

FCC Reviews Submarine Cable Rules to Address National Security and Law Enforcement Risks

Potential rule changes could expand the scope of the disclosure and reporting obligations for applicants and licensees of submarine cables.

On November 22, 2024, the Federal Communications Commission (the Commission) released a Notice of Proposed Rulemaking ([NPRM](#)) that proposes to expand and clarify its oversight of submarine cable ownership and operations. Submarine cables, which “historically have carried more than 95% of all U.S.-international voice, data, and Internet traffic, including civilian and military,”¹ have faced increasing and evolving national security and law enforcement threats in recent years.² In response to this shifting threat landscape and heightened security concerns, the Commission proposes in the NPRM a number of significant changes that would expand the scope and depth of submarine cable information collection. In particular, the NPRM seeks comment on rule changes that would, among other things:

- impose additional informational requirements for submarine cable landing licenses for cables that connect the United States to foreign countries, to address national security risks;
- lower the ownership reporting threshold from 10% to 5%; and
- implement a three-year periodic review process for cable landing licenses, or alternatively, shorten the 25-year license term for such licenses.

The NPRM proposes other rule changes that seek to codify the Commission’s longstanding submarine cable application procedures and to streamline the Commission’s existing submarine cable licensing process. Interested parties will have an opportunity to weigh in on the proposals contained in the NPRM, and the Commission will consider any such stakeholders’ comments while deliberating over the implementation of the rules proposed in the NPRM.

Background

Section 34 of the Cable Landing License Act requires the owner or operator of a submarine cable landing in the US to obtain a license issued by the President of the United States. Executive Order 10530 delegated the President’s authority to the Commission, thus establishing the Commission’s authority to grant, withhold, revoke, or condition such licenses required for any submarine cable system that directly connects the United States with a foreign country. As part of the public interest review process, the Commission considers, among other concerns, national security, law enforcement, foreign policy, and trade policy implications for applications for cable landing licenses.

The Commission last reviewed its submarine cable rules in 2001, and it cites the significant evolution in the national security and law enforcement threat environment as the driving force behind the current comprehensive review of the submarine cable licensing framework.³

Key Changes Proposed in the NPRM

Codifying and Updating Procedural Rules

As an initial matter, the NPRM proposes to codify the general licensing requirements for submarine cables with landings in the United States. The Commission notes that the scope of the requirements is generally “well understood,” but nevertheless proposes to adopt explicit rules to clarify that submarine cable licenses are required prior to landing certain submarine cables. The licensing obligation applies to cables that connect (1) the continental US with any foreign country; (2) Alaska, Hawaii, or the US territories or possessions with a foreign country, the continental US, or with each other; or (3) points within the US, including territories or possessions, in which the cable is laid in international waters.⁴

The NPRM also seeks comment on (1) whether adopting a definition of “submarine cable” is necessary;⁵ (2) codification of the requirement to demonstrate in submarine cable applications that the grant will serve the public interest;⁶ and (3) codification of the requirement to demonstrate applicants’ character qualifications in assessing license applications.⁷

The Commission seeks comment on the adoption of procedural rules for withholding or revoking submarine cable landing licenses.⁸ The Commission notes that it has yet to prescribe specific procedures, and asks whether it should integrate “the approach utilized by the Commission in recent section 214 revocation proceedings.”⁹ The NPRM also invites comment on whether existing application denial procedures should be modified.¹⁰

Three-Year Periodic Reporting or Shortening the 25-Year License Term

The Commission invites comment on the implementation of a three-year periodic reporting requirement,¹¹ or alternatively, shortening the current 25-year submarine cable license term.¹²

The Commission notes that it does not routinely require license-holders to report updated ownership and system information, with the exception of annual circuit capacity data, during the 25-year license term. The Commission thus proposes “periodic reporting” every three years, to include “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.”¹³ The Commission proposes that submarine cable licenses would continue throughout the term, and further proposes that if any reports raise national security, law enforcement, foreign policy, and/or other concerns, the Commission will conduct a further inquiry to assess concerns, potentially resulting in enforcement action.¹⁴ Acknowledging the potential burden on licensees, the Commission asks whether the three-year timeframe is appropriate, and considers whether substantive filings should be required from licensees that have not undergone any reportable changes.¹⁵

