

ALERT

# FCC Finalizes Standard Questions for Applicants as Last Step in Team Telecom Modernization

October 1, 2021

On September 30, 2021, at its Open Commission Meeting, the Federal Communications Commission (FCC or Commission) issued a Second Report and Order (Order) adopting a set of standardized national security and law enforcement questions (Standard Questions) for parties whose applications will be referred to the Committee for the Assessment of Foreign Participation in the United States Telecommunications Services Sector (the Committee)—the inter-agency working group also referred to as “Team Telecom.” This is the final step in the Commission’s efforts to improve the timeliness and transparency of the Team Telecom process and follows the adoption of rules governing timelines, included and excluded applications, and other related matters.

The Standard Questions will have a broad impact on investors and regulated entities. Once effective, applicants will have to answer the Standard Questions and submit responses to the Committee prior to or at the same time they file certain petitions or applications with the FCC. This represents a significant change from the current procedure, under which applicants need not respond to national security and law enforcement questions until after they submit their filings with the FCC, the FCC refers the filing to Team Telecom, and Team Telecom provides the applicants with tailored questions. The Commission will issue a Public Notice informing the public of the effective date of the requirements adopted in the Order.

## Standard Questions

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The Second Report and Order adopts the Standard Questions largely as proposed, with some important changes to more narrowly tailor and clarify instructions, among other things. ¶¶6-8. The Standard Questions cover five general categories: “(1) corporate structure and shareholder information; (2) relationships with foreign entities; (3) financial condition and circumstances; (4) compliance with applicable laws and regulations; and (5) business and operational information, including services to be provided and network infrastructure.” ¶4.

### **Terminology**

Commenters argued that the Commission should make changes to certain terms used in the Standard Questions. In response, the Commission agreed to modify the definition of “Senior Officer,” harmonize the definitions of “Ultimate Owner,” “Ultimate Parent” and “Controlling Interest” to be consistent across all Standard Questions, and remove transferors and assignors from the definition of “Relevant Parties.” ¶¶10, 12-13, 19. However, the FCC rejected suggestions to condense definitions for “Remote Access” and “Managed Services” or to remove Network Operations Center (NOC) facilities from the definition of “Domestic Communications Infrastructure.” ¶¶11, 20.

The FCC also rejected commenters’ arguments that the definition of “Ownership Interest”—defined as a direct or indirect 5% or greater equity (non-voting) and/or voting interest—is too expansive and requires applicants to submit information for owners that have no influence or control over the applicant, including as insulated interest holders. ¶¶14-15. In so doing, the Commission emphasized that Committee staff had advised that a five percent threshold is appropriate because in some instances a less-than-ten percent foreign ownership interest—or a collection of such interests—may pose a national security or law enforcement risk. ¶¶16-17.

### **Confidentiality and Filing Obligations**

The FCC agreed with commenters that all information submitted in response to the Standard Questions should be treated as business confidential and protected from disclosure but stopped short of adopting “heightened protection” of personally identifiable information (PII) and restrictions on sharing it within Committee agencies in light of existing federal regulation protecting such data. ¶¶21-22. The Commission also clarified how applicants can submit joint filings to prevent the sharing of sensitive information. ¶¶23-24. In addition, the FCC rejected commenters’ request to permit applicants to cite previously filed information in their responses to the Standard Questions. ¶25. The Commission similarly declined to allow applicants that have previously received a declaratory ruling approving foreign investment to respond to a streamlined questionnaire that only seeks information about new investors instead of the Standard Questions. ¶26.

### **Foreign Relationships and Parties**

*“Prior Relationships.”* The Commission rejected commenter requests to eliminate the request for information concerning broadcast petitioners’ prior relationships with foreign entities, with no time limit or “defined look-back period.” Finding this information to be relevant only to broadcast licensees, the FCC deleted it from the Standard Questions for other non-broadcast services. ¶27.

*“Planned” Relationships and Exclusion of Foreign Customers and Foreign Employees from Foreign Relationships.* The FCC also clarified the scope of reportable foreign relationships, explaining that “planned relationships” are “current relationships or those reasonably anticipated by negotiations or that are identified under current business plans,” including any situations in which contracts have been signed or where the parties are already in negotiations. ¶29. The Commission likewise clarified that applicants need not report relationships with foreign subscribers to an applicant’s retail services or foreign employees who are identified in response to other questions. ¶30. However, the FCC declined to limit the question to only relationships with foreign governments or foreign government-owned entities, finding that foreign individuals and entities also may raise national security and law enforcement concerns. ¶30.

*“Foreign Parties” in Broadcast Standard Questions.* The FCC had originally proposed that the Standard Questions for broadcast applicants require responses to a large number of questions related to “Foreign Parties,” defined to include a broad range of foreign entities with which the applicant had a planned or prior relationship. In response to comments, the Commission eliminated the obligation to respond to many of these questions, retaining it only for questions that the Committee advised are directly related to Committee concerns under the Foreign Agents Registration Act (FARA). ¶32.

