The comments filed in response to the Notice of Proposed Rulemaking\(^1\) in this proceeding reflect near uniform agreement with the Commission that the “Team Telecom” process is in need of reform so that it becomes more timely, predictable and transparent.\(^2\)

Beyond that, the record demonstrates that the Commission must do at least the following to achieve this objective:

- establish firm and enforceable deadlines for the Team Telecom review process, which should take no longer than 90 days, with exceptions only in the rarest cases;
- ensure that any new filing requirements are appropriately tailored and limit the burden on applicants by requiring only the submission of information directly relevant to assessing law enforcement, national security, and foreign policy concerns; and

\(^1\) *Process Reform for Executive Branch Review of Certain FCC Applications and Petitions Involving Foreign Ownership*, NPRM, IB Docket No. 16-155, FCC 16-79 (June 24, 2016) ("NPRM").

• impose firm security measures that will protect sensitive data, including when in the possession of the Team Telecom agencies.

I. THE COMMISSION SHOULD ESTABLISH AND ENFORCE FIRM DEADLINES FOR TEAM TELECOM REVIEWS

Commenters broadly agree that establishing a predictable and firm timetable for Team Telecom reviews is the most urgently needed reform. CTIA, for instance, notes that “the length, burden, lack of transparency, and absence of structure under the current review process have discouraged applicants from pursuing new business opportunities and conducting routine transactions.” Others explain that “the Team Telecom review associated with the transfer of a single section 214 authorization for a resale business with a minor U.S. presence can delay the closing of the transaction by many months or thwart it completely,” and that as a result “companies generally take great pains to structure their ownership to avoid Team Telecom review, if possible, though these companies have no reason to believe that a national security issue exists.” It disserves the public interest when the Team Telecom process is not timely, thereby discouraging and hindering investment in the U.S. telecommunications and media sectors. The Commission must take steps to correct this.

The National Telecommunications and Information Administration (“NTIA”), on behalf of the Team Telecom agencies, asserts that timetables are not needed because the agencies “recognize the need for, and are therefore fully committed to a timely and efficient review of referred applications or petitions that is focused, thorough, and concluded in a manner that is proportional to risk.” Although INCOMPAS appreciates this commitment, Level 3’s analysis of

---

3 CTIA Comments at 4.
4 Telecom Companies Comments at 4.
5 Comments of the National Telecommunications and Information Administration, IB Docket No. 16-155, at 15 (filed Aug. 18, 2016) (“NTIA Comments”).
the time Team Telecom has taken to review transactions and cable landing license applications demonstrates why clear timetables are needed. 6 Level 3’s analysis shows, for example, that “recent processing timelines vary dramatically—sometimes by months or even years,” and that “[t]he fact that Commission approval follows shortly after execution of Team Telecom mitigation in the majority of reviews indicates that Team Telecom is a key determinant, if not the key determinant, in Commission reviews.” 7 In particular, Level 3 found that cable landing license application reviews have in the past taken “an extraordinary amount of time.” 8 According to Level 3, of 14 such applications filed since 2008, 12 have taken more than four months, 10 have taken more than six months, and five have taken more than a year to be processed. 9 One cable landing license application took 801 days, with the Commission granting its approval only three days after the execution of a Team Telecom mitigation agreement. 10

Any meaningful reform of the Team Telecom process must include firm, concrete deadlines that are enforced to ensure that such delays do not continue. INCOMPAS therefore supports the NPRM’s proposal that Team Telecom be required to complete its review of any application or petition within 90 days of the Commission’s release of a public notice accepting that application or petition for filing. In those rare instances in which the Commission grants Team Telecom additional time, no extension or series of extensions should exceed 90 days in the aggregate for any application or petition (or group of applications or petitions being considered together). Perhaps most critically, if Team Telecom does not raise concerns or (in rare cases)

