional grant under Title I [of the Communications Act] covers the regulated subject and (2) the regulations are reasonably ancillary to the Commission's effective performance of its statutorily mandated responsibilities.''

[177] *2024 Open internet Order* at *133, para. 344 (''We find that the public interest is served by this waiver as it will ensure that consumers can continue to receive the broadband internet access services to which they presently subscribe and avoid any disruption to, or uncertainty for, BIAS consumers and BIAS providers'').

[178] Each Filing Entity is required to calculate its available capacity as the sum of (1) cable ownership; (2) the net of IRUs leased from other entities less IRUs leased to other entities; and (3) the net of ICLs leased from other entities less ICLs leased to other entities.

[179] Ideally, the Commission expects that the total available capacity reported in the cable operator report for a given cable (filed on behalf of the licensee or joint licensees) should match the aggregated owned capacity reported in all of the capacity holder reports on that cable. Thus, the Commission expects that the total available capacity and the total owned capacity by region should also match, though there may be discrepancies between these figures. For example, some amount of capacity may be owned by non-reporting entities, such as entities that own capacity on a cable through an ownership interest in the submarine cable system but are not required to be a licensee under § 1.767(h) of the Commission's rules and are otherwise not common carriers.

[180] For instance, if the Commission adopts a definition in the rules that ''[a]vailable capacity, also known as design capacity, is all of the capacity (both lit and unlit capacity) on the cable as of the reporting date (December 31 of the reporting period),'' should the Commission clarify that Filing Entities must report their owned capacity using a similar methodology? On the other hand, if the Commission distinguishes between ''available capacity'' and ''design capacity'' and create separate categories for reporting these data in the cable operator report, how should Filing Entities report their owned capacity on a submarine cable in the capacity holder report?

[181] *See* Filing Manual at 11 (''Indefeasible Right of Use (IRU) refers to an arrangement in which the holder has made an upfront payment for the full length of the lease, such as 5, 10, 20 years, or the remaining useful life of the asset.'').

[182] *See id.* at 11 (''Inter-Carrier Lease (ICL), for § 43.82 reporting purposes, refers to a lease of bare capacity between one entity and another.'').

capacity'' of a submarine cable to similarly report their capacity holdings assist the Commission's efforts to verify the accuracy and consistency of the data reported in the cable operator reports and capacity holder reports?

193. The Commission seeks comment on whether the capacity holder report should be revised to capture new developments in the provisioning of capacity in the submarine cable market. In the *2017 Part 43.62 Report and Order,* the Commission noted the comments raised in the proceeding, ''that in addition to sales through IRUs and ICLs, capacity is now sold on a fiber pair or spectrum basis.'' [183] The Commission seeks detailed comments on any new facts or circumstances which may inform the Commission's understanding of how capacity is owned, sold, or leased in the submarine cable market, and how to capture this information in the capacity holder report if appropriate. In particular, information about capacity held on a submarine cable is relevant to Commission and other Federal Government agency assessments of the impact on communications during national security or public safety emergencies, including where a cable is rendered inoperable, and to factor the information into emergency response efforts. Currently, to what extent is submarine cable capacity sold or leased through IRUs, short-term leases, or other means such as on a fiber pair or spectrum basis? How is submarine cable capacity sold or leased by fiber pair or spectrum? Does the licensee of a submarine cable sell or lease capacity by fiber pair or spectrum to other entities, or do entities other than the licensee of a cable also sell or lease capacity by fiber pair or spectrum? Where a cable landing licensee sells or leases capacity by fiber pair to other entities, how does the licensee maintain *de jure* and *de facto* control of the U.S. portion of the submarine cable system as required by the Commission's rules? Is there additional information related to these and other types of capacity holdings that would enhance the Commission's understanding of the ownership and use of capacity or assist the Commission in the protection, restoration, and resiliency of submarine cable infrastructure during national security or public safety emergencies?

194. To the extent the Commission revises the capacity holder report to include additional categories of capacity holdings, how should such information be reported? For instance, if the Commission includes additional categories for reporting capacity that is sold, purchased, or leased by fiber pair or spectrum, how should Filing Entities calculate the net capacity they hold on the submarine cable? [184] Should Filing Entities report those capacity holdings as an amount in Gbps? Should the Commission require Filing Entities to annually report all whole fiber pairs that they own (including for their own use or which they have leased out) or manage on submarine cables landing in the United States? Do national security, law enforcement, or other concerns warrant that the Commission obtain updated information each year confirming who currently owns and/or manages the fiber pairs on such submarine cables, especially if the entity that manages the fiber pair of a particular cable is not the licensee whose original application was subject to review by the Committee? The Commission also seeks comment on what it means for an entity to ''manage'' a fiber pair to the extent the role and capabilities differ from solely having ownership of a fiber pair. To the extent the manager of a fiber pair is neither a cable landing licensee nor a common carrier subject to § 43.82 of the rules, should the Commission require that the licensee of a submarine cable landing in the United States identify the entities that own and/or manage each fiber pair on the cable? Should the Commission require Filing Entities to identify the U.S. and foreign landing points of any fiber pair that they sell or lease to other entities for use of capacity? Should any or all of this information be provided in the cable operator report, capacity holder report, or a separate report?

3. Reporting of Capacity on Domestic Cables

195. The requirement to file circuit capacity reports applies only to U.S-international cables, and not to domestic cables (cables that do not connect the United States with foreign points).[185] However, the national security environment has changed significantly since the Commission adopted this approach in 2013. In light of evolving national security, law enforcement, and other risks, the Commission seeks comment on whether the distinction between U.S.-international submarine cables and domestic submarine cables for purposes of reporting circuit capacity information is justified. The Commission seeks comment on whether the lack of information on domestic cables creates a critical gap in the Commission's insight into the ownership and use of capacity on submarine cables regulated by the Commission. For example, would collecting capacity information regarding domestic submarine cables allow the Commission and the Committee to identify whether any entities associated with a ''foreign adversary'' country, as defined in the Department of Commerce's rule, hold capacity on those cables? Would this information enhance the Commission's ability to use the circuit capacity data to assist in the protection, restoration, and resiliency of submarine cable infrastructure during national security or public safety emergencies, even where there is no foreign ownership, especially given the role that domestic submarine cables also have in providing connectivity among the continental United States and Alaska, Hawaii, Guam, American Samoa, the Northern Mariana Islands, Puerto Rico, and the U.S. Virgin Islands?

196. If the Commission finds that circuit capacity reports should be filed for domestic cables, the Commission seeks comment on whether it should require Filing Entities to include in the cable operator report and the capacity holder report the same capacity information that the Commission collects for U.S.-international submarine cables, with respect to submarine cables that do not have a foreign landing point and connect (1) Alaska, Hawaii, or the U.S. territories or possessions with the continental United States or with each other, and (2) points within the continental United States, Alaska, Hawaii, or a territory or possession in which the cable is laid within international waters. Alternatively, should Filing Entities be required to provide more limited or tailored capacity information relating to domestic submarine cables in a separate report? The Commission seeks comment on these approaches and on potential

[183] The Commission directed the International Bureau ''to consult with stakeholders and to review and revise as needed the categories of ownership interests reported in the cable capacity holder reports to reflect changes in industry's provisioning of capacity, while ensuring that the capacity holder data are accurately captured by the Commission's reporting requirements.''

[184] In this document, the Commission also seeks comment on whether holding capacity on the cable system should be defined to include the leasing, purchasing, selling, buying, or swapping of a fiber (spectrum, capacity, partial fiber pair, or a full fiber pair, among others) for transmission of voice, data, and internet over the cable system to interconnect with a U.S. terrestrial network.

[185] Licensees and common carriers are not required to file a cable operator report or capacity holder report with respect to submarine cables that only connect points within the United States, such as cables connecting the Hawaiian Islands or Alaska to the conterminous United States.

burdens on licensees and common carriers if the Commission requires that they include capacity data for domestic submarine cables in cable operator reports and capacity holder reports.

4. Other Issues With Reporting of Circuit Capacity Data

a. Reporting of Submarine Line Terminal Equipment

197. As discussed above, the SLTE is among the most important equipment associated with the submarine cable system for national security and law enforcement purposes. Given the importance of this equipment and who controls and operate the SLTE, the Commission seeks comment on whether the Commission should require all Filing Entities to identify in the annual capacity holder report whether they control or operate their own SLTE on any of the U.S. or foreign ends of a submarine cable landing in the United States. In addition, should the Commission require all Filing Entities to file a notification of any installation of their own SLTE on the U.S. or foreign ends of a submarine cable landing in the United States, within a certain time period following such installation (such as 30 days)? If the Commission were to extend the circuit capacity reporting requirements to new entities not currently subject to § 43.82, as addressed herein, should the Commission require such entities to similarly identify in the annual capacity holder report, or in a separate report, whether they control or operate their own SLTE and to provide notification of any installation of their own SLTE within a certain time period (such as 30 days)? To the extent the Commission adopts these approaches, the Commission proposes to share with its Federal partners the information that is collected pursuant to such requirements, including any information for which confidential treatment is requested, through the procedures. The Commission seeks comment on these approaches and what potential burdens, if any would be imposed by requiring such information.

b. Which Corporate Entity May File Reports

198. The Filing Manual requires affiliated entities to file separate circuit capacity reports to the extent that they are considered to be separate legal entities, unless the Commission has authorized such affiliated entities to submit a consolidated FCC Form 499–A filing.[186] The Commission chose to use this standard for administrative convenience because common carriers are familiar with this requirement. This requirement originated when the Filing Manual covered not only the Circuit Capacity Reports but also the International Traffic and Revenue Reports, which were filed by common carriers and interconnected Voice over internet Protocol (VoIP) providers, which also had to file FCC Form 499 reports. The Filing Manual retained this requirement even after the Commission eliminated the International Traffic and Revenue Reports and the Filing Manual now only covers the circuit capacity reports.[187]

199. The Commission seeks comment on whether to allow any subsidiary, parent entity, or affiliate of a Filing Entity to file the annual circuit capacity reports on behalf of the Filing Entity, so long as the subsidiary, parent entity, or affiliate identifies the Filing Entity in the reports. Specifically, should the Filing Manual be revised to allow any subsidiary, parent entity, or affiliate to file the annual circuit capacity reports on behalf of a Filing Entity? Is there any reason to parallel the filing procedure applicable to FCC Form 499–A filings? To what extent do current Filing Entities comprise of telecommunications carriers or other providers that are required to submit FCC Form 499–A filings? [188]

200. The Commission seeks comment generally on whether it is common practice for cable landing licensees and common carriers to maintain, track, or consolidate their capacity information with affiliated entities in the ordinary course of business. In such cases, the Commission seeks comment on what potential burdens, if any, would be imposed upon Filing Entities if the Commission were to require all affiliated entities to file their own annual circuit capacity reports instead of submitting consolidated reports. If a subsidiary, parent entity, or affiliate files the annual circuit capacity reports on behalf of a Filing Entity, how can the Commission improve the efficiency of its current practice, which involves informal inquiries by Commission staff, to confirm whether the Filing Entity has complied with its reporting obligations? [189] To the extent a subsidiary, parent entity, or affiliate of a Filing Entity submits the circuit capacity reports on the of a Filing Entity's behalf, the Commission tentatively concludes that the Filing Entity shall be held accountable for any defects in the certification as to the accuracy and completeness of information filed in the circuit capacity reports.[190] Should the Commission codify such a requirement in the rules? Should the Commission also codify the requirement in the Filing Manual that an officer of the Filing Entity must certify the accuracy and completeness of the Filing Entity's § 43.82 information? If a subsidiary, parent entity, or affiliate files the annual circuit capacity reports on behalf of a Filing Entity, should an officer of the Filing Entity submit a separate attachment certifying that the information in the reports is accurate and complete? The Commission seeks comment on whether and why an alternative approach may be more desirable, and how the Commission could implement any alternative approach while retaining the ability to enforce compliance against a Filing Entity.

c. Compliance

201. The Commission proposes to set forth in the rules that filing false or inaccurate certifications or failure to file timely and complete annual circuit capacity reports in accordance with the Commission's rules and the Filing Manual shall constitute grounds for enforcement action, including but not limited to a forfeiture, revocation, or termination of the cable landing license

[186] The Filing Manual states that affiliated companies ''must file separate section 43.82 reports to the extent that they are considered to be separate legal entities where they have separate articles of incorporation, articles of formation, or similar legal documents,'' but where the Commission has authorized them ''to make a consolidated FCC Form 499–A filing, the affiliated companies similarly shall make a consolidated section 43.82 filing.''

[187] Previously, any person or entity that holds an international section 214 authorization to provide International Telecommunications Services (ITS) and/or any person or entity that is engaged in the provision of Interconnected Voice over internet Protocol (VoIP) Services through the Public Switched Telephone Network (PSTN) between the United States and any foreign point was required to file an annual Traffic and Revenue Report.

[188] The Communications Act requires that the Commission establish mechanisms to fund universal service, interstate telecommunications relay services, the administration of the North American Numbering Plan, and the shared costs of local number portability administration. To accomplish these congressionally-directed objectives, the Commission requires telecommunications carriers and certain other providers of telecommunications (including Voice over internet Protocol (VoIP) service providers) to report each year on the FCC Form 499–A the revenues they receive from offering service.

[189] The Filing Manual advises that ''[i]f a Filing Entity is filing a consolidated section 43.82 report or filing on behalf of an affiliated entity or entities, we ask the Filing Entity to email the International Bureau with the list of entities for which it is filing data.'' The Commission seeks comment on any alternative, more efficient methods that it can use to confirm that an entity has complied with its reporting obligations.

[190] Filing Manual at 5, para. 21 (''Filing Entities must certify on the Registration Form the accuracy and completeness of the data filed in the accompanying Circuit Capacity Report.'').

or international section 214 authorization, pursuant to the Communications Act and any other applicable law. Although the Filing Manual addresses consequences for failure to file timely § 43.82 reports [191] or submission of inaccurate or untruthful information,[192] the Commission tentatively concludes that addressing the issue of compliance in the rules would ensure greater compliance overall with the reporting requirements. The Commission seeks comment on this proposal. The Commission also seeks comment on whether to allow any exceptions to the reporting requirements of § 43.82 and whether the Commission should revise the rules or the Filing Manual accordingly. For example, should the Commission revise § 43.82(a)(2) of the rules or the Filing Manual to set out an exception to the reporting requirements where a licensee that holds no capacity in its licensed submarine cable—for example, where a joint licensee only owns and/or controls a landing station(s) in the United States and holds no capacity at the landing station(s) or other portion of the cable—or any other cables landing in the United States need not file a capacity holder report? Should the Commission require such licensees to file an annual certification attesting to the continuing applicability of such an exception?

5. Sharing the Circuit Capacity Data With Federal Agencies

202. The Commission seeks comment on adopting a rule which would allow the Commission to share with other Federal Government agencies the circuit capacity data filed on a confidential basis without the pre-notification requirements of § 0.442(d) of the Commission's rules. Since 2019, the Commission has annually issued a public notice to announce its intent to share the annual circuit capacity data with DHS and subsequently the Committee pursuant to the procedures set out in § 0.442 of the Commission's rules, and no party has opposed such disclosure of the circuit capacity data for which confidential treatment was requested.[193] Under this approach, the Commission would be able to share the confidential data with Federal agencies that have a legitimate need for the data consistent with their functions without the delay attendant to providing parties an opportunity to object to the sharing. The sharing of confidential circuit capacity data would, however, continue to be subject to the requirement that each of the other Federal agencies comply with the confidentiality protections applicable both to the Commission and the other agency's relating to the unlawful disclosure of information, and the Commission would provide notice to the parties whose information is being shared.

203. *Federal Agencies' Need for the Information.* The Commission may share information that has been submitted to it in confidence with other Federal agencies when they have a legitimate need for the information and the public interest will be served by sharing the information. The Commission has found that the data provided in the Circuit Capacity Reports ''are essential for [the Commission's] national security and public safety responsibilities in regulating communications'' submarine cables and that ''circuit capacity data are important for the Commission's contributions to the national security and defense of the United States.'' The data are also useful for Federal agencies in fulfilling their other duties and responsibilities. The Commission contemplates that such sharing would include cable operator data, capacity holder data, and the names and contact information (including addresses, email addresses, telephone numbers, and fax numbers) of individual points of contact identified in the circuit capacity reports, as well as any additional information that is collected pursuant to any new requirements adopted in this proceeding or in a revised Filing Manual.[194] The Commission seeks comment on whether to make clear in § 43.82 that sharing of the annual circuit capacity data with other Federal Government agencies is subject to the requirements of the confidentiality protections contained in the Commission's regulations [195] and 44 U.S.C. 3510, and, in the case of the Committee, section 8 of Executive Order 13913 [196] that require the Committee to keep the information confidential.