### **Applicant Background Information**

*Prior Applications to the FCC and the Committee on Foreign Investment in the United States (CFIUS).* The Commission clarified that to be reportable in response to questions concerning prior FCC applications or CFIUS submissions, an “involved” or “associated” individual or entity must be either the applicant in a prior Commission or CFIUS filing or listed as an owner in such a prior filing. ¶34. In addition, applicants only need to report on FCC filings submitted with the last ten years. The Commission declined to impose any time limit for disclosure of prior CFIUS filings. ¶35.

*Information Regarding Criminal, Administrative, or Civil Penalties.* The Commission found unpersuasive requests to cabin the scope of the background questions regarding criminal, administrative, or civil penalties citing the Committee’s view that “no time limits can be placed on the reporting period for this inquiry due to the serious nature of the underlying question, as past felonies or regulatory violations may be indicative of possible future behavior, or may give the Committee staff insight on where to focus any additional questions for the applicant.” ¶36. Thus, applicants need to report on covered actions and proceedings occurring at any time in the past.

### **Personally Identifiable Information (PII)**

For broadcast parties, the FCC narrowed the scope of non-U.S. individuals for whom PII is required. Specifically, the Order clarifies that broadcasters must provide PII “for non-U.S. Individuals with access to (1) all facilities and equipment in the United States, (2) facilities outside the United States that are used to broadcast into the United States, and (3) facilities both inside and outside the United States that store, process, or provide access to U.S. person data (including data on current, past, and potential U.S. customers).” ¶¶37-38.

With respect to submarine cable facilities, the Commission rejected a commenter's request to confine the PII reporting requirements for non-U.S. individuals with access to submarine cable facilities "to the Domestic Communications Infrastructure . . . as it has been in practice in past proceedings." Addressing concerns that it could be difficult to answer this question given changes in personnel activity and limitations imposed by foreign laws in some cases, the Commission indicated that the Standard Questions can only be answered with information known at the time of submission and that obligations to update such information could be addressed through a mitigation agreement. ¶¶39-40.

### **Information about the Applicant's Services**

*Critical Infrastructure.* At the request of a commenter, the Commission updated the list of U.S. critical infrastructure sectors outlined in the Standard Questions to track Presidential Policy Directive 21 (PPD-21) and harmonized questions for International Section 214 applicants related to serving sectors of U.S. critical infrastructure consistent with other sets of Standard Questions that use the phrase "provide services to," which includes situations where the applicant provides service to, has customers in, or participates in the market in certain sectors of U.S. critical infrastructure. ¶¶42-43.

*Proposed Services Checklist and Reference Questions.* The Commission rejected requests to modify the list of services in the Reference Question section of certain sets of Standard Questions or omit the Reference Questions, deferring to the Committee's expressed need for both a general description of the services to be provided and finer technical detail as requested in the Reference Questions. However, the Commission noted that applicants may respond to the Reference Questions by cross-referencing responses to other questions where appropriate. ¶¶44-45.

*Use of Interconnecting Carriers and Peering Relationships.* The FCC declined to change or eliminate questions concerning interconnecting carriers or peering relationships. In the Commission's view, "[t]hese types of relationships are relevant to the Committee's national security and law enforcement analysis of the application, even if they do not reach everyone who may use the submarine cable," and the Standard Questions "provide applicants with flexibility in how they choose to describe peering relationships." ¶46.

### **National Security/Law Enforcement Questions**

The Commission declined to make any changes to the questions related to an applicant's national security and law enforcement obligations, finding several arguments to make modifications unpersuasive. Thus, applicants will remain obligated to respond to questions about these matters. ¶¶47-48.

### **Broadcaster Questions Concerning Non-Broadcast Activities**

The Commission rejected arguments that it should eliminate certain questions in the Standard Questions for broadcasters "because they concern issues outside of the scope of the Commission's jurisdiction and are thus not properly the subject of Committee review." Thus, broadcast parties will remain obligated to respond to questions about satellite or cable rebroadcasting, online programming, and data collection and security issues. ¶50.

### **Additional Recommendations Concerning the Submission of the Standard Questions to the Committee**

The Commission recognized that the Standard Questions are meant to address a broad range of situations and will therefore request information that an individual applicant may not find to be specific to its own situation. In such cases, applicants may explain in their responses any situation in which they find a question inapplicable, overly broad, or unclear. ¶51. The FCC also reiterated the Committee’s strong preference against negotiating the questions or responses with applicants before the responses are filed with the Committee or prior to Commission referral of an application. ¶52. The FCC noted Committee staff’s recommendation that applicants explain in their submissions the scope of their responses and any limitations in their responses and advised that post-submission coordination may be available as needed. ¶52.

Wiley’s Telecom, Media & Technology and National Security practices have been deeply engaged in the efforts to reform the Team Telecom review process, as well as reforms to CFIUS, and have significant experience assisting parties in responding to Team Telecom triage questions. If you have questions about the Standard Questions or new processes, please contact one of the authors of this alert.