

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
Review of International Section 214)	IB Docket No. 23-119
Authorizations to Assess Evolving National)	
Security, Law Enforcement, Foreign Policy,)	
and Trade Policy Risks;)	
)	
Amendment of the Schedule of Application)	MD Docket No. 23-134
Fees Set Forth in Sections 1.1102 through)	
1.1109 of the Commission’s Rules)	

REPLY COMMENTS OF INCOMPAS

INCOMPAS hereby submits these reply comments in response to the Federal Communications Commission’s (“Commission” or “FCC”) Notice of Proposed Rulemaking that seeks input on a new regulatory framework for entities holding an international Section 214 authorization.¹

I. THE COMMENT RECORD DEMONSTRATES THAT THE FCC SHOULD PAUSE ITS CONSIDERATION OF THE *NPRM*’s PROPOSALS.

The FCC received a robust record of entities concerned about the FCC’s *NPRM*’s proposals in the comment round which should give it pause. Five industry trade associations filed. In addition to INCOMPAS, CTIA, Competitive Carriers Association (“CCA”), Telecommunications Industry Association, and USTelecom—The Broadband Association filed

¹ *In re Review of International Section 214 Authorizations to Assess Evolving National Security, Law Enforcement, Foreign Policy, and Trade Policy Risks; Amendment of the Schedule of Application Fees Set Forth in Sections 1.1102 through 1.1109 of the Commission’s Rules*, IB Docket No. 23-119 & MD Docket No. 23-134, Order and Notice of Proposed Rulemaking, FCC 23-28 (rel. April 25, 2023) (“*NPRM*”).

comments indicating their objections and/or concerns about the FCC’s proposals. Over twenty licensees also filed, including a consolidated filing from Cincinnati Bell Inc. d/b/a altafiber, Bestel (USA) Inc., Consolidated Communications, Inc., Global Cloud Xchange, GlobeNet Cabos Submarinos America, Inc., GTT Communications, Inc., ImOn Communications, LLS, Servicio di Telecomunicacion di Aruba N.V., and Tata Communications (Americas), Inc. (collectively, “International Licensees”), a consolidated filing from Liberty Latin America Ltd. and Columbus Networks Telecommunications Services USA, Inc., Cable & Wireless Puerto Rico, Inc., CWC New Cayman Limited, Liberty Communications of Puerto Rico LLC, Liberty Mobile Puerto Rico Inc., and Liberty Mobile USVI Inc. (collectively, “Liberty Latin America”), and separate filings from Fusion Connect, Inc. (“Fusion”), Office Des Postes Et Telecommunications de Polynesie Francaise and ONATI S.A.S, T-Mobile USA, Inc. (“T-Mobile”), and Verizon. Finally, five major investors in U.S. telecommunications companies filed joint comments. They include Berkshire Partners LLC, DigitalBridge Group, Inc., EQT Fund Management S.a.r.l, GI Manager L.P., and Palisade Investment Partners Limited (collectively, “Telecommunications Investors”).

The arguments in these filings are robust and compelling. INCOMPAS believes that the FCC should pause its consideration of the *NPRM*’s proposals until it has the benefit of reviewing the results of its one-time information collection and assessing the current state of play of authorization holders prior to implementing an entirely new burdensome regulatory framework that introduces significant new obligations and so much uncertainty and cost on licensees.² Indeed, like INCOMPAS, CTIA specifically states “the FCC’s one-time information collection should come before the *NPRM* progresses.”³ It asserts that “[u]nintended and costly

² INCOMPAS Comments at 2 & 3-4.

³ CTIA Comments at 17.

consequences will result if the proposed rules are evaluated without considering the intricacies of communications enterprises with some non-U.S. investment or vendors.”⁴ CTIA implores the FCC to “only consider proposed rules once the collection is complete, when it can better assess the information gathered and consider a more targeted approach to any issues it identifies.”⁵ In fact, the Comments of the Committee for the Assessment of Foreign Participation in the United States Telecommunications Services Sector (the “Committee”) also raise the issue that the FCC needs to better understand the implications of its proposals by reviewing the current status of authorization holders before proceeding.⁶ It not only requests a pause for referrals to the Committee of authorizations that are less likely to be under the influence of foreign adversaries, it also advises the Commission to “solicit another round of comments” on at least some of its proposals.⁷

INCOMPAS urges the agency to heed our advice that was echoed from CTIA and the Committee. We support the FCC’s effort to achieve its goals. It should do so in a targeted fashion by first focusing on the one-time data collection to fully understand the current state of the ownership and control of international Section 214 authorizations holders, and the potential risks (if any) that need to be targeted with new policies. The FCC can then revise its proposals, considering the robust issues raised in the comments, and seek a second round of comments on modified proposals that are directed specifically at addressing risks.