204. In addition, the Commission tentatively finds that several agencies have a special need for the information contained in the Circuit Capacity Reports. First, the Commission tentatively finds that Executive Order 13913 provides a basis to share annual circuit capacity data with the Committee by establishing that the members and advisors of the Committee have a legitimate need for such information.[197] The policy of Executive Order 13913 is to ensure the ''[t]he security, integrity, and availability of the United States telecommunications networks [that] are vital to United States national security and law enforcement interests.'' [198] Further, in this regard, Executive Order 13913 authorizes the Committee to review not only license applications but also existing licenses. The Department of Justice (DOJ), in its capacity as Chair of the Committee, has stated in formal requests for access to the annual circuit capacity data that this information ''will enhance and improve the Committee's ability to execute its mission to assess risk to the national security and law enforcement interests of the United States.'' [199] In the context of reviews within the scope of Executive Order 13913, the Committee's important role in reviewing applications and licenses for risks to national security and law enforcement interests

[191] *Id.* at 3, para. 10 (''Failure to file the Circuit Capacity Report on time is a violation of the Commission's rules and could result in the imposition of forfeitures or other penalties.'').

[192] *Id.* (''Inaccurate or untruthful information contained in section 43.82 reports may lead to prosecution under section 220(e) of the Communications Act or the criminal provisions of Title 18 of the United States Code.'').

[193] *See also* Letter from Ulises R. Pin, Counsel to ARCOS–1 USA Inc. et al, Morgan, Lewis & Bockius LLP, to Marlene H. Dortch, Secretary, FCC (Jul. 2, 2020) (on file in IB Docket No. 20–194) (stating, ''[b]ecause the purpose of the disclosure is national security, law enforcement and emergency response, the Commission should only share confidential information contained in C&W Networks' circuit capacity reports with DHS and other federal agencies charged with national security, law enforcement and emergency response, including those agencies forming part of the new Committee for the Assessment of Foreign Participation in the United States Telecommunications Services Sector. The Commission, however, should not share this information other agencies that fall outside of that scope.'').

[194] To the extent required, the Commission will ensure that any new disclosures are fully covered by applicable Privacy Act SORNs. *Cf.* IB–1, 86 FR 43238 (''Information filed with a request for confidentiality may be disclosed to other Federal government agencies pursuant to 47 CFR 0.442.'').

[195] The Commission's regulations provide that confidential proprietary and commercially sensitive information will be withheld from public disclosure, subject to the public's right to seek disclosure under the Freedom of Information Act and implementing regulations.

[196] Executive Order 13913, section 8.

[197] *See* 47 CFR 0.442(b)(2) (''Information submitted to the Commission in confidence pursuant to § 0.457(c)(2) and (3), (d) and (g) or § 0.459, or any other statute, rule or order, may be disclosed to other agencies of the Federal government upon request or upon the Commission's own motion, provided . . . The other agency has established a legitimate need for the information . . . .'').

[198] Under section 8 of Executive Order 13913, the Committee ''may seek information from applicants, licensees, and any other entity as needed'' in furtherance of its reviews and assessments of applications and licenses.

[199] DOJ has explained that having circuit capacity information ''provides a clearer picture of how [submarine cables] are being used, which better enables the Committee to evaluate international data flows on various cables (and related issues such as internet topography)'' and that ''[w]ith this data, the Committee has another tool to assess data-security risk . . . [thus providing] additional context to the Committee's risk-based analyses.''

establishes its legitimate need for the information. The Commission seeks comment on this tentative conclusion.

205. The Commission's established policy in the *2017 Part 43.62 Report and Order* also provides a basis to share annual circuit capacity data with DHS by establishing that DHS has a legitimate need for such information. In that Report and Order, the Commission specifically noted that DHS ''finds this information to be critical to its national and homeland security functions'' and ''[DHS] states that this information, when combined with other data sources, is used to protect and preserve national security and for its emergency response purposes.'' DHS has stated in formal requests for access to the annual circuit capacity data that ''[t]his information, when combined with other data sources, will be used to protect and preserve national security and for the Department's emergency response purposes.'' DHS has also stated that the data will ''enhance its efforts and inform its analysis and decision-making that protect the resilience of the Nation's critical infrastructure.''

206. Finally, the Commission tentatively finds that Executive Order 10530 provides a basis for the Commission to share annual circuit capacity data with the State Department. Executive Order 10530, which delegates the President's authority to license submarine cables to the Commission, requires the Commission to obtain approval from the State Department for any such action.[200] The Commission's approach contemplates sharing the annual circuit capacity data with the State Department in light of the agency's legitimate need for the information in furtherance of its functions related to approving (or disapproving) Commission actions on submarine cable licenses. The Commission seeks comment on this tentative conclusion.

E. Costs and Benefits

207. The Commission seeks comment on the potential benefits and costs of the proposals discussed throughout the *NPRM.* The rule changes identified in the *NPRM* would advance U.S. national security, law enforcement, foreign policy, and trade policy interests. These proposals are designed to update and formalize the submarine cable rules and to enable the Commission to better identify and address national security and law enforcement risks.

208. Among the proposals, in the *NPRM,* the Commission proposes to codify the Commission's rules and legal requirements under the Cable Landing License Act, adopt a process to withhold or revoke a cable landing license, and adopt a three-year periodic review process for cable landing licenses for national security and law enforcement concerns. The Commission also seeks comment on shortening current 25-year submarine cable license term or adopting a shorter license term in combination with periodic reporting. The Commission proposes to adopt a presumption that certain entities and their current and future affiliates and subsidiaries shall not be qualified to become a new submarine cable landing licensee if their international section 214 authority was previously denied or revoked on national security or law enforcement grounds. The Commission proposes several certifications, including a certification that applicants have created, updated, and implemented cybersecurity risk management plans and that the submarine cable system will not use covered equipment or services identified on the Commission's ''Covered List'' that the Commission maintains pursuant to the Secure and Trusted Communications Networks Act. The Commission also proposes that all submarine cable landing licensees certify as to whether or not they use, for the relevant submarine cable system, equipment or services identified on the ''Covered List'' within sixty (60) days of the effective date of any rule adopted in this proceeding. The Commission proposes, among other things, to require (1) applicants/licensees, with or without reportable foreign ownership, to report whether or not they use and/or will use foreign-owned MNSPs and (2) any applicant/licensee that indicates it uses and/or will use a foreign-owned MNSP will answer the Standard Questions and those applications would be routinely referred to the relevant executive branch agencies. The Commission also proposes to adopt a rule allowing the sharing of critical submarine cable data filed in the applications and confidential circuit capacity data with Federal agencies without undertaking the procedures required under § 0.442 of the rules.

209. The benefits of the proposed rules will ensure the Commission fulfills its national security and public interest responsibilities under the Cable Landing License Act. Similar to the Commission's work in other related proceedings, the Commission expects that the resulting changes would improve the Commission's oversight of submarine cable licenses and ensure that a submarine cable license and the licensees continue to serve the public interest, as the Act intended. As the Commission stated there, ''[t]hese benefits cannot be achieved with ad hoc reviews alone.'' By adopting a periodic reporting requirement for submarine cable licenses, this process will help ensure that the Commission and the executive branch agencies review submarine cable licenses on a continuing basis and have the necessary information to address evolving national security, law enforcement, foreign policy, and/or trade policy risks. While the Commission tentatively finds that a three-year periodic reporting requirement is a critical component of protecting U.S. national security, law enforcement, foreign policy, and trade policy interests against evolving threats, the Commission acknowledges that such a process or other proposals in the *NPRM* may create economic burdens for submarine cable landing licensees.

210. Broadly, concerning benefits, the Commission seeks to ensure the safety and reliability of the submarine cable systems while adopting processes to expedite and streamline the Commission's rules. Submarine cables carry an estimated 99% of intercontinental data traffic [201] and the Commission's efforts will enable the industry to continue to deploy submarine cables ensuring reliable communications in a competitive marketplace, fulfilling its public interest duties. Importantly, the Commission has previously found that ''a foreign adversary's access to American communications networks could result in hostile actions to disrupt and surveil the Commission's communications networks, impacting [the] nation's economy generally and online commerce specifically, and result in the breach of confidential data.'' Given that the Commission's national gross domestic product was over $26 trillion in 2023, the digital economy accounted for $3.7 trillion of the Commission's economy in 2021, and the volume of international trade for the United States (exports and imports) was $6.9 trillion in 2023, even a temporary disruption in international submarine cable communications could cause billions of dollars in economic losses. The harms would be significant, causing disruption

[200] Executive Order 10530, section 5(a) (''*Provided,* That no such license shall be granted or revoked by the Commission except after obtaining approval of the Secretary of State . . . .'').

[201] According to a report by the Congressional Research Service, ''undersea telecommunication cable network carries about 95% of intercontinental global internet traffic, and 99% of transoceanic digital communications.'' According to an article on TeleGeography's website, submarine cables account for over 99% of intercontinental data traffic.

to business import and export trade, multinational corporation operations, international financial flows, online commerce, residential and government communications, and online access to information, including emergency services. A 2012 report by the Asia-Pacific Economic Cooperation (APEC) stated that submarine cables carried over $10 trillion in financial transactions globally each day. Assuming the United States' share is approximately equal to its share of global gross domestic product (GDP), it would account for nearly $2.6 trillion per day. The Commission seeks comment on the expected benefits of the proposals in the *NPRM*.

211. The Commission's estimate of costs should include all the expected ongoing costs that would be incurred as a result of the rules proposed in the *NPRM*. The Commission notes that the annual aggregate cost of the proposed rules described above could vary, depending on the rules adopted and whether applications and license reviews are referred to the Committee. The Commission tentatively concludes that the benefits of establishing the proposed licensing process—which include the safety and reliability of the submarine cable systems and the protection of national security and law enforcement interests—will be in excess of these costs.

212. The Commission bases its cost estimate on the Commission's records, as described above, that indicate there are currently 84 submarine cable systems owned by approximately 145 unique licensees. Furthermore, the Commission estimates that every year, there are approximately eight (8) cable landing license applications for new cables.[202] The Commission also estimates that there are approximately 23 applications every year for modification, assignment, transfer, or control.[203] Based on these groups, the Commission estimates that 35 applications are submitted annually.[204]

213. The Commission's cost estimate assumes that approximately 105 licensees will undergo the application process each year for the estimated 35 cable systems. The Commission bases this on the conservative assumption that each submarine cable landing license application will have an average of three licensees.[205] The Commission estimates that the costs to applicants related to applying for licenses would include, among other tasks, providing responses to standard questions, reporting on current and future service offerings, reporting on the use of foreign-owned MNSPs, providing information on the submarine cable infrastructure, and providing information pertaining to reportable foreign ownership. In addition to the requirements, the Commission estimates that applicants will incur an additional cost associated with the Commission's proposal to certify compliance to baseline cybersecurity standards, including implementing the cybersecurity risk management plans. The Commission expects that the amount of work associated with preparing a new license application likely will be similar to the work associated with preparing a renewal application.[206] Additionally, the licensees would be required to provide the Commission with updated information every three years.

214. The Commission has estimated that the preparation of a new or renewal application for each submarine cable system by an average of three licensees will require 80 hours of work by attorneys [207] and 80 hours of work by support staff, at a cost of $27,200 per application.[208] To this cost, the Commission adds the cost of cybersecurity certification required for all new and renewal application, and which the Commission estimate to be $9,100.[209] The Commission also estimates that the 3-year periodic reporting review will require twelve hours of attorney and twelve hours of support staff time, at a cost of $4,100, which the Commission multiplies by one-third to calculate the annual estimated cost of $1,370.[210] The Commission then multiplies the sum of these costs by 35 to produce a total estimate of approximately $1.32 million per year for the 25-year period, as a baseline estimate of the annual application and license review costs.[211] The Commission anticipates that later rounds of the three-year periodic reporting review will cause significantly lower costs, since much of the information will not have changed between reviews.

215. The Commission seeks comment on the estimates provided here, which are based on the Commission's

[202] Based on internal staff analysis, there were 24 cable landing license applications for new cables between January 1, 2022, and October 20, 2024, which produces an annual average of eight cable landing license applications.

[203] Based on internal staff analysis, there were 67 applications for modification, assignment, or transfer of control between January 1, 2022, and October 20, 2024, which produces an annual average of approximately 23 applications. The Commission conservatively assumes that the cost for an application for modification, assignment, transfer, or control is equivalent to the cost for a new application.

[204] For the purposes of renewal of existing licenses, the Commission assumes a uniform distribution of license renewal applications over the entirety of the 25-year license term, thereby projecting that there will be 4 applications submitted annually for existing submarine cable systems (84 / 25 = 3.36 rounded up to 4 applications per year). Annual number of applications submitted would therefore be approximately 35 (23 + 8 + 4).

[205] Based on the Commission's records, there are 237 total licensees for 84 cable systems, which produces an average of 2.8 licensees per application, which the Commission conservatively rounds up to 3 licensees per cable system.

[206] This is based on the Commission's proposal to require applicants seeking to renew or extend a cable landing license to provide in the application the same information and certifications required in an application for a new cable landing license.

[207] The Commission's cost data on wages for attorneys are based on the Commission's estimates of labor costs as represented in previous Paperwork Reduction Act (PRA) statements.

[208] Consistent with the Commission's calculations in the PRA statements, the Commission estimates the median hourly wage for attorneys as $300 for outside counsel. The Commission assumes that this wage reasonably represents an average for all attorney labor, across a range of authorization holders with different sizes and business models, used to comply with the rules proposed in the NPRM. Also, consistent with the Commission's calculations in PRA statements, the Commission estimates the median hourly wage for support staff (paralegals and legal assistants) as $40. Thus, 80 hours of work by attorneys would cost $24,000 and 80 hours of work by support staff would cost $3,200, for a total of $27,200 per application.

[209] Previously, the Commission had estimated a cost of drafting a cybersecurity risk management plan and submitting a certification as $820. Specifically, the Commission estimated that compliance would take 10 hours of labor from a General and Operations Manager compensated at $82 per hour ($820 = $82 × 10). The Commission updates this estimate to account for a baseline increase in compensation for General and Operations Managers from $55 to approximately $62.18 per hour, which when accounting for a benefits estimate of 45% becomes $90.16 (= $62.18 × 1.45). Several commenters in that proceeding argued that the proposed cost of creating, updating, implementing and certifying cybersecurity risk management plans is too low. For example, NPR estimates that the Commission's estimate is ''off by a factor of 10 or more.'' In light of this record, the Commission updates the Commission's estimate to $9,100 to be consistent with the record in that proceeding (= (100 hours per applicant) × ($62.18 mean hourly wage) × (1 + 45% benefit mark-up), which the Commission rounds up to $9,100). To account for benefits, the Commission marks up wages by 45%, which results in total hourly compensation of $62.18 × 145% = $90.16. According to the Bureau of Labor Statistics, as of June 2023, civilian wages and salaries averaged $29.86/hour and benefits averaged $13.39/hour. Total compensation therefore averaged $29.86 + $13.39, rounded to $43.26. Using these figures, benefits constitute a markup of $13.39/$29.86 ~ 45%.

[210] Twelve hours of work by attorneys would cost $3,600 (12 hours × $300 per hour) and twelve hours of work by support staff would cost $480 (12 hours × $40 per hour), which sums to $4,080, which the Commission rounds up to $4,100. The Commission then calculates the annual cost by dividing the three-year cost by 3 to produce an estimate of $1,370 ($4,100/3 = $1,366.67, rounded up to $1,370).

[211] $27,200 + $9,100 + $1,370 = $37,670. Multiplying by 35 applications per year, the Commission has, $1,318,450 (= $37,670 × 35), which the Commission rounds up to $1,319,000 per year.

experience and calculations of the likely costs of past submarine cable application processing and cybersecurity reviews. The Commission seeks comment on the additional costs that applicants will incur from the new reporting requirements detailed above. The Commission also seeks comment on the expected costs incurred by applicants, licensees, and Government agencies for applications and periodic reporting reviews that are referred to the Committee for additional review. The Commission seeks comment on the potential burdens on licensees, including on small entities.[212] The Commission notes that some proposals may lower industry costs by streamlining or simplifying the application process. Also, some national security requirements might financially benefit companies that had not yet fully secured their networks from harm and thus were vulnerable to costly disruptions. Indeed, some of these requirements could be considered the minimum security needed in today's communications environment, and thus should already have been implemented by all submarine cables operators. Do the Commission's assumptions represent a reasonable estimate of total costs of the proposals in the *NPRM?* Any suggestions for alternative approaches should include clear explanations of the cost estimates, as well as estimates as to whether the benefits under any proposed alternatives would increase or decrease compared to the benefits described above.

F. Digital Equity and Inclusion

216. Finally, the Commission, as part of its continuing effort to advance digital equity for all,[213] including people of color, persons with disabilities, persons who live in rural or Tribal areas, and others who are or have been historically underserved, marginalized, or adversely affected by persistent poverty or inequality, invites comment on any equity-related considerations [214] and benefits (if any) that may be associated with the proposals and issues discussed herein. Specifically, the Commission seeks comment on how its proposals may promote or inhibit advances in diversity, equity, inclusion, and accessibility, as well as the scope of the Commission's relevant legal authority.