---

6 See Level 3 Comments at Apps. A & B.
7 Id. at 3-4.
8 Id. at 3.
9 Id. at App. B.
10 Id.
requests additional time for its review within this initial 90-day period, the Commission should
deeem Team Telecom’s review complete and without objection and the Commission should
proceed to act on the application or petition accordingly. As the Commission can appreciate,
deadlines are meaningful because they are enforced. INCOMPAS shares Level 3’s concern that
a 90-day deadline that is not enforced or is often extended most certainly will lead to other
review processes involving Team Telecom “always tak[ing] priority, resulting in longer Team
Telecom reviews as a matter of agency resource allocation.”¹¹

NTIA expresses concern that the NPRM’s proposed 90-day review period may be too
“rigid” for the Team Telecom agencies to complete a “careful assessment of intelligence and
national security information, as well as engagement with the applicants.”¹² But as INCOMPAS
and other commenters have explained, the Team Telecom agencies have proven fully capable of
completing the same type of national security reviews of transactions that involve foreign control
of U.S. businesses within the 90-day statutory deadline that governs the Committee on Foreign
Investment in the United States (“CFIUS”).¹³ That deadline—which effectively provides at most
75 days for agency-level review—applies to even the most complex transactions submitted to
CFIUS. NTIA does not explain why Team Telecom reviews should require more than 90 days
to complete, considering that the same agencies routinely complete functionally equivalent
CFIUS reviews within 75 days or less.

¹¹ Id. at 7.
¹² NTIA Comments at 14-15.
¹³ See Comments of INCOMPAS, IB Docket No. 16-155, at 5 (filed Aug. 18, 2016)
(“INCOMPAS Comments”); Level 3 Comments at 4; CTIA Comments at 5; Telecom
Companies Comments at 6; BT Americas Comments at 11-12.
INCOMPAS agrees with NTIA that the United States should maintain its “strong and longstanding commitment to safeguarding U.S. national security while maintaining an open investment climate.”\textsuperscript{14} Contrary to NTIA’s suggestion, however, an open-ended national security review period is neither necessary to protect national security (as described above) nor “consistent with” this open investment policy.\textsuperscript{15} To the contrary, the current open-ended review process undermines and threatens that policy. For example, one group of investors explains that “[t]he complexity and lack of transparency that currently surrounds this process hinders investment activity in the United States telecommunications and media sectors” and “puts the United States at odds with other modern economies.”\textsuperscript{16} Comments by carriers confirm that the current process creates “uncertainty, costs and delays that can inadvertently discourage foreign investors facing the lengthy review time period and uncertainty of the current review process,” as well as “complicat[ing] an applicant’s ability to plan and initiate service operations or obtain necessary financing which may be withdrawn during the lengthy review process.”\textsuperscript{17} Setting a firm, transparent and appropriate deadline for the completion of Team Telecom’s review is critical to maintaining a regulatory environment conducive to network investment and deployment, and to the efficient and effective administration of the Commission’s duties.

\textsuperscript{14} NTIA Comments at 15.
\textsuperscript{15} See id.
\textsuperscript{16} TMT Comments at 3.
\textsuperscript{17} BT Americas Comments at 2.
II. ANY NEW FILING REQUIREMENTS MUST BE APPROPRIATELY TAILORED TO PROVIDE TEAM TELECOM WITH SPECIFIC INFORMATION DIRECTLY RELEVANT TO ITS ASSESSMENT

A. A Streamlined Questionnaire Can Be Workable, But Only if it Seeks Information Directly Relevant to Assessing Law Enforcement, National Security, and Foreign Policy Concerns Implicated by Reportable Foreign Ownership

The record reflects a consensus that Team Telecom’s review process would be significantly streamlined if applications and petitions were filed with all or most of the information required for Team Telecom to complete a typical review. INCOMPAS therefore supports the proposal to develop a standard set of questions designed to provide Team Telecom with as much of this information as possible at the front end. However, it is critical that these questions be appropriately tailored so that applicants and petitioners are required to provide Team Telecom only with information that is directly relevant to assessing the law enforcement, national security, and foreign policy concerns implicated by foreign ownership. The Commission established the Team Telecom process as a means of soliciting input from Executive Branch agencies with expertise on such issues when it comes to reportable levels of foreign ownership. There is thus no reasonable justification for requiring parties to provide information in their initial filings that goes beyond the scope of Team Telecom’s purview. There similarly is no justification for requiring that applications or petitions without reportable foreign ownership submit any such information at all.