⁴ *Id.* at 18.

⁵ *Id.*

⁶ Comments of The Committee for the Assessment of Foreign Participation in the United States Telecommunications Services Sector at 3.

⁷ *Id.*

II. IN REVISING ITS *NPRM* PROPOSALS, THE FCC MUST HEED THE CONCERNS RAISED IN THE RECORD AND MODIFY ITS PROPOSALS ACCORDINGLY.

In our original comments, INCOMPAS stated that the agency should carefully consider how the new regulatory framework's significant new burdens, costs, and uncertainty impact authorization holders and their ability to raise capital, compete in the marketplace, and the potential long-term consumer impact from adverse consequences that may result from fewer competitive options in the marketplace.⁸

Across the filings, commenters discuss the significant burdens that would be imposed, and many request that the agency more narrowly target any new rules to achieve its goals. Commenters also focus on how the *NPRM*'s proposals would lead to burdensome reporting obligations that will cost more than the agency is anticipating and are not necessary for the agency to meet its objectives. The Telecommunications Investors state that "some of the proposed rules will be duplicative of other existing regulatory processes and unduly burdensome, unnecessarily drive-up operating costs for portfolio companies operating in the United States."⁹ They argue that the proposals will divert resources from broadband deployment and increased availability and operations of digital infrastructure across the nation.¹⁰ The International Licensees similarly discuss how the proposed periodic renewal or review process "could result in significant unnecessary and unduly burdensome obligations."¹¹

⁸ INCOMPAS Comments at 2.

⁹ Telecommunications Investors Comments at 10.

¹⁰ *Id.* at 12.

¹¹ International Licensee Comments at 5.

Fusion states that the proposals:

will place a substantially increased compliance burden on holders of Section 214 license[s] . . . [that] impose real economic and operational costs and, moreover, may complicate investment and transactional strategies of those license holders and chill investment in U.S. telecommunications. Fusion believes that those effects will in the aggregate adversely affect the competitive marketplace and, as a result, consumers.¹²

T-Mobile “cautions against enacting new, burdensome, unnecessary, and legally vulnerable requirements.”¹³ CCA also states its perspective that the proposal will be unduly burdensome, especially on smaller carriers that will result in “masses of data of likely limited value.”¹⁴ It warns that:

[t]he current proposals do not strike the right balance between burdensome regulation and advancing the FCC’s stated policy concerns. They would impact a broad universe of entities—the vast majority of which raise no national security or strategic policy concerns whatsoever.¹⁵

CTIA states that:

“[o]verly prescriptive regulations governing the international section 214 authorization process have the potential to tamp down crucial domestic and foreign investment in 5G networks. This, in turn, could potentially drive up consumer prices, and make it more difficult for U.S. networks to keep pace with innovation.”¹⁶

In addition to these significant concerns, several commenters raise legal authority issues with the FCC’s imposition of a renewal framework on current authorization holders, including

¹² Fusion Comments at 4.

¹³ T-Mobile Comments at 2.

¹⁴ CCA Comments at 7.

¹⁵ *Id.* at 6-7.

¹⁶ CTIA Comments at 11.

CTIA, CCA, and T-Mobile.¹⁷ These are robust legal analyses that warrant reconsideration of the agency's proposed renewal framework. INCOMPAS also has expressed its concern that there would be too much uncertainty for authorization holders during a renewal framework involving multiple agencies, including Team Telecom, which can impact their ability to raise capital and compete in the marketplace.¹⁸ Accordingly, INCOMPAS urges the Commission to heed the undue burden and uncertainty concerns, as well as the legal roadblocks to a requirement that international Section 214 authorization holders must renew their licenses every ten years. INCOMPAS recommends that the FCC reject the proposed renewal framework, and instead, the agency should seek further comment on adopting a framework to receive updated information from certain authorization holders every ten years—those that are not controlled by U.S. citizens and do not already have a mitigation agreement with the national security agencies. INCOMPAS believes that the FCC should also seek comment on refocusing the information collection process so that it only seeks information that has changed since the one-time data collection or the last transfer of control/assignment application, whichever was the most recent filing.¹⁹ Moreover, the agency should only refer applications to Team Telecom that have a new reportable interest from a foreign adversary that requires review by the national security agencies. As the Committee explains in its comments, they too have limited resources and their reviews (which often are very long, unpredictable and take significant resources from authorization holders to support) should be targeted to potential risks.