II. Procedural Issues

217. *Ex Parte Rules.* This proceeding shall be treated as a ''permit-but disclose'' proceeding in accordance with the Commission's *ex parte* rules. Persons making *ex parte* presentations must file a copy of any written presentation or a memorandum summarizing any oral presentation within two business days after the presentation (unless a different deadline applicable to the Sunshine period applies). Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentation must (1) list all persons attending or otherwise participating in the meeting at which the *ex parte* presentation was made, and (2) summarize all data presented and arguments made during the presentation. If the presentation consisted in whole or in part of the presentation of data or arguments already reflected in the presenter's written comments, memoranda, or other filings in the proceeding, the presenter may provide citations to such data or arguments in his or her prior comments, memoranda, or other filings (specifying the relevant page and/or paragraph numbers where such data or arguments can be found) in lieu of summarizing them in the memorandum. Documents shown or given to Commission staff during *ex parte* meetings are deemed to be written *ex parte* presentations and must be filed consistent with rule § 1.1206(b). In proceedings governed by rule § 1.49(f) or for which the Commission has made available a method of electronic filing, written *ex parte* presentations and memoranda summarizing oral *ex parte* presentations, and all attachments thereto, must be filed through the electronic comment filing system available for that proceeding, and must be filed in their native format (*e.g.,* .doc, .xml, .ppt, searchable .pdf). Participants in this proceeding should familiarize themselves with the Commission's *ex parte* rules.

218. *Regulatory Flexibility Act.* The Regulatory Flexibility Act of 1980, as amended (RFA), requires that an agency prepare a regulatory flexibility analysis for notice and comment rulemakings, unless the agency certifies that ''the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities.'' Accordingly, the Commission has prepared an Initial Regulatory Flexibility Analysis (IRFA) concerning the potential impact of rule and policy changes in the *NPRM* on small entities. Written public comments are requested on the IRFA. Comments must be filed by the deadlines for comments in the **DATES** section of this document and must have a separate and distinct heading designating them as responses to IRFA.

Technical Appendix

219. This technical appendix provides additional information about submarine cable systems, including definitions and an image that depicts the key parts of a submarine cable system.

220. *Submarine Cable System.* A submarine cable is an electrically powered cable that is laid beneath water and establishes communication transmission links between two or more land-based terminal cable landing stations. The cable consists of a wet (underwater) segment, a dry (not submerged under water) segment, and ancillary equipment required to support the operation and maintenance of the cable.

221. *Wet Segment.* The wet (underwater) segment of a submarine cable system typically extends from a beach manhole on one landmass to a beach manhole on another landmass. The underwater portion of the cable can consist of one or several segments, and is equipped with amplification devices (repeaters, etc.) and branching units built into the cable that allow interconnection to more than one destination country.

222. *Wet Segment Ancillary Components.* The repeaters (technically amplifiers), which are tied into the cable, amplify the optical signal to ensure it remains powerful enough for detection at the receiving or terminal landing station. The branching unit (BU) is used to split off the optical signal from the main cable segment(s) and send traffic to another location or country via a cable that connects the BU to a cable landing station.

223. *Dry Segment.* The dry (not submerged under water) segment of a submarine cable system typically extends from the beach manhole to

[212] For example, the Commission seeks comment on the costs and benefits of requiring all applicants, including those without reportable foreign ownership, to provide information on foreign-owned MNSPs.

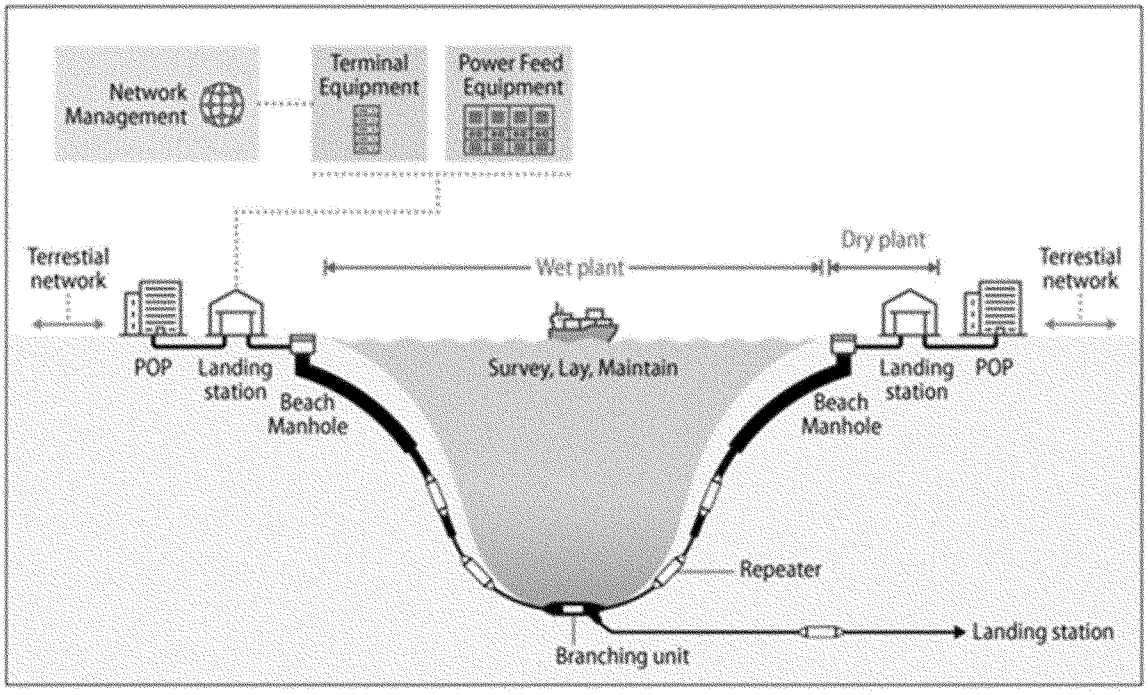
[213] Section 1 of the Communications Act of 1934 as amended provides that the FCC ''regulat[es] interstate and foreign commerce in communication by wire and radio so as to make [such service] available, so far as possible, to all the people of the United States, without discrimination on the basis of race, color, religion, national origin, or sex.''

[214] The term ''equity'' is used here consistent with Executive Order 13985 as the consistent and systematic fair, just, and impartial treatment of all individuals, including individuals who belong to underserved communities that have been denied such treatment, such as Black, Latino, and Indigenous and Native American persons, Asian Americans and Pacific Islanders and other persons of color; members of religious minorities; lesbian, gay, bisexual, transgender, and queer (LGBTQ+) persons; persons with disabilities; persons who live in rural areas; and persons otherwise adversely affected by persistent poverty or inequality.

cable landing station(s) that contain the Power Feed Equipment (PFE) and equipment (such as the Submarine Line Terminal Equipment (SLTE)) to convert submarine signals to terrestrial signals, and may include ancillary equipment or infrastructure such as equipment to operate or maintain the cable system.

224. *Dry Segment Ancillary Components.* The dry segment includes the optical fiber and power land cables that are separated at and extend from the beach manhole, a structure buried on the beach where the submarine cable first lands, and are then routed to the terminal cable landing station that may be located near the coast where the submarine cable reaches the shore, or may be located further inland.[215] The submarine cable landing station houses equipment to terminate cable traffic and equipment to power the submarine cable. The equipment used to convert submarine signals to terrestrial signals and interconnect with the U.S. terrestrial network is the SLTE, and the equipment used to power the cable, the PFE, is either located in or close to the terminal landing station. There might be multiple SLTEs within a cable landing station for a given submarine cable system.[216] A data center can serve as a cable landing station, and PoPs and IXPs [217] can be located within a cable landing station or data center.

225. For illustrative purposes, the image below depicts the key parts of a submarine cable system and depicts, in a basic manner, a submarine cable system. The Commission understand that not every submarine cable system may replicate the image below. For example, there may be numerous cable landing stations located further inland from the coastal landing submarine cable station.[218]



Source: Created by CRS.

Initial Regulatory Flexibility Analysis

226. As required by the Regulatory Flexibility Act of 1980, as amended (RFA), the Federal Communications Commission (Commission) has prepared this Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on a substantial number of small entities by the policies and rules proposed in the *NPRM.* Written public comments are requested on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments specified on the first page of the *NPRM.* The Commission will send a copy of the *NPRM,* including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration (SBA). In addition, the *NPRM* and IRFA (or summaries thereof) will be published in the **Federal Register**.

A. Need for, and Objective of, the Proposed Rules

227. In the *NPRM,* the Commission undertakes the first major comprehensive review of its submarine cable rules since it last adopted submarine cable rules in 2001. Over the last two decades, there have been

[215] Traditionally, cable landing stations ''have been historically close to network hubs to facilitate efficient connectivity to population centers, but now the focus is on being close to hyperscale data centers'' that might be located farther inland and require substantial backhaul facilities to interconnect to the data station. PoPs and/or Internet Exchange Points (IXPs) can be, and are typically located in data centers or other facilities with the necessary infrastructure to support internet traffic exchange. This infrastructure may include routers, switches, and other networking equipment, as well as power and cooling systems.

[216] Over the last decade, technological changes and the manner in which the dry segment submarine cable components are sold has permitted ''multiple cable systems owners to use different SLTE on their own fiber pairs.''

[217] *What is an internet exchange point? | How do IXPs work?,* Cloudflare, *https://www.cloudflare.com/learning/cdn/glossary/internet-exchange-point-ixp/* (last visited, Oct. 4, 2024), (''An internet exchange point (IXP) is a physical location through which internet infrastructure companies such as Internet Service Providers (ISPs) and [Content Delivery Networks or] CDNs connect with each other.'').

[218] Although not reflected in the graphic, the CRS Report recognizes that submarine terminal facilities could be ''hundreds of miles from the seashore'' with cable operators often using a longer fiber link with repeaters to connect to the cable landing station.

substantial changes in technology, consumer expectations, international submarine cable traffic patterns, and investment in and construction of submarine cable infrastructure as well as significant evolution in national security and law enforcement threat environments. The proposed rules on which the Commission seeks comment in this proceeding are intended for the Commission to determine how best to improve and streamline the submarine cable rules to facilitate deployment of submarine cables while at the same time ensuring the security, resilience, and protection of this critical infrastructure.

228. Specifically, in the *NPRM,* the Commission takes a number of actions to (1) codify the Commission's legal jurisdiction and other legal requirements in the Commission's rules to provide regulatory certainty to submarine cable owners and operators; (2) improve the Commission's oversight of submarine cable landing licensees and information regarding a submarine cable system and its licensees during the 25-year license term; (3) update application requirements for national security purposes and ensuring the Commission has targeted and granular information regarding the ownership, control, and use of a submarine cable system; (4) adopt new compliance certifications to protect against national security, law enforcement, and other risks; (5) protect submarine cable infrastructure, including activities in coordination with its Federal partners; (6) update submarine cable rules and certain targeted requirements to protect submarine cable systems from national security and law enforcement risks; (7) streamline procedures to expedite the submarine cable review processes; and (8) improve the quality of the Circuit Capacity data and facilitating the sharing of such information with other Federal agencies. The Commission believes its proposed actions in this proceeding will improve Commission review and oversight of submarine cable landing licenses and ensure each licensee continues to serve the public interest in an evolving national security and law enforcement landscape.

B. Legal Basis

229. The proposed action is authorized pursuant to sections 1, 4(i), 4(j), 201–255, 303(r), 403, and 413 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i), 154(j), 201–255, 303(r), 403, and 413, and the Cable Landing License Act of 1921, 47 U.S.C. 34–39, and Executive Order 10530, section 5(a) (May 12, 1954), reprinted as amended in 3 U.S.C. 301.

C. Description and Estimate of the Number of Small Entities to Which the Proposed Rules Will Apply

230. The RFA directs agencies to provide a description of, and where feasible, an estimate of the number of small entities that may be affected by the proposed rules, if adopted. The RFA generally defines the term ''small entity'' as having the same meaning as the terms ''small business,'' ''small organization,'' and ''small governmental jurisdiction.'' In addition, the term ''small business'' has the same meaning as the term ''small business concern'' under the Small Business Act. A ''small business concern'' is one which: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA).

231. *Wired Telecommunications Carriers.* The U.S. Census Bureau defines this industry as establishments ''primarily engaged in operating and/or providing access to transmission facilities and infrastructure that they own and/or lease for the transmission of voice, data, text, sound, and video using wired telecommunications networks.'' Transmission facilities may be based on a single technology or a combination of technologies. Establishments in this industry use the wired telecommunications network facilities that they operate to provide a variety of services, such as ''wired telephony services, including VoIP services, wired (cable) audio and video programming distribution, and wired broadband internet services.'' By exception, establishments providing satellite television distribution services using facilities and infrastructure that they operate are included in this industry. Wired Telecommunications Carriers are also referred to as wireline carriers or fixed local service providers.

232. The SBA small business size standard for Wired Telecommunications Carriers classifies firms having 1,500 or fewer employees as small. U.S. Census Bureau data for 2017 show that there were 3,054 firms that operated in this industry for the entire year. Of this number, 2,964 firms operated with fewer than 250 employees. Additionally, based on Commission data in the 2022 Universal Service Monitoring Report, as of December 31, 2021, there were 4,590 providers that reported they were engaged in the provision of fixed local services. Consequently, using the SBA's small business size standard, most of these providers can be considered small entities.

233. *Competitive Local Exchange Carriers (CLECs).* Neither the Commission nor the SBA has developed a size standard for small businesses specifically applicable to local exchange services. Providers of these services include several types of competitive local exchange service providers. Wired Telecommunications Carriers is the closest industry with an SBA small business size standard. The SBA small business size standard for Wired Telecommunications Carriers classifies firms having 1,500 or fewer employees as small. U.S. Census Bureau data for 2017 show that there were 3,054 firms that operated in this industry for the entire year. Of this number, 2,964 firms operated with fewer than 250 employees. Additionally, based on Commission data in the 2022 Universal Service Monitoring Report, as of December 31, 2021, there were 3,378 providers that reported they were competitive local service providers. Of these providers, the Commission estimates that 3,230 providers have 1,500 or fewer employees. Consequently, using the SBA's small business size standard, most of these providers can be considered small entities.

234. *Interexchange Carriers (IXCs).* Neither the Commission nor the SBA have developed a small business size standard specifically for Interexchange Carriers. Wired Telecommunications Carriers is the closest industry with an SBA small business size standard. The SBA small business size standard for Wired Telecommunications Carriers classifies firms having 1,500 or fewer employees as small. U.S. Census Bureau data for 2017 show that there were 3,054 firms that operated in this industry for the entire year. Of this number, 2,964 firms operated with fewer than 250 employees. Additionally, based on Commission data in the 2022 Universal Service Monitoring Report, as of December 31, 2021, there were 127 providers that reported they were engaged in the provision of interexchange services. Of these providers, the Commission estimates that 109 providers have 1,500 or fewer employees. Consequently, using the SBA's small business size standard, the Commission estimates that the majority of providers in this industry can be considered small entities.

235. *Wired Broadband Internet Access Service Providers (Wired ISPs).* Providers of wired broadband internet access service include various types of providers except dial-up internet access providers. Wireline service that terminates at an end user location or mobile device and enables the end user

to receive information from and/or send information to the internet at information transfer rates exceeding 200 kilobits per second (kbps) in at least one direction is classified as a broadband connection under the Commission's rules. Wired broadband internet services fall in the Wired Telecommunications Carriers industry. The SBA small business size standard for this industry classifies firms having 1,500 or fewer employees as small. U.S. Census Bureau data for 2017 show that there were 3,054 firms that operated in this industry for the entire year. Of this number, 2,964 firms operated with fewer than 250 employees.

236. *Internet Service Providers (Non-Broadband).* Internet Access Service Providers using client-supplied telecommunications connections (*e.g.,* dial-up ISPs) as well as VoIP service providers using client-supplied telecommunications connections fall in the industry classification of All Other Telecommunications. The SBA small business size standard for this industry classifies firms with annual receipts of $40 million or less as small. For this industry, U.S. Census Bureau data for 2017 show that there were 1,079 firms in this industry that operated for the entire year. Of those firms, 1,039 had revenue of less than $25 million. Consequently, under the SBA size standard a majority of firms in this industry can be considered small.

237. *Small Businesses, Small Organizations, Small Governmental Jurisdictions.* The Commission's actions, over time, may affect small entities that are not easily categorized at present. The Commission therefore describes, at the outset, three broad groups of small entities that could be directly affected herein. First, while there are industry specific size standards for small businesses that are used in the regulatory flexibility analysis, according to data from SBA's Office of Advocacy, in general a small business is an independent business having fewer than 500 employees. These types of small businesses represent 99.9% of all businesses in the United States, which translates to 33.2 million businesses.

238. Next, the type of small entity described as a ''small organization'' is generally ''any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.'' The Internal Revenue Service (IRS) uses a revenue benchmark of $50,000 or less to delineate its annual electronic filing requirements for small exempt organizations. Nationwide, for tax year 2022, there were approximately 530,109 small exempt organizations in the U.S. reporting revenues of $50,000 or less according to the registration and tax data for exempt organizations available from the IRS.