While the wording of particular items in any new standardized questionnaire can be finalized in the Paperwork Reduction Act (“PRA”) process, the Commission first must provide

18 See USTA Comments at 7; BT Americas Comments at 13; CTIA Comments at 6.
clear guidance that limits the scope of any such questionnaire to questions that are demonstrably relevant to typical Team Telecom reviews. For instance, as INCOMPAS and others explained, financial information that does not bear directly on law enforcement, national security and foreign policy concerns should not be required. 20 Other categories of information proposed to be requested in the questionnaire—such as “[p]resent or future anticipated relationships with any trusted third party providers”—must be significantly narrowed and clarified before being considered valid. 21

In addition, regardless of how the Commission defines the categories of information that a Team Telecom questionnaire may seek, the Commission should make clear that each individual question must be justified as directly relevant to the law enforcement, national security and foreign policy issues typically addressed by Team Telecom. In other words, each particular item proposed for the questionnaire must both (1) fall within a category of inquiry the Commission has approved, and (2) call only for information directly relevant to typical Team Telecom reviews. In this regard, INCOMPAS agrees with CTIA 22 that the specific questions in any standardized questionnaire should be subject to a full notice-and-comment process, which must include consideration of whether each proposed question meets this two-part relevance standard. If there is any question as to whether the PRA process can accommodate this assessment, the Commission instead should develop the questionnaire through a public notice and comment process, or a formal rulemaking if appropriate.

20 See INCOMPAS Comments at 9-10; Telecom Companies Comments at 12; USTA Comments at 7-8; CTIA Comments at 6-7.
21 See INCOMPAS Comments at 10-11; Level 3 Comments at 18-19; Telecom Companies Comments at 11-13.
22 CTIA Comments at 8.
The Commission also should make clear that standard questions are not intended to require all applicants and petitioners to provide information that might conceivably be relevant in the most unusual cases; if information outside the scope of the standard questionnaire is required to review a particular application or petition, then that information can and should be sought by Team Telecom through appropriately tailored follow-up requests. The Commission also should clarify that follow-up requests should be limited to information that falls squarely within the boundaries of the effect of reportable foreign ownership on national security, law enforcement and foreign policy concerns. It would be meaningless to establish a set of standard questions if Team Telecom simply can use a follow up process to seek information that the Commission has deemed insufficiently relevant to a foreign ownership assessment.

B. Certification Requirements Should Not Be Duplicative or Impose Extra-Legal Obligations

The Commission likewise should ensure that any new certification requirements are both relevant and necessary to foreign ownership reviews. The certifications proposed in the NPRM are duplicative or can be interpreted as imposing extra-legal obligations. For instance, the proposal that applicants and petitioners certify that they will “comply with applicable provisions of the Communications Assistance for Law Enforcement Act (CALEA)” serves no supportable legal purpose for telecommunications carriers already subject to CALEA and arguably would foist new—and unauthorized—legal obligations on entities that are not subject to CALEA. There similarly is no legal justification or authority for NTIA’s proposal that parties be required to certify that they will “make communications to, from, or within the United States, as well as records thereof, available in a form and location that permits them to be subject to lawful request

23 NPRM ¶ 31.
or valid legal process under U.S. law, for services covered under the requested Commission license or authorization.”  