¹⁷ *Id.* at 25-30; CCA Comments at 2-3; and T-Mobile Comments at 7-12.

¹⁸ INCOMPAS Comments at 5-10.

¹⁹ *See, e.g.*, International Licensees Comments, at 5-6 (asserting that restarting the clock based on transfers of control application will help avoid licensees from becoming subject to numerous duplicative Commission and potentially Team Telecom reviews where no material changes in the ownership or operations have occurred in the interim period).

III. THE RECORD SHOWS THAT CURRENT REPORTABLE OWNERSHIP DISCLOSURES SHOULD BE MAINTAINED AT TEN PERCENT.

Lowering the reportable ownership threshold to five percent will increase the burden and costs on authorization holders, upset reasonable expectations, require restructuring of ownership arrangements, and potentially lead to confidential ownership information being publicly disclosed. CTIA, INCOMPAS, International Licensees, Telecommunications Investors, Liberty Latin America, T-Mobile, and USTelecom support maintaining the ownership reporting requirement to direct or indirect ten percent or greater owners in the agency's approval processes.²⁰ For example, the International Licensees state that they are "ultimately owned and controlled by publicly traded corporations or private equity or similar investment funds, and thus, have limited visibility into, or ability to collect and publicly report, granular ownership information from some of their ultimate owners and any domestic or foreign investors."²¹ They note the significant roadblocks licensees face in obtaining such granular information.²² T-Mobile states that "[a]bsent *de facto* control, an entity with an interest between five and ten percent cannot exert any influence over a company," and that this information is not necessary for safeguarding national security.²³ Similarly, Telecommunications Investors discuss that limited partner investors with less than ten percent equity stake most often have no governance rights and are not even aware of specific investments in FCC licensees.²⁴ Based on INCOMPAS' and

²⁰ CTIA Comments at 30-38, INCOMPAS Comments at 10-14, International Licensees Comments at 4-5, Liberty Latin America Comments at 10-12, Telecommunications Investors at 4-10, T-Mobile Comments at 18, and USTelecom Comments at 3-4.

²¹ International Licensees Comments at 4.

²² *Id.*

²³ T-Mobile Comments at 18.

²⁴ Telecommunications Investors Comments at 4.

the other comments on this issue, the record demonstrates how lowering the disclosure threshold to five percent will increase the burden and costs of compliance for authorization holders and is not necessary to achieve the Commission's national security goals. Accordingly, the FCC should reject its proposal to lower the ownership disclosure.

IV. MORE THAN ONE AUTHORIZATION SHOULD BE PERMITTED.

INCOMPAS, along with three other commenters, expressed concerns about the *NPRM's* proposal to potentially restrict a company's ability to maintain more than one international section 214 authorization. INCOMPAS submitted that such a restriction would be a burden on those entities that have complex ownership structures and operational subsidiaries for business reasons.²⁵ Similarly, CTIA states, "[f]or companies that are large and complex, imposing a limit of one international 214 authorization would be nonsensical given the wide range of activities subject to section 214 in which such companies may engage."²⁶ CTIA also raises concerns about prescriptive regulation that could negatively impact operations and offers additional suggestions for Commission consideration should it choose to move forward with limiting the number of 214 authorizations an entity may hold.²⁷ Likewise, Verizon states that "[m]any corporate structures are not organized in a manner that would permit the easy consolidation of authorizations into a single entity."²⁸ Verizon also maintains that multiple authorizations may be needed for different functions and that the Commission should be mindful about introducing limits that force

²⁵ *Id.* ¶ 129.

²⁶ CTIA Comments at 67.

²⁷ *Id.* at 67-69.

²⁸ Verizon Comments at 25.

corporate reorganizations.²⁹ Liberty Latin America stresses that separate authorizations facilitate different services to separate customer bases, and it avers that separate authorizations by subsidiaries is both “inevitable and desirable” due to the fact that it facilitates those services.³⁰ Based on the comment record, INCOMPAS reiterates that the Commission should avoid making modifications that would require restructure and ownership changes for authorization holders that may require contract changes, customer notifications of discontinuances, and other steps that would be costly, time-consuming and a burden for authorization holders. Only truly duplicative authorizations that are not needed for business operations within a subsidiary should be affected by the proposed change.

²⁹ *Id.*

³⁰ Liberty Latin America Comments at 8-9.

V. CONCLUSION

For the reasons stated herein, INCOMPAS urges the Commission to consider the recommendations in its comments and reply comments as it examines the issues raised in the *NPRM*.

Respectfully submitted,

A handwritten signature in cursive script, appearing to read "Angie Kronenberg".

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October 2, 2023