239. Finally, the small entity described as a ''small governmental jurisdiction'' is defined generally as ''governments of cities, counties, towns, townships, villages, school districts, or special districts, with a population of less than fifty thousand.'' U.S. Census Bureau data from the 2022 Census of Governments indicate there were 90,837 local governmental jurisdictions consisting of general purpose governments and special purpose governments in the United States. Of this number, there were 36,845 general purpose governments (county, municipal, and town or township) with populations of less than 50,000 and 11,879 special purpose governments (independent school districts) with enrollment populations of less than 50,000. Accordingly, based on the 2022 U.S. Census of Governments data, the Commission estimates that at least 48,724 entities fall into the category of ''small governmental jurisdictions.''

240. Additionally, according to Commission data on internet access services as of June 30, 2019, nationwide there were approximately 2,747 providers of connections over 200 kbps in at least one direction using various wireline technologies. The Commission does not collect data on the number of employees for providers of these services, therefore, at this time the Commission is not able to estimate the number of providers that would qualify as small under the SBA's small business size standard. However, in light of the general data on fixed technology service providers in the Commission's *2022 Communications Marketplace Report,* the Commission believes that the majority of wireline internet access service providers can be considered small entities.[219]

241. *All Other Telecommunications.* This industry is comprised of establishments primarily engaged in providing specialized telecommunications services, such as satellite tracking, communications telemetry, and radar station operation. This industry also includes establishments primarily engaged in providing satellite terminal stations and associated facilities connected with one or more terrestrial systems and capable of transmitting telecommunications to, and receiving telecommunications from, satellite systems. Providers of internet services (*e.g.* dial-up ISPs) or VoIP services, via client-supplied telecommunications connections are also included in this industry. The SBA small business size standard for this industry classifies firms with annual receipts of $40 million or less as small. U.S. Census Bureau data for 2017 show that there were 1,079 firms in this industry that operated for the entire year. Of those firms, 1,039 had revenue of less than $25 million. Based on this data, the Commission estimates that the majority of ''All Other Telecommunications'' firms can be considered small.

242. *Internet Publishing and Broadcasting and Web Search Portals.* This industry comprises establishments primarily engaged in (1) publishing and/or broadcasting content on the internet exclusively or (2) operating websites that use a search engine to generate and maintain extensive databases of internet addresses and content in an easily searchable format (and known as web search portals). The publishing and broadcasting establishments in this industry do not provide traditional (non-internet) versions of the content that they publish or broadcast. They provide textual, audio, and/or video content of general or specific interest on the internet exclusively. Establishments known as web search portals often provide additional internet services, such as email, connections to other websites, auctions, news, and other limited content, and serve as a home base for internet users. The SBA small business size standard for this industry classifies firms having 1,000 or fewer employees as small. U.S. Census Bureau data for 2017 show that there were firms that 5,117 operated for the entire year. Of this total, 5,002 firms operated with fewer than 250 employees. Thus, under this size standard the majority of firms in this industry can be considered small.

243. *Computer Infrastructure Providers, Data Processing, Web Hosting, and Related Services.* This industry comprises establishments primarily engaged in providing computing infrastructure, data processing services, web hosting services (except software publishing), and related services, including streaming support services (except streaming distribution services). Cloud storage services, computer data storage services, computing platform infrastructure provision, Infrastructure as a service (IaaS), optical scanning services, and Platform as a service (PaaS) are included in this industry. Data processing establishments provide complete processing and specialized

[219] See Communications Marketplace Report, GN Docket No. 22–203, 2022 WL 18110553 at 10, paras. 26–27, Figs. II.A.5–7. (2022) (*2022 Communications Marketplace Report*).

reports from data supplied by clients or provide automated data processing and data entry services. The SBA small business size standard for this industry classifies firms with annual receipts of $40 million or less as small. U.S. Census Bureau data for 2017 indicate that 9,058 firms in this industry were operational for the entire year. Of this total, 8,345 firms had revenue of less than $25 million. Thus, under the SBA size standard the majority of firms in this industry are small.

244. Neither the Commission nor the SBA has developed a size standard specifically for applicants or licensees of submarine cable systems under the Cable Landing License Act. The proposals outlined in the *NPRM* apply to entities applying for an initial cable landing license; applicants/cable landing licensees for modification, assignment, transfer of control, and renewal or extension of such license; cable landing licensees that will be required to submit periodic reports; and cable landing licensees and common carriers that are required to annually report their capacity on international cables pursuant to § 43.82 of the rules. The proposals, however, may affect other entities as well, including users of submarine cable service such as Internet Service Providers (ISPs) that lease capacity or purchase indefeasible rights of use (IRUs) on submarine cable systems. The Commission, therefore, encourages these entities to comment on the proposals in the *NPRM*.

245. The proposals are intended to improve and streamline the submarine cable rules to facilitate efficient deployment of submarine cables while at the same time ensuring the security, resilience, and protection of this critical infrastructure. The Commission is not certain, however, as to the number of small entities that will be affected by the proposals. The Commission bases its cost estimate on the Commission's records, as described below, that indicate there are currently 84 submarine cable systems owned by approximately 145 licensees. In 2022, of all entities that filed § 43.82 Circuit Capacity Reports, 43 were Submarine Cable Operator Reports and 102 were Submarine Cable Capacity Holder Reports. Based on this information, the Commission estimates that there could be 50 or fewer applicants that might be a small entity.

D. Description of Projected Reporting, Recordkeeping and Other Compliance Requirements for Small Entities

246. In the *NPRM,* the rules that the Commission proposes would impose new and/or additional reporting, recordkeeping, and other compliance obligations on small and other entities. The Commission's comprehensive review of its submarine cable rules identified a need to update the existing rules to advance U.S. national security, law enforcement, foreign policy, and trade policy interests. These proposals are designed to update and formalize the submarine cable rules to better protect submarine cables and provide the Commission with important information on a more regular and timely basis for the Commission to better identify and address national security, law enforcement, and other risks.

247. The scope of the proposals in the *NPRM* is broad and wide ranging. The Commission proposes to codify in the rules the Commission's longstanding practices and legal requirements under the Cable Landing License Act that are applicable to small and other applicants seeking a submarine cable landing license or modification, assignment, transfer of control, or renewal or extension of their license, including proposed rules that would require these applicants, among other things, to comply with a general license requirement, to demonstrate how grant of an application will serve the public interest, convenience and necessity, and to certify whether or not they are in compliance with the Cable Landing License Act, the Communications Act, the Commission's rules, and other laws. The Commission proposes and seeks comment on adopting a procedural framework that the Commission may use to consider whether withholding a grant of a cable landing license or revocation of a cable landing license is warranted. The Commission also proposes to adopt a three-year periodic reporting requirement for cable landing licenses, which would require small and other licensees to provide certain information to the Commission every three years. The Commission seeks comment on shortening the current 25-year submarine cable license term or adopting a shorter license term in combination with periodic reporting.

248. The Commission's proposed three-year periodic reporting requirement would require licensees to provide updated information, including (1) information that is current as of thirty (30) days prior to the date of the submission of the report; (2) information concerning the submarine cable infrastructure; (3) information about the capacity services they currently offer or plan to offer through the submarine cable system; (4) certification as to whether or not they are in compliance with the Cable Landing License Act, the Communications Act, the Commission's rules, and other laws; (5) cybersecurity certifications, including a certification that they have created, updated, and implemented cybersecurity risk management plans; (6) certification that they have not purchased and/or used, and will not purchase and/or use, equipment or services produced or provided by entities (and their subsidiaries and affiliates) identified on the Commission's ''Covered List''; (7) whether or not they use and/or will use foreign-owned MNSPs in the operation of the submarine cable; and (8) updated licensee information and points of contact. The Commission seeks comment on whether, as part of the periodic reporting requirement, cable landing licensees should provide (1) information identifying any individuals or entities that hold an ownership interest in the submarine cable system that does not meet the threshold eligibility requirements requiring them to be licensees of the cable; (2) updated ownership information; and (3) other information.

249. As part of the licensing application process, the Commission proposes several new compliance certifications for small and other applicants that would trigger reporting and recordkeeping requirements, including (1) certification that an applicant is in compliance with the Commission's rules and regulations, the Communications Act of 1934, as amended (the Act), and all other applicable laws; (2) certification that an applicant has created, updated, and implemented cybersecurity risk management plans as well as certification that the applicant take reasonable measures to protect the confidentiality, integrity, and availability of their systems and services that could affect their provision of communications services; and (3) as a condition of the potential grant of their application, a certification that the submarine cable system will not use covered equipment or services identified on the Commission's ''Covered List'' that the Commission maintains pursuant to the Secure and Trusted Communications Networks Act. The Commission also proposes that all submarine cable landing licensees certify as to whether or not they use, for the relevant submarine cable system, equipment or services identified on the ''Covered List'' within 60 days of the release of any Report and Order in this proceeding. Additionally, the Commission proposes to amend its rules by adding a new routine condition and a certification requirement in the

proposed periodic reports prohibiting licensees from using, for the relevant submarine cable system, equipment or services identified on the ''Covered List.'' The Commission also seeks comment on whether to require a certification by all applicants/licensees that they have the ability to promptly and effectively interrupt, in whole or in part, traffic to and from the United States on the submarine cable system. The Commission proposes to require applicants and licensees to certify in the applications and the periodic reports whether or not they are in compliance with the Cable Landing License Act, the Communications Act, the Commission's rules, and other laws.

250. The cybersecurity certification will require small and other applicants and licensees to describe how the applicant or licensee employs its organizational resources and processes to ensure the confidentiality, integrity, and availability of its systems and services, and must be signed by an applicant's Chief Executive Officer (CEO), Chief Financial Officer (CFO), Chief Technology Officer (CTO), or a similarly situated senior officer responsible for governance of the organization's security practices. Small and other applicants and licensees will be allowed to structure their cybersecurity risk management plan in a manner that best fits its organization, as long as the plan demonstrates that the applicant and licensee is taking affirmative steps to analyze security risks and improve its security posture. Further, small and other applicants and licensees will not be required to submit their cybersecurity risk management plans but instead, if adopted, must maintain data and records related to their cybersecurity risk management plans for two years from the submission of the related risk management plan certification to the Commission, including any information that is necessary to show how the cybersecurity risk management plan is implemented. However, upon Commission request, small and other licensees must file their cybersecurity risk management plan with the Commission.

251. Other reporting requirements in the *NPRM* the Commission targets to protect submarine cable systems from national security and law enforcement risks includes the Commission's (1) proposal whether to require applicants to disclose their use of foreign-owned MNSPs and if so, it will answer the Standard Questions and those applications would be routinely referred to the relevant executive branch agencies; (2) proposal to require all applicants to provide a list of the anticipated addresses or physical locations for the Network Operations Center (NOC) on a presumptively confidential basis in their applications and periodic reports; and (3) the Commission's request for comments on whether to require applicants to submit basic information about an applicant's lessors of submarine cable landing stations and/or data centers housing hardware. The Commission also proposes to adopt a presumption that any entity whose application for international section 214 authority that was previously denied or whose domestic or international section 214 authority was previously revoked in view of national security and law enforcement concerns, and its current and future affiliates and subsidiaries, shall not be qualified to become a new submarine cable landing licensee. Additionally, the Commission proposes to expand the information reporting requirements under § 1.767(a)(4) of the Commission's rules to require small and other applicants for a cable landing license or modification, assignment, transfer of control, or renewal or extension of a license to provide additional detailed information concerning the submarine cable infrastructure.

252. One of the Commission's goals in this proceeding is also to improve the collection of circuit capacity data which includes data from cable landing licensees and common carriers who must report their capacity on submarine cables between the United States and any foreign point as of December 31 of the current reporting period. The Commission's annual capacity holder data indicates that there is substantial capacity leased or purchased from cable landing licensees and common carriers that is not accounted for in the circuit capacity data collected by the Commission, because entities that hold capacity on a particular cable in such arrangements are not required to report their capacity. To address this information gap, the Commission seeks comments on whether to require all entities that hold capacity on cables landing in the United States to file capacity holder reports, and in the alternative, or additionally, should cable landing licensees and common carriers be required to include in their annual capacity holder reports a list of customers to whom they sold or leased capacity as of December 31 of the reporting period. Given that all title II common carriers are required to file annual circuit capacity reports under § 43.82(a)(2) of the rules, the Commission seeks comment generally on whether the Commission should consider retaining or removing the waiver of § 43.82 of the rules as applied to BIAS providers, subject to judicial review of that *2024 Open Internet Order*.

253. The Commission includes cost estimates in the *NPRM* that estimate of all of the expected ongoing costs the industry would incur if the proposed rules were adopted. Annually, the Commission estimates the annual aggregate cost of implementation of the proposed rules should not exceed approximately $1.32 million for the 84 submarine cable systems currently owned by approximately 145 licensees. At this time however, the record does not include sufficient cost information to allow the Commission to quantify the costs of compliance for small entities, including whether it will be necessary for small entities to hire professionals to comply with the proposed rules if adopted.

254. The Commission also estimates that every year, there are approximately 8 cable landing license applications for new cables, and 23 applications every year for modification, assignment, transfer, or control. The Commission therefore estimates that 35 applications are submitted annually. The Commission's cost estimate assumes that approximately 105 licensees will undergo the application process each year for the estimated 35 cable systems. The Commission bases this on the conservative assumption that each submarine cable landing license application will have an average of three licensees. The Commission calculates that the costs to applicants related to applying for licenses would include, among other tasks, providing responses to standard questions, reports on current and future service offerings, reports on foreign-owned MNSPs and information pertaining to reportable foreign ownership. Additionally, the Commission calculates applicants will incur additional costs associated with the Commission's proposal for them to certify compliance to baseline cybersecurity standards, including implementing the cybersecurity risk management plans. The Commission anticipates the amount of work associated with preparing a new license application likely will be similar to the work associated with preparing a renewal application. Licensees would also be required to provide updated information to the Commission every three years.

255. Preparation of a new or renewal application for each submarine cable system by an average of three licensees

will require 80 hours of work by attorneys and 80 hours of work by support staff, at a total cost of $27,200 per application. To this cost the Commission adds the cost of the cybersecurity certification required for all new and renewal application, and which the Commission estimates to be $9,100. The Commission also estimates that the 3-year periodic reporting will require twelve hours of attorney and twelve hours of support staff time, at a cost of $4,100, which the Commission multiplies by one-third to calculate the annual estimated cost of $1,370. The Commission then multiplies the sum of these costs by 35 resulting in a total estimate of approximately $1.32 million per year for the 25-year licensing period, as a baseline estimate of the annual application and license review costs. The Commission anticipates that later rounds of the three-year periodic reporting review will cause significantly lower costs, since much of the information will not have changed between reviews. The Commission seeks comment on these cost estimates in the *NPRM,* and in particular on the costs (and burdens) that may be incurred by small entities. Small entities are encouraged to bring to the Commission's attention any specific concerns they may have with the cost estimate and the proposals outlined in the *NPRM.* In addition, the Commission seeks comment on the Commission's tentative conclusion that the benefits of the proposed update and modernization of the submarine cable licensing and oversight process which includes the safety and reliability of the submarine cable infrastructure, and the protection of national security and law enforcement interests—will far exceed these estimated costs.

256. The Commission is especially interested in estimates that address alternative means to provide the same benefits, in terms of advancing national security, law enforcement, foreign policy, and trade policy interests, at lower costs. The Commission expects the information it receives in comments including, where requested, cost and benefit analyses, to help identify and evaluate relevant compliance matters for small entities, including compliance costs and other burdens that may result if the proposals and associated requirements discussed in the *NPRM* are adopted.

E. Steps Taken To Minimize the Significant Economic Impact on Small Entities and Significant Alternatives Considered

257. The RFA requires an agency to describe any significant, specifically small business, alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives (among others): ''(1) the establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance and reporting requirements under the rules for such small entities; (3) the use of performance rather than design standards; and (4) an exemption from coverage of the rule, or any part thereof, for such small entities.''

258. As described in the *NPRM,* the Commission considers and seeks comment on the potential impact and burdens the proposed rules would generally have on submarine cable applicants, licensees, and common carriers that hold capacity on U.S.-international cables, some of whom may be small entities. As part of the Commission's proposals, the Commission discusses alternative options that could potentially reduce the impacts and burdens with respect to small entities and more generally for entities subject to the Commission's submarine cable rules.

259. Notably, the Commission proposes to require licensees to provide in periodic reports certain information to the Commission every three years. In discussing this proposal, the Commission expressly solicits information on the impact of the Commission's proposed three-year periodic reporting requirement on small entities, and the Commission considers and discusses alternatives. To decrease some of the administrative burden of this requirement for such entities, the Commission proposes that any new periodic report would reflect only updated information since the last report three years prior or other substantive filing, which may be the initial license application, a modification, a transfer of control, or an assignment. If there have not been any changes since a licensee's last periodic report or other substantive filing, the Commission asks whether the Commission should only require a licensee provide a periodic statement that its license remains in compliance with the Commission's rules and with its most recent periodic report, or other substantive filing. The Commission also proposes that each periodic report would be submitted through a filing in the Commission's existing International Communications Filing System (ICFS), or any successor system, minimizing administrative burdens associated with paper filings. Along these lines, the Commission proposes to adopt a schedule that prioritizes the filing and review of reports based on whether the cable's licensee(s) currently have reportable foreign ownership and the length of the time since the Commission's most recent review of the authorization. The proposal structures the timing of the submission of periodic reports to minimize burdens on licensees, the Commission and the executive branch staff while ensuring that the Commission receives the information it needs to protect this critical infrastructure. Submarine cable systems would be assigned to one of four categories with each category having a different submission deadline—submission deadlines for each category would be separated by six months.