NTIA concedes that its proposed certifications go beyond existing law. The fact that “as a practical matter” some parties “regularly agree” to certain “standard mitigation measures” not required by law does not, as NTIA insinuates, provide a basis for requiring all applicants or petitioners to certify compliance with such measures. Indeed, it is entirely unclear whether applicants or petitioners agree to accept such measures because they are needed or because doing so is the clearest and most expeditious (and in some cases the only) way to get Team Telecom to lift its hold on a submission. Moreover, contrary to NTIA’s assertion, it not only is possible but highly likely that requiring such certifications will lead to reciprocal demands from foreign governments. As the Office of the United States Trade Representative has noted (and contrary to NTIA’s suggestions), foreign governments already are making demands for measures such as data localization. Such harmful efforts likely would be bolstered if the Team Telecom process is used to impose similar requirements.

III. **THE COMMISSION MUST BALANCE THE NEED FOR EFFICIENCY WITH RULES THAT ENSURE THAT SENSITIVE INFORMATION IS PROTECTED**

As INCOMPAS previously noted, Team Telecom’s assessment of national security, law enforcement, and foreign policy issues typically requires applicants or petitioners to submit

---

24 *Id.* at ¶ 31; *see also*, e.g., Comments of Verizon, IB Docket No. 16-155, at 5 (filed Aug. 18, 2016); Level 3 Comments at 17-18; USTA Comments at 9-10.

25 NTIA Comments at 11.

26 *Id.*

27 *Id.*

detailed information about their network operations, personnel, and ownership structure. The record overwhelmingly supports the notion that this sensitive data must be treated as presumptively confidential and should receive robust protections, whether transmitted to or stored with the Commission or the Team Telecom agencies. INCOMPAS agrees with commenters who note that, because the Commission does not intend to substantively review information submitted for Team Telecom’s review, many of these confidentiality concerns can be mitigated by allowing parties to submit this information directly to Team Telecom, thus reducing potential points of vulnerability.

Regardless of whether information is submitted to Team Telecom directly or through the Commission, however, the information is being provided under the Commission’s authority and the Commission therefore has a responsibility to ensure that it is appropriately protected. NTIA acknowledges that “to the extent the Commission notifies the Executive Branch of applicable Commission handling restrictions” on information shared by the Commission, “in an instance where an applicable Commission restriction were more stringent than an applicable Executive Branch restriction[] the Executive Branch would treat the information under the more stringent requirement.” This is a sensible approach, and to ensure that the protocol is clear the Commission and the Team Telecom agencies should agree on a binding set of restrictions and procedures to govern all information submitted by applicants and petitioners as part of the Team

29 INCOMPAS Comments at 14.
30 See CTIA Comments at 9-10; Level 3 Comments at 13-14; TMT Comments at 8-9; Telecom Companies Comments at 14-15;
31 See, e.g., CTIA Comments at 9; Level 3 Comments at 13-14.
32 NTIA Comments at 21.
Telecom process, including information submitted directly to Team Telecom concurrently with
an application or petition or in response to a follow-up request.

These procedures should require the information to be transmitted, stored and accessed
securely by the Commission and Team Telecom throughout the review process and for as long as
the Commission or Team Telecom agencies retain the information. Furthermore, given the
particular sensitivity of information about network infrastructure, the agreed data security
framework should, among other things, require multiple levels of protection before data can be
accessed and limit access to individuals directly involved in Team Telecom’s review on a need-
to-know basis.

**CONCLUSION**

The record in this proceeding reflects a clear consensus that a more disciplined and
streamlined Team Telecom review process is necessary and in the public interest. INCOMPAS
urges the Commission to implement this consensus view by adopting reforms to ensure that
every application or petition receives a timely, efficient, and secure review, thereby promoting
more investment in the U.S.

Respectfully submitted,

**INCOMPAS**

By: /s/Angie Kronenberg
    Angie Kronenberg
    INCOMPAS
    1200 G Street, NW
    Suite 350
    Washington, D.C. 20005
    (202) 872-5746

September 2, 2016