

FCC Proposes Sweeping Changes to Submarine Cable Licensing Rules

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On November 22, 2024, the Federal Communications Commission (FCC or Commission) released a Notice of Proposed Rulemaking (NPRM) aimed at broadening and strengthening its oversight of submarine cables. The NPRM seeks to revise the Commission's submarine cable licensing rules. The NPRM is the result of the most comprehensive review of the Commission's submarine cable rules since 2001, and would significantly expand and revise a multitude of regulations aimed at addressing evolving national security and law enforcement concerns.

Much like the FCC's 2023 *Evolving Risks NPRM*, which proposed altering the compliance obligations of international Section 214 authorization holders, the NPRM is extremely comprehensive and proposes new rules that could result in sweeping changes to the FCC's current submarine cable licensing framework. Significant proposals advanced by the NPRM include, among other things:

- **Three-Year Periodic Reporting Requirement** – The Commission seeks comment on implementation of a three-year reporting requirement for submarine cable landing licensees, requiring updated information about, among other things: (1) the licensee's ownership, (2) points of contact for the submarine cable system, (3) the use of foreign-owned Managed Network Service Providers (MNSPs), and (4) cybersecurity and other regulatory compliance certifications.
- **Shortened License Term** – As an alternative to the proposed periodic reporting requirement, the Commission requests comment on whether to shorten the current 25-year submarine cable license term or adopt a shorter license term in

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combination with periodic reporting.

- **Expanded Licensing and Application Requirements** – The Commission requests comment on expanding entities regulated under the current licensing framework to include not only cable landing stations, but also those entities owning Submarine Line Terminal Equipment (SLTE), potentially including inland data centers and entities leasing capacity from licensees, such as internet service providers (ISPs). Further, much of the new information required in the proposed three-year reports would be required for license applications as well.
- **Presumptive Disqualification from Submarine Cable Licensing** – The Commission seeks comment on adopting 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 light of national security or law enforcement concerns, is not qualified to become a new cable landing licensee.
- **Lowered Reportable Interests Thresholds** – The Commission seeks comment on lowering the current 10 percent threshold for reporting direct and indirect equity and/or voting interests to 5 percent, consistent with the proposals in the *Evolving Risks NPRM*.

Comments and reply comments will be due 30 and 60 days, respectively, from the date of the NPRM's publication in the Federal Register. The most significant proposals are discussed below.

Notable Proposed Requirements

Three-Year Periodic Reporting Requirement. The Commission proposes to require all submarine cable licensees to file three-year periodic reports, requiring the disclosure of various information relating to their operations, including information about ownership points of contact, description of the operator's submarine cable system, and other information. The information in the three-year report would have to be current as of 30 days prior to submission. For submarine cable systems comprised of multiple licensees, the Commission proposes that the joint licensees file one reporting statement per submarine cable system. The periodic reports would also require the following information: (a) submarine cable infrastructure information; (b) information relating to current and future service offerings, including current capacity, the amount of capacity the licensee intends to sell, and any capacity management services; (c) regulatory compliance certifications concerning: (i) compliance with the Cable Landing License Act of 1921, the Communications Act of 1934, and Commission rules; (ii) the creation and implementation of a cybersecurity risk management plan; and (iii) compliance with the FCC's "Covered List" prohibiting the procurement and use of equipment and services identified by FCC rules and the Secure and Trusted Communications Networks Act of 2019; (d) reporting whether licensees use and/or will use foreign-owned MNSPs in the operation of the submarine cable; and (e) updated contact information.

Shortened License Term. Under the FCC's current rules, the license term for submarine cable licenses is 25 years. As an alternative to three-year periodic reporting requirement, the Commission seeks comment on alternative proposals. First, the NPRM asks whether to instead adopt a shorter license term (such as 5-, 10-, or 15-year terms). Second, the Commission also asks whether to adopt *both* a shorter license term *and* a

periodic reporting requirement.

Requirements to Be an Applicant/Licensee. The Commission seeks comment on whether to include more entities within the scope of parties required to obtain a submarine cable landing license – including any entity that owns, controls, or operates SLTE or equivalent equipment that converts submarine signals into terrestrial signals located in the U.S. portion of a cable system.

The Commission states that if it requires entities with ownership or control of SLTE or equivalent equipment to be applicants/licensees for a submarine cable landing license, then Indefeasible Right of Use (IRU) holders or grantees “likely meet these requirements.” Moreover, the Commission asks about 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 support essential to proper operations of cable landing systems housed in their facilities.

Presumption of Entities Not Qualified to Become a New Submarine Cable Landing Licensee. 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 for national security and law enforcement concerns, and the entity’s current and future affiliates and subsidiaries, will not be qualified to become a new cable landing licensee. 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.

Five Percent Threshold for Reportable Interests. The Commission proposes to lower the current 10 percent ownership reporting threshold to 5 percent or greater for direct and indirect equity and/or voting interests in submarine cable applicants and licensees. The NPRM invites comment on whether the lower reporting threshold would impose potential burdens on applicants, and whether this information is “financial information” of a privileged and confidential nature.

Submarine Cable Infrastructure Information. The Commission proposes to require applicants for a cable 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 applicant’s submarine cable infrastructure.

Current and Future Service Offerings. 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.

Regulatory Compliance Certifications. The Commission proposes new certifications to protect against national security, law enforcement, and other risks. These certifications would cover compliance with FCC rules, creation and implementation of cybersecurity risk management plans, and verification that applicants and

licensees do not use “Covered List” equipment or services.

Third-Party Access. The Commission seeks comment on: (a) whether it should require basic information about an applicant’s lessors of submarine cable landing stations and/or data center housing hardware; (b) ways the Commission can address vulnerabilities associated with logical access to submarine cable systems by third-party individuals and entities; and (c) the challenges posed by a submarine cable landing licensee’s use of remote service vendors and their services and steps the Commission could take to mitigate those challenges.

Relatedly, the Commission proposes to require all applicants/licensees, with or without reportable foreign ownership, to report whether they use and/or will use foreign-owned MNSPs in the operation of the submarine cable. This information would be required 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.

Streamlining Procedures to Expedite Cable Processing. The NPRM asks for suggestions on how the Commission can modify its streamlining procedures to expedite submarine cable processing while ensuring national security and law enforcement concerns are addressed.

Key Takeaways

The NPRM proposes sweeping changes to the submarine cable licensing regime that implicate not only submarine cable systems, but potentially entities leasing capacity from submarine cable systems and businesses looking to invest in submarine cable infrastructure. The changes, if adopted, will significantly expand the obligations for submarine cable licensees and others doing business with them. Wiley’s Telecom, Media & Technology; National Security; Cybersecurity; and Government Contracts practitioners can help navigate these evolving issues.