260. The Commission also considers the burdens on small entities in seeking comment on whether shortening the current 25-year submarine cable license term or adopting a shorter license term in combination with periodic reporting would similarly account for evolving national security, law enforcement, and other risks. In this regard, to ensure the Commission addresses burdens on licensees, including small entities, the Commission seeks comment on an appropriate time frame to better account for evolving risks while minimizing burdens on licensees, recognizing the significant capital expenditures and long lead times in planning and constructing submarine cable systems. The Commission also seeks comment on the economic impact of shortening the 25-year license term. The Commission asks whether a 5-year or 10-year license term would alter investment incentives in new submarine cable infrastructure and if a shortened license terms would impact the upgradation and maintenance of existing submarine cable systems. The Commission identifies various licensing term alternatives based on approaches it has adopted for other industry licensees. For example, for Miscellaneous Wireless Communications Services (WCS), the license term varies according to spectrum band, resulting in different license periods such as 10, 12, or 15 years. In the satellite industry the Commission's licensing terms likewise vary. Space stations licensed under part 25 of the Commission's rules have a 15-year license term, small satellites have a 6-year license term, and certain SDARS and DBS space stations have an 8-year license term. In the broadcasting industry, each license granted for the operation of a broadcasting station is limited to a term not to exceed eight

years. Additionally, more recently in the *Evolving Risks NPRM,* the Commission tentatively concluded that a 10-year timeframe is reasonable under the proposed renewal framework for structuring a formalized and systemic reassessment of carriers' international section 214 authority. The Commission specifically requests that commenters address the burdens that will be placed on the licensees based on the length of the license term and identify the costs/benefits overall and impact, if any, on small businesses.

261. The Commission also discussed the potential impact on small entities with regard to the Commission's consideration of who must become a submarine cable applicant and licensee. In the *NPRM,* the Commission seeks comment on whether it should retain the requirement that an entity that owns or controls a 5% or greater interest in the cable and uses the U.S. points of the cable system must become an applicant and licensee should be retained or changed. The Commission explained that the 5% ownership threshold was created in part to not unduly burden small carriers or investors that lacked the ability to significantly affect the operation of a cable system, among others. In this regard, the Commission asks whether the 5% threshold is reasonable in today's national security environment. The Commission further seeks comment on whether it should instead require any entity that owns any interest in the cable to become a licensee. The Commission also considers and seeks comment generally on whether to include any entity that has capacity on the submarine cable as an applicant/licensee, and how such a requirement would affect small entities. Relatedly, the Commission seeks comment on whether holding capacity on the cable system should be defined to include the leasing, purchasing, selling, buying, or swapping of a fiber (spectrum, capacity, partial fiber pair, or a full fiber pair, among others) for transmission of voice, data, and internet over the cable system to interconnect with a U.S. terrestrial network.

262. Consistent with the Commission's overarching goal to promote and protect the security of the submarine cable network and infrastructure, the Commission proposes to require all applicants for cable landing licenses and modification, assignment, transfer of control, renewal, and licensees filing their three-year periodic reports to certify in the application or report that they have created, updated, and implemented cybersecurity risk management plans. Recognizing the importance of cybersecurity generally and the potential impact of cybersecurity related requirements on small entities, the Commission proposes that each applicant or licensee have flexibility to structure their cybersecurity risk management plan that is tailored to its organization, provided that the plan demonstrates that the applicant or licensee is taking affirmative steps to analyze security risks and improve its security posture. This flexibility should reduce costs for small entities. Further, the Commission states that while it believes there are many ways that an applicant or licensee may satisfy this requirement, the Commission proposes that they could successfully demonstrate compliance with this proposed requirement by following an established risk management framework, such as the National Institute of Standards and Technology (NIST) Cybersecurity Framework (CSF).[306] The NIST CSF is designed to be scalable and adaptable to the needs and capabilities of companies both large and small, is well understood by industry, and is flexible.

263. The Commission also proposes not to require small and other entities to submit or file their cybersecurity risk management plans at a designated time each year. Instead, the Commission proposes that applicants and licensees submit cybersecurity management plans to the Commission upon request. Additionally, the Commission proposes that applicants and licensees must preserve data and records related to their cybersecurity risk management plans, including any information that is necessary to show how the cybersecurity risk management plan is implemented, for two years from the submission of the related risk management plan certification to the Commission.

264. In addition, the Commission highlights the availability of many free and low-cost resources to help small entities identify and implement best practices and improve their security over time without requiring small entities to hire outside experts. NIST publishes guidance that could assist organizations with measuring their safeguards, including how to address ransomware, malware, malicious code, spyware, distributed denial of service (DDoS) attacks, phishing, securing networks, and threats to mobile phones. CISA offers vulnerability scanning at no cost for critical infrastructure, which includes communications providers, and also provides CPG Assessment Training with regional cybersecurity experts that will help communications providers better understand CPGs and the cybersecurity risk assessment process. The Commission assumes that these resources, along with any number of other publicly available resources that the Commission has not specifically identified or that may arise in the future, will assist applicants' and licensees' employees and their existing technical contractors in identifying and implementing appropriate security controls without needing specialized cybersecurity expertise. Thus, the Commission believes its proposals to the submarine cable rules to protect national security and law enforcement interests as well as the Commission's streamlining proposals can be implemented by small entities without being overly burdensome.

265. To assist in the Commission's evaluation of the economic impact on small entities, as a result of actions that have been proposed in the *NPRM,* and to better explore options and alternatives, the Commission has sought comment from all interested parties. In particular, the Commission seeks comment on whether, and how, any of the burdens associated the filing, recordkeeping and reporting requirements described above and in the *NPRM* can be minimized for small entities. Additionally, the Commission seeks comment on whether the costs associated with the Commission's proposed requirements can be alleviated for small entities. The Commission expects to more fully consider the economic impact and alternatives for small entities following the review of comments filed in response to the *NPRM.*

F. Federal Rules That May Duplicate, Overlap, or Conflict With the Proposed Rules

266. None.

THREE-YEAR PERIODIC REPORTING PRIORITIZATION SCHEDULE

Category	Submarine cable name	Current license No.
1	Americas-1 Cable System	SCL–LIC–20190326–00009
1	Asia America Gateway (AAG)	SCL–LIC–20070824–00015

THREE-YEAR PERIODIC REPORTING PRIORITIZATION SCHEDULE—Continued

Category	Submarine cable name	Current license No.
1	FASTER Cable System	SCL–LIC–20150626–00015
1	Japan-U.S. Cable Network	SCL–MOD–20130227–00002
1	JUPITER	SCL–LIC–20180517–00012
1	New Cross-Pacific (NCP)	SCL–LIC–20151104–00029
1	PPC–1	SCL–MOD–20180803–00030
1	Trans-Pacific Express (TPE) Cable Network	SCL–MOD–20080714–00012
2	AmeriCan-1	SCL–MOD–19990901–00016
2	Apollo Cable	SCL–MOD–20020412–00031
2	Atisa	SCL–LIC–20160314–00008
2	Australia-Japan Cable	SCL–MOD–20020415–00050
2	Bahamas Internet Cable System (BICS)	SCL–MOD–20020925–00094
2	CFX–1 Cable System (CFX–1)	SCL–LIC–20070516–00008
2	Crosslake Fibre	SCL–LIC–20180216–00002
2	Gemini Bermuda System	SCL–LIC–20070925–00017
2	Global Caribbean Network (GCN)	SCL–MOD–20140923–00009
2	Japan-Guam-Australia (JGA) North System (JGA North)	SCL–LIC–20181106–00035
2	Japan-Guam-Australia (JGA) South System (JGA South)	SCL–LIC–20190502–00016
2	Honotua Cable System	SCL–MOD–20180410–00007
2	Monet Cable System	SCL–LIC–20150408–00008
2	Samoa American Samoa Cable System	SCL–LIC–20080814–00016
2	Seabras-1	SCL–LIC–20160115–00002
2	SMPR–1	SCL–LIC–20031209–00033
2	Southern Cross NEXT	SCL–LIC–20190809–00026
2	Telstra Endeavour	SCL–LIC–20070621–00009
2	TGN Atlantic	SCL–MOD–20060111–00001
2	TGN Pacific	SCL–MOD–20060111–00002
2	Unity Cable System	SCL–LIC–20080516–00010
3	AEConnect-1 Cable System	SCL–MOD–20210105–00001
3	América Móvil Submarine Cable System (AMX1)	SCL–LIC–20120330–00002
3	Americas II	SCL–MOD–20191202–00038
3	Amitié	SCL–LIC–20200807–00036
3	Antilles Crossing	SCL–LIC–20031125–00032
3	ARCOS–1	SCL–MOD–20020701–00056
3	Atlantic Crossing 1 (AC–1)	SCL–LIC–20230222–00005
3	BAHAMAS II	SCL–LIC–20220422–00016
3	BRUSA	SCL–LIC–20160330–00011
3	Columbus II	SCL–MOD–20210702–00030
3	Carnival Submarine Networks-1 (CSN–1)	SCL–LIC–20230921–00026
3	FLAG Atlantic-1	SCL–MOD–20040211–00006
3	GlobeNet	SCL–MOD–20121003–00012
3	GTT Atlantic Cable System	SCL–MOD–20020412–00023
3	Gulf of Mexico	SCL–LIC–20061115–00010
3	Havfrue	SCL–LIC–20180511–00010
3	Hawaii Interisland Cable System (HICS)	SCL–LIC–20240320–00009
3	Hawaii Island Fiber Network (HIFN)	SCL–LIC–20220111–00003
3	Hawaiki Cable System	SCL–LIC–20160906–00019
3	JUNO	SCL–LIC–20221208–00037
3	MAREA	SCL–LIC–20160525–00012
3	Maya-1	SCL–MOD–20110928–00028
3	Mid-Atlantic Crossing (MAC)	SCL–MOD–20020415–00035
3	MTC Interisland (MICS)	SCL–LIC–20211013–00048
3	Neutral Networks Laredo Cable	SCL–LIC–20210930–00042
3	Pacific Caribbean Cable System (PCCS)	SCL–LIC–20130122–00001
3	Pacific Crossing-1 (PC–1)	SCL–MOD–20020807–00086
3	Pan American Crossing (PAC)	SCL–MOD–20110524–00020
3	Paniolo Cable System	SCL–LIC–20070223–00003
3	Quintillion	SCL–LIC–20160325–00009
3	South America-1 (SAm-1)	SCL–MOD–20190826–00028
3	South American Crossing (SAC)	SCL–MOD–20150129–00002
3	Southeast Asia-US (SEA–US)	SCL–LIC–20150626–00016
3	Southern Cross 1&2	SCL–LIC–20231117–00038
3	Taino-Carib Cable System	SCL–LIC–20180702–00019
3	Yellow	SCL–MOD–20020415–00026
4	AKORN	SCL–LIC–20071025–00018
4	Airraq	SCL–MOD–20240515–00013
4	Alaska United Southeast (AU–SE)	SCL–MOD–20200708–00025
4	Alaska United West	SCL–LIC–20020522–00047
4	AU-Aleutian	SCL–MOD–20230803–00022
4	Cook Inlet Segment of TERRA–SW	SCL–LIC–20100914–00021
4	Curie	SCL–MOD–20191223–00039
4	Dunant	SCL–LIC–20190410–00015
4	Echo	SCL–LIC–20210329–00020

THREE-YEAR PERIODIC REPORTING PRIORITIZATION SCHEDULE—Continued

Category	Submarine cable name	Current license No.
4	Firmina	SCL–LIC–20220422–00015
4	GOKI Cable Network	SCL–LIC–20110329–00009
4	Grace Hopper	SCL–LIC–20210225–00014
4	HANTRU1	SCL–LIC–20090302–00005
4	KetchCan1 Submarine Fiber Cable System	SCL–LIC–20190718–00020
4	Kodiak-Kenai Fiber Link	SCL–LIC–20060413–00004
4	Pacific Light Cable Network (PLCN)	SCL–LIC–20200827–00038
4	St. Thomas-St. Croix	SCL–LIC–20220114–00004
4	St. Thomas-St. Croix Submarine Cable System	SCL–LIC–20121221–00015
4	VILink Cable	SCL–LIC–20180417–00008

List of Subjects

47 CFR Part 0

Authority delegations (Government agencies), Communications, Communications common carriers, Freedom of information, Organization and functions (Government agencies), Reporting and recordkeeping requirements, Telecommunications.

47 CFR Part 1

Administrative practice and procedure, Authority delegations (Government agencies), Communications, Communications common carriers, Communications equipment, internet, Organization and function (Government agencies), Penalties, Reporting and recordkeeping requirements, Security measures, Telecommunications.

47 CFR Part 43

Administrative practice and procedure, Authority delegations (Government agencies), Communications common carriers, Penalties, Reporting and recordkeeping requirements.

Federal Communications Commission.

Marlene Dortch,

Secretary.

Proposed Rules

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR parts 0, 1, and 43 as follows:

PART 0—COMMISSION ORGANIZATION

■ 1. The authority citation of part 0 continues to read as follows:

Authority: 47 U.S.C. 151, 154(i), 154(j), 155, 225, 409, and 1754, unless otherwise noted.

■ 2. Amend § 0.457 by adding paragraph (c)(1)(iv) to read as follows:

§ 0.457 Records not routinely available for public inspection.

* * * * *

(c) * * *

(1) * * *

(iv) The exact addresses and the specific geographic coordinates of cable landing stations, beach manholes, and other location information associated with submarine cables.

* * * * *

PART 1—PRACTICE AND PROCEDURE

■ 3. The authority citation of part 1 continues to read as follows:

Authority: 47 U.S.C. chs. 2, 5, 9, 13; 28 U.S.C. 2461 note; 47 U.S.C. 1754, unless otherwise noted.

§§ 1.767 and 1.768 [Removed]

■ 4. Remove §§ 1.767 and 1.768.

■ 5. Add subpart FF, consisting of §§ 1.70000 through 1.70019, to read as follows:

Subpart FF—Submarine Cable Landing Licenses

Sec.

§ 1.70000 Purpose.

The provisions contained in this subpart implement the Cable Landing License Act of 1921, codified at 47 U.S.C. 34–39, as amended, and section 5(a) of Executive Order 10530, dated May 10, 1954, and provide requirements for initial applications for a submarine cable landing license; certifications; routine conditions; requests for special temporary authority; foreign carrier affiliation notifications; amendment of applications; modification applications; substantial assignment and transfer of control of a submarine cable landing license; *pro forma* assignment and transfer of control notifications; requests for streamlining of applications; quarterly reports; three-year periodic reports; renewal applications; public viewing of applications; electronic filing; and denial, revocation, and termination of submarine cable landing license applications or licenses.

§ 1.70001 Definitions.

(a) *Affiliated.* The term *affiliated* as used in this subpart is defined as in § 63.09 of this chapter.

(b) *Country.* The term *country* as used in this subpart refers to the foreign points identified in the U.S. Department of State's list of Independent States of the World and its list of Dependencies and Areas of Special Sovereignty. *See https://www.state.gov.*

(c) *Foreign carrier.* The term *foreign carrier* as used in this subpart is defined as in § 63.09 of this chapter except that the term *foreign carrier* shall also include any entity that owns or controls a cable landing station in a foreign market.

(d) *Managed network service provider.* For purposes of this subpart, a *managed network service provider* (MNSP) is defined as any entity other than the applicant(s) or licensee(s) (*i.e.,* third party entity) with whom the applicant(s) or licensee(s) contracts to provide, supplement, or replace certain functions

for the U.S. portion of the submarine cable system (including any cable landing station and submarine line terminal equipment (SLTE) located in the United States) that require or may require access to the network, systems, or records of the applicant(s) or licensee(s).

§ 1.70002 General requirements.

(a) *Submarine cable landing license requirements.* A submarine cable landing license must be obtained prior to landing a submarine cable that connects:

(1) The continental United States with any foreign country;

(2) Alaska, Hawaii, or the U.S. Territories or possessions with a:

(i) Foreign country;

(ii) The continental United States; or

(iii) With each other; or

(3) Points within the continental United States, Alaska, Hawaii, or a Territory or possession in which the cable is laid in international waters.

(b) *Public interest standard.* An applicant seeking a submarine cable landing license or modification, assignment, transfer of control, or renewal or extension of a submarine cable landing license shall include in the application information demonstrating how the grant of the application will serve the public interest, convenience, and necessity.

(c) *Character qualifications.* An applicant seeking a submarine cable landing license or modification, assignment, transfer of control, or renewal or extension of a submarine cable landing license shall certify in the application that the applicant has the requisite character qualifications, including whether the applicant has violated the Cable Landing License Act of 1921, the Communications Act of 1934, or rules in this chapter, including making false statements or misrepresentations to the Commission; whether the applicant has been convicted of a felony; and whether there is an adjudicated determination that the applicant has violated U.S. antitrust or other competition laws, has been found to have engaged in fraudulent conduct before another government agency, or has engaged in other non-FCC misconduct the Commission has found to be relevant in assessing the character qualifications of a licensee or authorization holder.

(d) *State Department coordination.* Submarine cable licenses shall be granted or revoked by the Commission after obtaining the approval of the Secretary of State and such assistance from any executive department or establishment of the Government as the Commission may deem necessary. See section 5(a) of Executive Order 10530, dated May 10, 1954.

§ 1.70003 Applicant/licensee requirements.

Except as otherwise required by the Commission, the following entities, at a minimum, shall be applicants for, and licensees on, a cable landing license:

(a) Any entity that owns or controls a cable landing station in the United States; and

(b) All other entities owning or controlling a five percent (5%) or greater interest in the cable system and using the U.S. points of the cable system.

§ 1.70004 Presumption of entities not qualified to become a new submarine cable landing licensee.

The following entities shall be presumed to be unqualified to become a new submarine cable landing licensee.

(a) Any entity whose application for international authority pursuant to section 214 of the Communications Act of 1934, as amended (international section 214 authority), was previously denied or whose domestic or international section 214 authority was previously revoked, as identified in the Report and Order in IB Docket No. 23–119 [**Federal Register** publication date TBD], shall be presumed to be unqualified to become a new cable landing licensee.

(b) Any entity whose application (including an application for any authorization or license) is or was previously denied or whose authorization or license is or was previously revoked and/or terminated on national security and/or law enforcement grounds shall be presumed to be unqualified to become a new cable landing licensee.

(c) Current and future affiliates and subsidiaries, as defined in § 2.903(c) of this chapter, of identified entities pursuant to paragraphs (a) and (b) of this section.

§ 1.70005 Initial application for a submarine cable landing license.

An applicant must demonstrate in the initial application for a submarine cable landing license that they meet the requirements under § 1.70002(b) through (c), and the initial application must contain:

(a) The name, address, email address(es), and telephone number(s) of each applicant.

(b) The Government, State, or Territory under the laws of which each corporate or partnership applicant is organized.

(c) The name, title, address, email address(es), and telephone number of the officer and any other contact point, such as legal counsel, of each applicant to whom correspondence concerning the application is to be addressed.

(d) The name of the submarine cable system.

(e) A description of the submarine cable, including:

(1) The States, Territories, or possessions in the United States and the foreign countries where the cable will land;

(2) The number of segments in the submarine cable system and the designation of each (*e.g.,* Segment A, Main Trunk, A–B segment);

(3) The length of the submarine cable by segment and in total;

(4) The location, by segment, of any branching units;

(5) The address and county or county equivalent of each U.S. and non-U.S. cable landing station;

(6) The number of optical fiber pairs, by segment, of the submarine cable;

(7) The design capacity, by segment, of the submarine cable; and

(8) Anticipated time frame when the applicant(s) intends to place the submarine cable system into service).

(f)(1) A specific description of the submarine cable system, including a map and geographic data in generally accepted Geographic Information Systems (GIS) formats or other formats. The Office of International Affairs (OIA), in coordination with the Office of Economics and Analytics (OEA), shall determine the file formats and specific data fields in which data will ultimately be collected.

(2) The applicant initially may file a general geographic description of the landing points; however, grant of the application will be conditioned on the Commission's final approval of a more specific description of the landing points, including all information required by this paragraph, to be filed by the applicant no later than ninety (90) days prior to construction. The Commission will give public notice of the filing of this description, and grant of the license will be considered final if the Commission does not notify the applicant otherwise in writing no later than sixty (60) days after receipt of the specific description of the landing points, unless the Commission designates a different time period.

(g) A statement disclosing whether the applicant uses and/or will use foreign-owned MNSPs in the cable system. Such functions may include, but are not limited to: operations and management support; network operations and service monitoring, including intrusion testing; network performance, optimization, and reporting; installation and testing;

network audits, provisioning and development; and the implementation of changes and upgrades.

(h) A statement as to whether the cable will be operated on a common carrier or non-common carrier basis. Applicants for common carrier cable landing licenses shall also separately file an application for an international authorization pursuant to section 214 of the Communications Act of 1934, as amended, for overseas cable construction under § 63.18 of this chapter.

(i) A list of all of the proposed owners of the cable system including those owners that are not applicants, their respective equity and/or voting interests in the cable system as a whole, their respective equity and/or voting interests in each U.S. cable landing station including submarine line terminal equipment, and their respective equity and/or voting interests by segment of the cable.

(j) For each applicant:

(1) The information and certifications required in § 63.18(h), (o), and (q) of this chapter.

(2) A certification as to whether or not the applicant is, or is affiliated with, a foreign carrier, including an entity that owns or controls a cable landing station, in any foreign country. The certification shall state with specificity each such country.

(3) A certification as to whether or not the applicant seeks to land and operate a submarine cable connecting the United States to any country for which any of the following is true. The certification shall state with specificity the foreign carriers and each country:

(i) The applicant is a foreign carrier in that country; or

(ii) The applicant controls a foreign carrier in that country; or

(iii) There exists any entity that owns more than 25 percent of the applicant, or controls the applicant, or controls a foreign carrier in that country.

(iv) Two or more foreign carriers (or parties that control foreign carriers) own, in the aggregate, more than 25 percent of the applicant and are parties to, or the beneficiaries of, a contractual relation (*e.g.,* a joint venture or market alliance) affecting the provision or marketing of arrangements for the terms of acquisition, sale, lease, transfer and use of capacity on the cable in the United States.

(4) For any country that the applicant has listed in response to paragraph (j)(3) of this section that is not a member of the World Trade Organization, a demonstration as to whether the foreign carrier lacks market power with reference to the criteria in § 63.10(a) of this chapter.

(5) Under § 63.10(a) of this chapter, the Commission presumes, subject to rebuttal, that a foreign carrier lacks market power in a particular foreign country if the applicant demonstrates that the foreign carrier lacks 50 percent market share in international transport facilities or services, including cable landing station access and backhaul facilities, intercity facilities or services, and local access facilities or services on the foreign end of a particular route.

(k) The certifications in § 1.70006, including a certification that the applicant accepts and will abide by the routine conditions specified in § 1.70007(a);

(l) Each applicant shall provide the following information with respect to services it expects to provide through the submarine cable system:

(1) Identify and describe the capacity services and capacity management services, including the amount of fiber, spectrum, or capacity, by selling, leasing, or swapping;

(2) Identify the types of customers that will be served, including those with whom the applicant will lease, sell, share, or swap fiber, spectrum, or capacity;

(3) Identify whether the applicant will own or control the U.S. portion of the submarine cable system, including the cable landing station(s), through an Indefeasible Right of Use (IRU) or leasehold interest;

(4) Identify where the applicant expects to market, offer, and/or provide services; and

(5) Identify the general terms and conditions that will apply to the services, such as contact duration, minimum capacity/bandwidth requirements, IRU requirements, termination clauses, security requirements, delivery or Service Level Agreements (SLA) requirements, dispute resolution, and other applicable provisions.

(m) Each applicant shall demonstrate that it has successfully implemented an established set of cybersecurity best practices consistent with § 1.70006(c). The information provided under this paragraph (m) shall be treated as presumptively confidential. Applicants and licensees shall submit cybersecurity risk management plans to the Commission upon request. OIA, in coordination with the Public Safety and Homeland Security Bureau, may request, at its discretion, submission of such cybersecurity risk management plans and to evaluate them for compliance with the Commission's rules in this subpart.

(n) Any other information that may be necessary to enable the Commission to act on the application.

(o) Applicants for cable landing licenses may be subject to the consistency certification requirements of the Coastal Zone Management Act (CZMA), 16 U.S.C. 1456, if they propose to conduct activities, in or outside of a coastal zone of a state with a federally-approved management plan, affecting any land or water use or natural resource of that state's coastal zone.

(1) Before filing their applications for a license to construct and operate a submarine cable system or to modify the construction of a previously approved submarine cable system, applicants must determine whether they are required to certify that their proposed activities will comply with the enforceable policies of a coastal state's approved management program. In order to make this determination, applicants should consult National Oceanic Atmospheric Administration (NOAA) regulations, 15 CFR part 930, subpart D, and review the approved management programs of coastal states in the vicinity of the proposed landing station to verify that this type of application is not a listed Federal license activity requiring review.

(2) After the application is filed, applicants should follow the procedures specified in 15 CFR 930.54 to determine whether any potentially affected state has sought or received NOAA approval to review the application as an unlisted activity. If it is determined that any certification is required, applicants shall consult the affected coastal state(s) (or designated state agency(ies)) in determining the contents of any required consistency certification(s). Applicants may also consult the Office of Ocean and Coastal Management (OCRM) within NOAA for guidance.

(3) The cable landing license application filed with the Commission shall include any consistency certification required by 16 U.S.C. 1456(c)(3)(A) for any affected coastal state(s) that lists this type of application in its NOAA–approved coastal management program and shall be updated pursuant to § 1.65, to include any subsequently required consistency certification with respect to any state that has received NOAA approval to review the application as an unlisted Federal license activity. Upon documentation from the applicant—or notification from each coastal state entitled to review the license application for consistency with a federally approved coastal management program—that the state has either concurred, or by its inaction, is

conclusively presumed to have concurred with the applicant's consistency certification, the Commission may take action on the application.

§ 1.70006 Certifications.

All applicants for a submarine cable landing license, all licensees seeking modification of their license under § 1.70011, all licensees seeking renewal or extension of their license under § 1.70017, all assignees or transferees in transactions under § 1.70012 or § 1.70013, and all licensees providing periodic reporting under § 1.70016 must certify to the following:

(a) That the applicant/licensee accepts and will abide by the routine conditions specified in § 1.70007.

(b) That the applicant/licensee has the requisite character qualifications, including whether or not the applicant/licensee has violated the Cable Landing License Act of 1921, the Communications Act of 1934, or the rules in this chapter, including making false statements or misrepresentations to the Commission; whether the applicant/licensee has been convicted of a felony; and whether there is an adjudicated determination that the applicant/licensee has violated U.S. antitrust or other competition laws, has been found to have engaged in fraudulent conduct before another Government agency, or has engaged in other non-FCC misconduct the Commission has found to be relevant in assessing the character qualifications of a licensee or authorization holder.

(c) That the applicant/licensee has created, updated, and implemented cybersecurity risk management plans, and:

(1) That these plans identify the cybersecurity risks they face, the controls they use or plan to use to mitigate those risks, and how to ensure these controls are applied effectively to their organizations;

(2) That they will take reasonable measures to protect the confidentiality, integrity, and availability of their systems and services that could affect the provision of communications services, describing in the cybersecurity risk management plan how they will employ their organizational resources and processes to ensure this;

(3) That the cybersecurity risk management plan has been signed by the entity's Chief Executive Officer, Chief Financial Officer, Chief Technology Officer, or similarly situated senior officer responsible for governance of the organization's security practices;

(4) That they will submit cybersecurity risk management plans to the Commission upon request; and

(5) That they will preserve data and records related to their cybersecurity risk management plans for two years from submission of the risk management plan certification.

(d) That the applicant/licensee will not use covered equipment or services identified on the Commission's ''Covered List'' that the Commission maintains pursuant to the Secure and Trusted Communications Networks Act of 2019, 47 U.S.C. 1601–1609.

§ 1.70007 Routine conditions.

Except as otherwise ordered by the Commission, the following rules apply to each licensee of a cable landing license.

(a) Grant of the cable landing license is subject to:

(1) All rules and regulations of the Federal Communications Commission in this chapter;

(2) Any treaties or conventions relating to communications to which the United States is or may hereafter become a party; and

(3) Any action by the Commission or the Congress of the United States rescinding, changing, modifying or amending any rights accruing to any person by grant of the license.

(b) The location of the cable system within the territorial waters of the United States of America, its Territories and possessions, and upon its shores shall be in conformity with plans approved by the Secretary of the Army. The cable shall be moved or shifted by the licensee at its expense upon request of the Secretary of the Army, whenever he or she considers such course necessary in the public interest, for reasons of national defense, or for the maintenance and improvement of harbors for navigational purposes.

(c) The licensee shall at all times comply with any requirements of United States Government authorities regarding the location and concealment of the cable facilities, buildings, and apparatus for the purpose of protecting and safeguarding the cables from injury or destruction by enemies of the United States of America.

(d) The licensee, or any person or company controlling it, controlled by it, or under direct or indirect common control with it, does not enjoy and shall not acquire any right to handle traffic to or from the United States, its Territories or its possessions unless such service is authorized by the Commission pursuant to section 214 of the Communications Act, as amended.

(e)(1) The licensee shall be prohibited from agreeing to accept special concessions directly or indirectly from any foreign carrier, including any entity that owns or controls a foreign cable landing station, where the foreign carrier possesses sufficient market power on the foreign end of the route to affect competition adversely in the U.S. market, and from agreeing to accept special concessions in the future.

(2) For purposes of this section, a special concession is defined as an exclusive arrangement involving services, facilities, or functions on the foreign end of a U.S. international route that are necessary to land, connect, or operate submarine cables, where the arrangement is not offered to similarly situated U.S. submarine cable owners, indefeasible-right-of-user holders, or lessors, and includes arrangements for the terms for acquisition, resale, lease, transfer and use of capacity on the cable; access to collocation space; the opportunity to provide or obtain backhaul capacity; access to technical network information; and interconnection to the public switched telecommunications network.

(f) The cable landing license and rights granted in the license shall not be transferred, assigned, or disposed of, or disposed of indirectly by transfer of control of the licensee, except in compliance with the requirements set out in §§ 1.70012 and 1.70013.

(g) Entities that are parties to a pro forma assignment or transfer of control notification must notify the Commission no later than thirty (30) days after the assignment or transfer of control is consummated, and the notification must include information and certifications required under § 1.70013.

(h) Unless the licensee has notified the Commission in the application of the precise locations at which the cable will land, as required by § 1.70005(f), the licensee shall notify the Commission no later than ninety (90) days prior to commencing construction at that landing location. The Commission will give public notice of the filing of each description, and grant of the cable landing license will be considered final with respect to that landing location unless the Commission issues a notice to the contrary no later than sixty (60) days after receipt of the specific description. See § 1.70005(f).

(i) The Commission reserves the right to require the licensee to file an environmental assessment should it determine that the landing of the cable at the specific locations and construction of necessary cable landing stations may significantly affect the environment within the meaning of

§ 1.1307, implementing the National Environmental Policy Act of 1969. See § 1.1307(a) and (b). The cable landing license is subject to modification by the Commission under its review of any environmental assessment or environmental impact statement that it may require pursuant to its rules. See also note 1 to § 1.1306 and § 1.1307(c) and (d).

(j) The Commission reserves the right, pursuant to section 2 of the Cable Landing License Act, 47 U.S.C. 35, Executive Order 10530 as amended, and section 214 of the Communications Act of 1934, as amended, 47 U.S.C. 214, to impose common carrier regulation or other regulation consistent with the Cable Landing License Act on the operations of the cable system if it finds that the public interest so requires.

(k) The licensee, or in the case of multiple licensees, the licensees collectively, shall maintain de jure and de facto control of the U.S. portion of the cable system, including the cable landing stations in the United States, sufficient to comply with the requirements of the Commission's rules and any specific conditions of the license.

(l) The licensee shall comply with the requirements of § 1.70009.

(m) The licensee shall file annual international circuit capacity reports as required by § 43.82 of this chapter.

(n) The cable landing license is revocable or subject to termination by the Commission after due notice and opportunity for hearing for reasons set forth in section 2 of the Cable Landing License Act, 47 U.S.C. 35, or for failure to comply with the terms of the license or with this chapter.

(o) The cable landing license shall expire twenty-five (25) years from the in-service date, unless renewed or extended upon proper application. Upon expiration, all rights granted under the license shall be terminated.

(p) The licensee(s) must commence service provided under its license within three years following the grant of its license.

(1) The licensee must notify the Commission within thirty (30) days of the date the cable is placed into service.

(2) Failure to notify the Commission of commencement of service within three years following the grant of the license shall result in automatic cancellation of the license, unless the licensee can show good cause why it is unable to commence commercial service on the cable.

(q) Licensees shall file submarine cable outage reports as required in part 4 of this chapter.

(r) Each licensee shall notify the Commission of any changes to the following within thirty (30) days:

(1) The contact information of the licensee provided under § 1.70005(a) and (c); and,

(2) The name of the licensee (including the name under which the licensee is doing business) (a change in the form of the business, *e.g.,* from a corporation to limited liability company, is a *pro forma* assignment and the Commission should be notified of such change pursuant to § 1.70013).

(s) The licensee(s) shall notify the Commission of any changes to the following within thirty (30) days the name of the licensed submarine cable system. Joint licensees may appoint one party to act as proxy for purposes of complying with this paragraph (s).

(t) The licensee(s) will not use covered equipment or services identified on the Commission's ''Covered List'' that the Commission maintains pursuant to the Secure and Trusted Communications Networks Act of 2019, 47 U.S.C. 1601–1609.

(u) The licensee(s) shall submit periodic reports every three years consistent with the requirements under § 1.70016. Joint licensees may appoint one party to act as proxy for purposes of complying with this paragraph (u).

§ 1.70008 Requests for special temporary authority.

(a) Special temporary authority may be used for construction, testing, or operation of a submarine cable service for a term up to and including 180 days.

(b) Applicants seeking special temporary authority must file all requisite applications related to the request for special temporary authority. Applicants must identify the file number(s) of any pending application(s) associated with the request for special temporary authority.

(c) An application for special temporary authority must include:

(1) A narrative describing the request for a special temporary authority including the type of request (*e.g.,* new request, extension or renewal of previous request, or other), purpose for the special temporary authority (construction, testing, operating, or other), and the justification for such request;

(2) Information required by § 1.70005(a) through (c), (d), (g);

(3) Whether or not the request for special temporary authority is associated with an application(s) pending with the Commission, and if so, identification of the related file number(s);

(4) The date by which applicants seek grant of the request for special temporary authority; and

(5) Any other information that may be necessary to enable the Commission to act on the application.

§ 1.70009 Notification by and prior approval for submarine cable landing licensees that are or propose to become affiliated with a foreign carrier.

Any entity that is licensed by the Commission (''licensee'') to land or operate a submarine cable landing in a particular foreign destination market that becomes, or seeks to become, affiliated with a foreign carrier that is authorized to operate in that market, including an entity that owns or controls a cable landing station in that market, shall notify the Commission of that affiliation.

(a) *Affiliations requiring prior notification.* Except as provided in paragraph (b) of this section, the licensee must notify the Commission, pursuant to this section, forty-five (45) days before consummation of either of the following types of transactions:

(1) Acquisition by the licensee, or by any entity that controls the licensee, or by any entity that directly or indirectly owns more than twenty-five percent (25%) of the capital stock of the licensee, of a controlling interest in a foreign carrier that is authorized to operate in a market where the cable lands; or

(2) Acquisition of a direct or indirect interest greater than twenty-five percent (25%), or of a controlling interest, in the capital stock of the licensee by a foreign carrier that is authorized to operate in a market where the cable lands, or by an entity that controls such a foreign carrier.

(b) *Exceptions.* (1) Notwithstanding paragraph (a) of this section, the notification required by this section need not be filed before consummation, and may instead by filed pursuant to paragraph (c) of this section, if either of the following is true with respect to the named foreign carrier, regardless of whether the destination market where the cable lands is a World Trade Organization (WTO) or non-WTO Member:

(i) The Commission has previously determined in an adjudication that the foreign carrier lacks market power in that destination market (for example, in an application for international authority pursuant to section 214 of the Communications Act of 1934 or a declaratory ruling proceeding); or

(ii) The foreign carrier owns no facilities in that destination market. For this purpose, a carrier is said to own

facilities if it holds an ownership, indefeasible-right-of-user, or leasehold interest in a cable landing station or in bare capacity in international or domestic telecommunications facilities (excluding switches).

(2) In the event paragraph (b)(1) of this section cannot be satisfied, notwithstanding paragraph (a) of this section, the notification required by this section need not be filed before consummation, and may instead be filed pursuant to paragraph (c) of this section, if the licensee certifies that the destination market where the cable lands is a WTO Member and provides certification to satisfy either of the following:

(i) The licensee demonstrates that its foreign carrier affiliate lacks market power in the cable's destination market pursuant to § 63.10(a)(3) of this chapter (see § 63.10(a)(3) of this chapter); or

(ii) The licensee agrees to comply with the reporting requirements contained in § 1.70015 effective upon the acquisition of the affiliation. See § 1.70015.

(c) *Notification after consummation.* Any licensee that becomes affiliated with a foreign carrier and has not previously notified the Commission pursuant to the requirements of this section shall notify the Commission within thirty (30) days after consummation of the acquisition.

Example 1 to paragraph (c). Acquisition by a licensee (or by any entity that directly or indirectly controls, is controlled by, or is under direct or indirect common control with the licensee) of a direct or indirect interest in a foreign carrier that is greater than twenty-five percent (25%) but not controlling is subject to paragraph (c) of this section but not to paragraph (a) of this section.

Example 2 to paragraph (c). Notification of an acquisition by a licensee of a hundred percent (100%) interest in a foreign carrier may be made after consummation, pursuant to paragraph (c) of this section, if the foreign carrier operates only as a resale carrier.

Example 3 to paragraph (c). Notification of an acquisition by a foreign carrier from a WTO Member of a greater than twenty-five percent (25%) interest in the capital stock of the licensee may be made after consummation, pursuant to paragraph (c) of this section, if the licensee demonstrates in the post-notification that the foreign carrier lacks market power in the cable's destination market or the licensee agrees to comply with the reporting requirements contained in § 1.767(l) effective upon the acquisition of the affiliation.

(d) *Cross-reference.* In the event a transaction requiring a foreign carrier notification pursuant to this section also requires a transfer of control or assignment application pursuant to the requirements of the license granted under § 1.70007(f) through (g), § 1.70012, or § 1.70013, the foreign carrier notification shall reference in the notification the transfer of control or assignment application and the date of its filing. See § 1.70007.

(e) *Contents of notification.* The notification shall certify the following information:

(1) The name of the newly affiliated foreign carrier and the country or countries at the foreign end of the cable in which it is authorized to provide telecommunications services to the public or where it owns or controls a cable landing station.

(2) Which, if any, of those countries is a Member of the World Trade Organization.

(3) The name of the cable system that is the subject of the notification, and the FCC file number(s) under which the license was granted.

(4) The name, address, citizenship, and principal business of any person or entity that directly or indirectly owns ten percent or more of the equity interests and/or voting interests, or a controlling interest, of the licensee, and the percentage of equity and/or voting interest owned by each of those entities (to the nearest one percent). Where no individual or entity directly or indirectly owns ten percent or more of the equity interests and/or voting interests, or a controlling interest, of the licensee, a statement to that effect.

(i) *Calculation of equity interests held indirectly in the licensee.* Equity interests that are held by an individual or entity indirectly through one or more intervening entities shall be calculated by successive multiplication of the equity percentages for each link in the vertical ownership chain, regardless of whether any particular link in the chain represents a controlling interest in the company positioned in the next lower tier. Example: An entity holds a non-controlling 30 percent equity and voting interest in Corporation A which, in turn, holds a non-controlling 40 percent equity and voting interest in the licensee. The entity's equity interest in the licensee would be calculated by multiplying the individual's equity interest in Corporation A by that entity's equity interest in the licensee. The entity's equity interest in the licensee would be calculated as 12 percent (30% × 40% = 12%). The result would be the same even if Corporation A held a de facto controlling interest in the licensee.

(ii) *Calculation of voting interests held indirectly in the licensee.* Voting interests that are held through one or more intervening entities shall be calculated by successive multiplication of the voting percentages for each link in the vertical ownership chain, except that wherever the voting interest for any link in the chain is equal to or exceeds 50 percent or represents actual control, it shall be treated as if it were a 100 percent interest. A general partner shall be deemed to hold the same voting interest as the partnership holds in the company situated in the next lower tier of the vertical ownership chain. A partner of a limited partnership (other than a general partner) shall be deemed to hold a voting interest in the partnership that is equal to the partner's equity interest. Example: An entity holds a non-controlling 30 percent equity and voting interest in Corporation A which, in turn, holds a controlling 70 percent equity and voting interest in the licensee. Because Corporation A's 70 percent voting interest in the licensee constitutes a controlling interest, it is treated as a 100 percent interest. The entity's 30 percent voting interest in Corporation A would flow through in its entirety to the licensee and thus be calculated as 30 percent (30% × 100% = 30%).

(5) An ownership diagram that illustrates the licensee's vertical ownership structure, including the direct and indirect ownership (equity and voting) interests held by the individuals and entities named in response to paragraph (e)(4) of this section. Every individual or entity with ownership shall be depicted and all controlling interests must be identified.

(6) The name of any interlocking directorates, as defined in § 63.09(g) of this chapter, with each foreign carrier named in the notification. See § 63.09(g) of this chapter.

(7) With respect to each foreign carrier named in the notification, a statement as to whether the notification is subject to paragraph (a) or (c) of this section. In the case of a notification subject to paragraph (a) of this section, the licensee shall include the projected date of closing. In the case of a notification subject to paragraph (c) of this section, the licensee shall include the actual date of closing.

(8) If a licensee relies on an exception in paragraph (b) of this section, then a certification as to which exception the foreign carrier satisfies and a citation to any adjudication upon which the licensee is relying. Licensees relying upon the exceptions in paragraph (b)(2)

of this section must make the required certified demonstration in paragraph (b)(2)(i) of this section or the certified commitment to comply with the reporting requirements in paragraph (b)(2)(ii) of this section in the notification required by paragraph (c) of this section.

(f) *Exemptions.* If the licensee seeks exemption from the reporting requirements contained in § 1.70015, the licensee should demonstrate that each foreign carrier affiliate named in the notification lacks market power pursuant to § 63.10(a)(3) of this chapter. See § 63.10(a)(3) of this chapter.

(g) *Procedure.* After the Commission issues a public notice of the submissions made under this section, interested parties may file comments within fourteen (14) days of the public notice.

(1) If the Commission deems it necessary at any time before or after the deadline for submission of public comments, the Commission may impose reporting requirements on the licensee based on the provisions of § 1.70015. See § 1.70015.

(2) In the case of a prior notification filed pursuant to paragraph (a) of this section, the authorized U.S. licensee must demonstrate that it continues to serve the public interest for it to retain its interest in the cable landing license for that segment of the cable that lands in the non-WTO destination market. Such a showing shall include a demonstration as to whether the foreign carrier lacks market power in the non-WTO destination market with reference to the criteria in § 63.10(a) of this chapter. In addition, upon request of the Commission, the licensee shall provide the information specified in § 1.70005(j). If the licensee is unable to make the required showing or is notified by the Commission that the affiliation may otherwise harm the public interest pursuant to the Commission's policies and rules under 47 U.S.C. 34 through 39 and Executive Order 10530, dated May 10, 1954, then the Commission may impose conditions necessary to address any public interest harms or may proceed to an immediate authorization revocation hearing.

(3) Under § 63.10(a) of this chapter, the Commission presumes, subject to rebuttal, that a foreign carrier lacks market power in a particular foreign country if the applicant demonstrates that the foreign carrier lacks 50 percent market share in international transport facilities or services, including cable landing station access and backhaul facilities, intercity facilities or services, and local access facilities or services on the foreign end of a particular route.

(h) *Continuing accuracy.* All licensees are responsible for the continuing accuracy of information provided pursuant to this section for a period of forty-five (45) days after filing. During this period if the information furnished is no longer accurate, the licensee shall as promptly as possible, and in any event within ten (10) days, unless good cause is shown, file with the Commission a corrected notification referencing the FCC file numbers under which the original notification was provided.

(i) *Confidential treatment.* A licensee that files a prior notification pursuant to paragraph (a) of this section may request confidential treatment of its filing, pursuant to § 0.459 of this chapter, for the first twenty (20) days after filing.

(j) *Electronic filing.* Subject to the availability of electronic forms, all notifications described in this section must be filed electronically through the International Communications Filing System (ICFS). A list of forms that are available for electronic filing can be found on the ICFS homepage. For information on electronic filing requirements, see §§ 1.1000 through 1.10018 and the ICFS homepage at *https://www.fcc.gov/icfs.* See also §§ 63.20 and 63.53 of this chapter.

§ 1.70010 Amendment of applications.

Any application may be amended as a matter of right prior to the date of any final action taken by the Commission or designation for hearing. Amendments to applications shall be signed and submitted in the same manner as was the original application. If a petition to deny or other formal objection has been filed in response to the application, the amendment shall be served on the parties.

§ 1.70011 Modification applications.

A separate application shall be filed with respect to each individual cable system for which a licensee(s) seeks to modify the cable landing license. Each modification application shall include a narrative description of the proposed modification including relevant facts and circumstances leading to the request. Each modification application must contain a demonstration that the applicant meets the requirements under § 1.70002(b) through (c). Requirements for specific types of modification requests are set out in paragraphs (a) through (e) of this section. For other situations, the licensee(s) should contact Commission staff regarding the required information for the modification application.

(a) A modification application to add a landing station(s), segment(s), or other like material changes to a submarine cable system must also include the following:

(1) Information as required by § 1.70005(a) through (i), (k), and (m), as it relates to the modified portion of the cable system.

(2) Each applicant shall provide the following information with respect to services it currently provides and/or expects to provide through the submarine cable system:

(i) Identify and describe the capacity services and capacity management services, including the amount of fiber, spectrum, or capacity by selling, leasing, or swapping;

(ii) Identify the types of customers that currently are and/or will be served, including those with whom the applicant leases, sells, shares, or swaps fiber, spectrum, or capacity and/or plans to lease, sell, share, or swap fiber, spectrum, or capacity;

(iii) Identify whether the applicant currently owns or controls and/or will own or control the U.S. portion of the submarine cable system, including the cable landing station(s), through an Indefeasible Right of Use (IRU) or leasehold interest;

(iv) Identify where the applicant currently markets, offers, and provides services and/or expects to market, offer, and provide services; and

(v) Identify the general terms and conditions that currently apply and/or will apply to the services, such as contact duration, minimum capacity/bandwidth requirements, IRU requirements, termination clauses, security requirements, delivery or Service Level Agreement (SLA) requirements, dispute resolution, and other applicable provisions.

(3) Certifications set forth under § 1.70006.

(4) Any other information that may be necessary to enable the Commission to act on the application.

(5) Signatures by each licensee. Joint licensees may appoint one party to act as proxy for purposes of complying with this paragraph (a)(5).

(b) A modification application to remove a landing station(s), segment(s), or other like material changes to a submarine cable system must also include the following:

(1) A description of which elements will be removed from the cable system and the timing for the removal or that element(s).

(2) Information as required by § 1.70005(a) through (i), (k), and (m).

(3) Each applicant shall provide the following information with respect to services it currently provides and/or

expects to provide through the submarine cable system:

(i) Identify and describe the capacity services and capacity management services, including the amount of fiber, spectrum, or capacity by selling, leasing, or swapping;

(ii) Identify the types of customers that currently are and/or will be served, including those with whom the applicant leases, sells, shares, or swaps fiber, spectrum, or capacity and/or plans to lease, sell, share, or swap fiber, spectrum, or capacity;

(iii) Identify whether the applicant currently owns or controls and/or will own or control the U.S. portion of the submarine cable system, including the cable landing station(s), through an IRU or leasehold interest;

(iv) Identify where the applicant currently markets, offers, and provides services and/or expects to market, offer, and provide services; and

(v) Identify the general terms and conditions that currently apply and/or will apply to the services, such as contact duration, minimum capacity/bandwidth requirements, IRU requirements, termination clauses, security requirements, delivery or SLA requirements, dispute resolution, and other applicable provisions.

(4) Certifications set forth under § 1.70006.

(5) Any other information that may be necessary to enable the Commission to act on the application.

(6) Signatures by each licensee. Joint licensees may appoint one party to act as proxy for purposes of complying with this paragraph (b)(6).

(c) A modification application to add an applicant as a licensee for an existing cable landing license must also include the following:

(1) Information required by § 1.70005(a) through (c), (g), (j), (k), and (m) for the proposed new licensee.

(2) Information required by § 1.70005(d) through (f).

(3) The proposed new licensee shall provide the following information with respect to services it currently provides and/or expects to provide through the submarine cable system:

(i) Identify and describe the capacity services and capacity management services, including the amount of fiber, spectrum, or capacity by selling, leasing, or swapping;

(ii) Identify the types of customers that currently are and/or will be served, including those with whom the applicant leases, sells, shares, or swaps fiber, spectrum, or capacity and/or plans to lease, sell, share, or swap fiber, spectrum, or capacity;

(iii) Identify whether the applicant currently owns or controls and/or will own or control the U.S. portion of the submarine cable system, including the cable landing station(s), through an IRU or leasehold interest;

(iv) Identify where the applicant currently markets, offers, and provides services and/or expects to market, offer, and provide services; and

(v) Identify the general terms and conditions that currently apply and/or will apply to the services, such as contact duration, minimum capacity/bandwidth requirements, IRU requirements, termination clauses, security requirements, delivery or SLA requirements, dispute resolution, and other applicable provisions.

(2) Certifications set forth under § 1.70006 for the proposed new licensee.

(3) Any other information that may be necessary to enable the Commission to act on the application.

(4) Signatures by the proposed licensee and each current licensee. Joint licensees may appoint one party to act as proxy for purposes of complying with this paragraph (c)(4).

(d) A modification application for a licensee that seeks to relinquish its interest in a cable landing license must also include:

(1) Information required by § 1.70005(a) through (c) for the licensee that seeks to relinquish its interest;

(2) A demonstration that the entity is not required to be a licensee under § 1.70003 and that the remaining licensee(s) will retain collectively *de jure* and *de facto* control of the U.S. portion of the cable system sufficient to comply with the requirements of the Commission's rules and any specific conditions of the license;

(3) A signature from the licensee that seeks to relinquish its interest;

(4) Any other information that may be necessary to enable the Commission to act on the application; and

(5) Such application must be served on each other licensee of the cable system.

(e) A modification application to add, remove, or change a condition on an existing cable landing license must also include the following:

(1) Information required by § 1.70005(a) through (c), (g), (j), (k), and (m) for the licensee(s) that seeks to add, remove, or change a condition.

(2) Information required by § 1.70005(d) through (f).

(3) Each applicant shall provide the following information with respect to services it currently provides and/or expects to provide through the submarine cable system:

(i) Identify and describe the capacity services and capacity management services, including the amount of fiber, spectrum, or capacity by selling, leasing, or swapping;

(ii) Identify the types of customers that currently are and/or will be served, including those with whom the applicant leases, sells, shares, or swaps fiber, spectrum, or capacity and/or plans to lease, sell, share, or swap fiber, spectrum, or capacity;

(iii) Identify whether the applicant currently owns or controls and/or will own or control the U.S. portion of the submarine cable system, including the cable landing station(s), through an IRU or leasehold interest;

(iv) Identify where the applicant currently markets, offers, and provides services and/or expects to market, offer, and provide services; and

(v) Identify the general terms and conditions that currently apply and/or will apply to the services, such as contact duration, minimum capacity/bandwidth requirements, IRU requirements, termination clauses, security requirements, delivery or SLA requirements, dispute resolution, and other applicable provisions.

(4) Certifications set forth under § 1.70006.

(5) A signature from the licensee that seeks to add, remove, or change a condition.

(6) Any other information that may be necessary to enable the Commission to act on the application.

§ 1.70012 Substantial assignment or transfer of control applications.

(a) Each application for authority to assign or transfer control of an interest in a cable system shall contain a demonstration that the requirements under § 1.70002(b) through (c) are met.

(b) An application for authority to assign or transfer control of an interest in a cable system shall contain a narrative description of the proposed transaction, including relevant facts and circumstances, and that the applicant meets the requirements of § 1.70002(b) through (c). The application shall also include the following information:

(1) The information requested in § 1.70005(a) through (c) for both the assignor/transferor and the assignee/transferee.

(2) The information requested in § 1.70005(j) and (k) for the assignee/transferee.

(3) The pre-transaction and post-transaction ownership diagram of the licensee as required under § 1.70005(j)(1).

(4) A narrative describing the means by which the assignment or transfer of control will take place.

(5) The information required in § 1.70005(e) through (f).

(6) The application shall also specify, on a segment specific basis, the percentage of voting and ownership interests being assigned or transferred in the cable system, including in the U.S. portion of the cable system (which includes all U.S. cable landing station(s)).

(7) Each assignee or licensee that is the subject of a transfer of control shall provide the following information with respect to services it currently provides and/or expects to provide through the submarine cable system:

(i) Identify and describe the capacity services and capacity management services, including the amount of fiber, spectrum, or capacity by selling, leasing, or swapping;

(ii) Identify the types of customers that currently are and/or will be served, including those with whom the applicant leases, sells, shares, or swaps fiber, spectrum, or capacity and/or plans to lease, sell, share, or swap fiber, spectrum, or capacity;

(iii) Identify whether the applicant currently owns or controls and/or will own or control the U.S. portion of the submarine cable system, including the cable landing station(s), through an Indefeasible Right of Use (IRU) or leasehold interest;

(iv) Identify where the applicant currently markets, offers, and provides services and/or expects to market, offer, and provide services; and

(v) Identify the general terms and conditions that currently apply and/or will apply to the services, such as contact duration, minimum capacity/bandwidth requirements, IRU requirements, termination clauses, security requirements, delivery or Service Level Agreement (SLA) requirements, dispute resolution, and other applicable provisions.

(8) Information as required by § 1.70005(g) and (m) for each assignee or licensee that is the subject of a transfer of control.

(9) In the event the transaction requiring an assignment or transfer of control application also requires the filing of a foreign carrier affiliation notification pursuant to § 1.70009, the application shall reference the foreign carrier affiliation notification and the date of its filing. See § 1.70009.

(10) The Commission reserves the right to request additional information concerning the transaction to aid it in making its public interest determination.

(11) An assignee or transferee must notify the Commission no later than thirty (30) days after either consummation of the assignment or transfer or a decision not to consummate the assignment or transfer. The notification shall identify the file numbers under which the initial license and the authorization of the assignment or transfer were granted.

(12) Certifications set forth under § 1.70006.

§ 1.70013 Pro forma assignment and transfer of control notifications.

(a) A *pro forma* assignee or a licensee that is the subject of a *pro forma* transfer of control of a cable landing license is not required to seek prior approval for the *pro forma* transaction. A *pro forma* assignee or licensee that is the subject of a *pro forma* transfer of control must notify the Commission no later than thirty (30) days after the assignment or transfer of control is consummated.

(b) Assignments or transfers of control that do not result in a change in the actual controlling party are considered non-substantial or *pro forma.* Whether there has been a change in the actual controlling party must be determined on a case-by-case basis with reference to the factors listed in note 1 to § 63.24(d) of this chapter. The types of transactions listed in note 2 to § 63.24(d) of this chapter shall be considered presumptively *pro forma* and prior approval from the Commission need not be sought. A notification of a *pro forma* assignment or transfer of control shall include the following information:

(1) The information requested in § 1.70005(a) through (c) for both the assignor/transferor and the assignee/transferee.

(2) The information requested in § 1.70005(j) and (k) for the assignee/transferee.

(3) The pre-transaction and post-transaction ownership diagram of the licensee as required under § 1.70005(j).

(4) A narrative describing the means by which the assignment or transfer of control occurred.

(5) The information required in § 1.70005(e) through (f).

(6) The application shall also specify, on a segment specific basis, the percentage of voting and ownership interests being assigned or transferred in the cable system, including in the U.S. portion of the cable system (which includes all U.S. cable landing station(s)).

(7) The notification must certify that the assignment or transfer of control was *pro forma,* as defined in paragraph (a) of this section, and, together with all previous *pro forma* transactions, does not result in a change of the licensee's ultimate control.

(8) Each assignee or licensee that is the subject of a transfer of control shall provide the following information with respect to services it currently provides and/or expects to provide through the submarine cable system:

(i) Identify and describe the capacity services and capacity management services, including the amount of fiber, spectrum, or capacity by selling, leasing, or swapping;

(ii) Identify the types of customers that currently are and/or will be served, including those with whom the applicant leases, sells, shares, or swaps fiber, spectrum, or capacity and/or plans to lease, sell, share, or swap fiber, spectrum, or capacity;

(iii) Identify whether the applicant currently owns or controls and/or will own or control the U.S. portion of the submarine cable system, including the cable landing station(s), through an Indefeasible Right of Use (IRU) or leasehold interest;

(iv) Identify where the applicant currently markets, offers, and provides services and/or expects to market, offer, and provide services; and

(v) Identify the general terms and conditions that currently apply and/or will apply to the services, such as contact duration, minimum capacity/bandwidth requirements, IRU requirements, termination clauses, security requirements, delivery or Service Level Agreement (SLA) requirements, dispute resolution, and other applicable provisions.

(9) Information as required by § 1.70005(g) and (m) for each assignee or licensee that is the subject of a transfer of control.

(10) The licensee may file a single notification for an assignment or transfer of control of multiple licenses issued in the name of the licensee if each license is identified by the file number under which it was granted.

(11) The Commission reserves the right to request additional information concerning the transaction to aid it in making its public interest determination.

(12) Certifications set forth under § 1.70006.

§ 1.70014 Processing of applications and requests for streamlining.

(a) *Processing of submarine cable applications.* The Commission will take action upon an application eligible for streamlined processing, as specified in paragraph (c) of this section, within forty-five (45) days after release of the public notice announcing the application as acceptable for filing and eligible for streamlined processing. If the Commission deems an application seeking streamlined processing acceptable for filing but ineligible for streamlined processing, or if an

applicant does not seek streamlined processing, the Commission will issue public notice indicating that the application is ineligible for streamlined processing. Within ninety (90) days of the public notice, the Commission will take action upon the application or provide public notice that, because the application raises questions of extraordinary complexity, an additional 90-day period for review is needed. Each successive 90-day period may be so extended.

(b) *Submission of application to executive branch agencies.* On the date of filing with the Commission, the applicant shall also send a complete copy of the application, or any major amendments or other material filings regarding the application, to: U.S. Coordinator, EB/CIP, U.S. Department of State, 2201 C Street NW, Washington, DC 20520–5818; Office of Chief Counsel/NTIA, U.S. Department of Commerce, 14th St. and Constitution Ave. NW, Washington, DC 20230; and Defense Information Systems Agency, ATTN: GC/DO1, 6910 Cooper Avenue, Fort Meade, MD 20755–7088, and shall certify such service on a service list attached to the application or other filing.

(c) *Eligibility for streamlining.* Each applicant must demonstrate eligibility for streamlining by:

(1) Certifying that it is not a foreign carrier and it is not affiliated with a foreign carrier in any of the cable's destination markets;

(2) Demonstrating pursuant to § 63.12(c)(l)(i) through (iii) of this chapter that any such foreign carrier or affiliated foreign carrier lacks market power; or

(3) Certifying that the destination market where the applicant is, or has an affiliation with, a foreign carrier is a World Trade Organization (WTO) Member and the applicant agrees to accept and abide by the reporting requirements set out in § 1.70015. An application that includes an applicant that is, or is affiliated with, a carrier with market power in a cable's non-WTO Member destination country is not eligible for streamlining.

(4) Certifying that for applications for a license to construct and operate a submarine cable system or to modify the construction of a previously approved submarine cable system the applicant is not required to submit a consistency certification to any state pursuant to section 1456(c)(3)(A) of the Coastal Zone Management Act (CZMA), 16 U.S.C. 1456.

(5) Certifying that all individuals or entities that hold a five percent or greater direct or indirect equity and/or voting interests, or a controlling interest, in the applicant are U.S. citizens or entities organized in the United States.

(d) *Applicability.* Streamlining of cable landing license applications will be limited to those applications where all potentially affected states, having constructive notice that the application was filed with the Commission, have waived, or are deemed to have waived, any right under section 1456(c)(3)(A) of the CZMA to review the application within the thirty-day period prescribed by 15 CFR 930.54.

§ 1.70015 Quarterly reports.

Reporting requirements applicable to licensees affiliated with a carrier with market power in a cable's destination market. Any licensee that is, or is affiliated with, a carrier with market power in any of the cable's destination countries must comply with the following requirements:

(a) File quarterly reports summarizing the provisioning and maintenance of all network facilities and services procured from the licensee's affiliate in that destination market, within ninety (90) days from the end of each calendar quarter. These reports shall contain the following:

(1) The types of facilities and services provided (for example, a lease of wet link capacity in the cable, collocation of licensee's equipment in the cable station with the ability to provide backhaul, or cable station and backhaul services provided to the licensee);

(2) For provisioned facilities and services, the volume or quantity provisioned, and the time interval between order and delivery; and

(3) The number of outages and intervals between fault report and facility or service restoration; and

(b) File quarterly, within 90 days from the end of each calendar quarter, a report of its active and idle 64 kbps or equivalent circuits by facility (terrestrial, satellite and submarine cable).

§ 1.70016 Three-year periodic reporting.

(a) *Periodic reporting.* Licensees shall file every three years a periodic report in the relevant File Number in the Commission's International Communications Filing System (ICFS), or any successor system. Joint licensees of a particular submarine cable system must submit one joint periodic reporting filing per submarine cable system.

(b) *Contents.* The periodic report shall include all information that has changed since an application for the cable landing license or any modification, assignment, transfer of control, or renewal or extension of the license or the last periodic report, whichever is most recent, filed with the Commission. Licensees shall include information that is current as of thirty (30) days prior to the filing deadline, as follows:

(1) The information as required by in § 1.70005(a) through (g) and (m).

(2) Each licensee shall provide the following information with respect to services it currently provides and/or expects to provide through the submarine cable system:

(i) Identify and describe the capacity services and capacity management services, including the amount of fiber, spectrum, or capacity by selling, leasing, or swapping;

(ii) Identify the types of customers that currently are and/or will be served, including those with whom the licensee leases, sells, shares, or swaps fiber, spectrum, or capacity and/or plans to lease, sell, share, or swap fiber, spectrum, or capacity;

(iii) Identify whether the licensee currently owns or controls and/or will own or control the U.S. portion of the submarine cable system, including the cable landing station(s), through an Indefeasible Right of Use (IRU) or leasehold interest;

(iv) Identify where the licensee currently markets, offers, and provides services and/or expects to market, offer, and provide services; and

(v) Identify the general terms and conditions that currently apply and/or will apply to the services, such as contact duration, minimum capacity/bandwidth requirements, IRU requirements, termination clauses, security requirements, delivery or Service Level Agreement (SLA) requirements, dispute resolution, and other applicable provisions.

(3) Certifications as set forth under § 1.70006.

(c) *Filing schedule.* Authority is delegated to the Office of International Affairs (OIA) to establish and modify, as appropriate, the filing categories and associated deadlines for the periodic reports. OIA may, if needed, consult with the relevant executive branch agencies concerning the filing categories and associated deadlines for the periodic reports. Licensees shall file the periodic reports pursuant to the deadlines.

(d) *Filing with the Committee for the Assessment of Foreign Participation in the United States Telecommunications Services Sector (Committee).* Licensees that have reportable foreign ownership as defined in § 1.40001(d) as of thirty (30) days prior to the date of the submission or that have a mitigation agreement with the Committee or other executive branch agencies shall also file

a copy of the report directly with the Committee.

§ 1.70017 Renewal applications.

(a) Licensees seeking to renew or extend a cable landing license shall file an application six months prior to the expiration of the license. The application must include the information and certifications required in §§ 1.70002(b) through (c), 1.70005, and 1.70006.

(b) Licensees that timely file an application to renew or extend a cable landing license may continue operating the submarine cable system while the application is pending before the Commission.

§ 1.70018 Electronic filing.

(a) With the exception of submarine cable outage reports, and subject to the availability of electronic forms, all applications and notifications described in this subpart must be filed electronically through the International Communications Filing System (ICFS). A list of forms that are available for electronic filing can be found on the ICFS homepage. For information on electronic filing requirements, see subpart Y of this part, and the ICFS homepage at *https://www.fcc.gov/icfs.*

(b) Submarine cable outage reports must be filed as set forth in part 4 of this title.

§ 1.70019 Denial, revocation, and termination.

The Office of International Affairs shall implement procedures for denial of an application or revocation and/or termination of a cable landing license in light of the relevant facts and circumstances.

PART 43—REPORTS OF COMMUNICATION COMMON CARRIERS, PROVIDERS OF INTERNATIONAL SERVICES AND CERTAIN AFFILIATES

■ 6. The authority citation of part 43 continues to read as follows:

Authority: 47 U.S.C. 35–39, 154, 211, 219, 220; sec. 402(b)(2)(B), (c), Pub. L. 104–104, 110 Stat. 129.

■ 7. Revise § 43.82 to read as follows:

§ 43.82 Circuit capacity reports.

(a) *International submarine cable capacity.* Not later than March 31 of each year:

(1) *Cable Operator Report.* The licensee(s) of a submarine cable between the United States and any foreign point shall file a report showing the capacity of the submarine cable as of December 31 of the preceding calendar year. The licensee(s) shall also file a report showing the planned capacity of the submarine cable (the intended capacity of the submarine cable two years from December 31 of the preceding calendar year).

(2) *Capacity Holder Report.* Each cable landing licensee and common carrier shall file a report showing its capacity on submarine cables between the United States and any foreign point as of December 31 of the preceding calendar year.

(3) *United States.* United States is defined in section 3 of the Communications Act of 1934, as amended, 47 U.S.C. 153.

(b) *Registration Form.* A Registration Form, containing information about the filer, such as address, phone number, email address, etc., shall be filed with each report. The Registration Form shall include a certification enabling the filer to check a box to indicate that the filer requests that its circuit capacity data be treated as confidential consistent with § 0.459(a)(4) of this chapter.

(c) *Filing Manual.* Authority is delegated to the Chief of the Office of International Affairs to prepare instructions and reporting requirements for the filing of these reports prepared and published as a Filing Manual. The information required under this section shall be filed electronically in conformance with the instructions and reporting requirements in the Filing Manual.

(d) *Compliance.* Submission of false or inaccurate certifications or failure to file timely and complete annual circuit capacity reports in accordance with the Commission's rules in this chapter and the Filing Manual shall constitute grounds for enforcement action, including but not limited to a forfeiture or cancellation of the cable landing license or international authorization pursuant to section 214 of the Communications Act of 1934, as amended, and any other applicable law.

[FR Doc. 2025–03718 Filed 3–12–25; 8:45 am]

BILLING CODE 6712–01–P