The NPRM sets forth the categories of information the Commission proposes to require in periodic reports: (1) submarine cable infrastructure; (2) current and future service offerings; (3) regulatory compliance certifications; (4) Cybersecurity Certifications; (5) “Covered List” Certifications; (6) use of foreign-owned MNSPs; (7) licensee information and points of contact; (8) submarine cable system ownership information; and (9) licensee ownership information. The NPRM seeks comment on any other

information the Commission should require, as well as whether the Commission should impose application fees.¹⁶

As an alternative to requiring periodic reporting from licensees every three years, the Commission asks whether shortening the current 25-year submarine cable landing license term would allow the Commission to similarly monitor evolving national security and law enforcement risks, and seeks comment on the appropriate window for the license term.¹⁷

Updated Application Requirements

Applicants for submarine cable landing licenses are required to make a number of disclosures to secure a license; the NPRM proposes to expand significantly applicants' disclosure obligations, both in terms of the parties required to make disclosures as well as the information that must be included in applications.

1. The Commission seeks comment on whether entities that own or control the Submarine Line Terminal Equipment or equivalent equipment — not just the entities that own or control the US cable landing station — should be considered applicants for, and licensees on, a submarine cable license.¹⁸
2. The Commission seeks comment on the 5% interest threshold requirement to be considered an applicant for and licensee on a submarine cable license. The Commission asks whether it should retain this threshold requirement, including whether it is “reasonable in today’s national security environment,” as well as whether it should set forth a specific method for calculating ownership interests.¹⁹
3. The Commission asks whether any entity that owns the submarine cable system, even if it does not use it,²⁰ or any entity that has capacity (including through a lease, purchase, or swap of spectrum or fiber pair) on the submarine cable system, should be required to become applicants/licensees.²¹
4. The Commission proposes to adopt a presumption that entities owned or controlled by certain foreign governments, and entities whose submarine cable landing license application or license (or international Section 214 authority) were previously denied or revoked because of national security and law enforcement concerns, shall not qualify for a new submarine cable license.²²
5. The Commission questions whether the current 10% ownership reportable interest threshold is appropriate in light of “the evolving threat environment,” and seeks comment on whether to lower the current 10% ownership reporting threshold to 5%. Currently, applicants for a submarine cable license must identify individuals and entities with 10% or greater direct and indirect equity and/or voting interests. The Commission notes that “the current reporting threshold of 10% may not capture all interests that may present national security and policy concerns,” and that both the Commission and other federal government entities use a 5% reporting threshold in other contexts.²³ The NPRM, however, acknowledges the potential burden on applicants/licensees, and seeks comment on strategies to minimize potential burdens.²⁴

The Commission also proposes to collect detailed information regarding submarine cable infrastructure,²⁵ as well as information about the capacity services that applicants currently, or plan to, provide through the submarine cable system, including the types of customers served, and the general terms and conditions for the services.²⁶

Regulatory Compliance Certifications

The Commission proposes to require new certifications in light of the evolving threat environment in national security and law enforcement contexts. Specifically, the Commission proposes to require all applicants and licensees filing periodic reports to certify whether they are in compliance with relevant rules and laws,²⁷ as well as submit information on and certify detailed cybersecurity risk management plans.²⁸

The Commission also proposes to require a certification that applicants and licensees will not use equipment or services identified on the Commission's "Covered List." In the event a licensee currently uses such covered equipment or services, the NPRM seeks comment on whether the Commission should require such licensees to remove the covered equipment or services, or develop plans to address the removal of the equipment and services.²⁹

The NPRM seeks comment on whether to require information from applicants regarding third parties that have physical, remote, or logical access to a submarine cable system, including the cable landing station and/or data center housing hardware.³⁰ The Commission also notes its interest in "logical access to and control of" Network Operations Centers, proposing to require all applicants and licensees to supply information on the locations of such facilities in applications and periodic reports.³¹

In both initial applications and periodic reports, 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."³² The NPRM seeks comment on the specific criteria to determine whether an MNSP is considered "foreign-owned" and thus reportable.³³

Other Considerations

To improve collection of circuit capacity data, the Commission seeks comment on the scope of the entities required to file Cable Operators Reports and Capacity Holders Reports, as well as the information contained in these reports.³⁴

The Commission also seeks comment on whether and how to streamline submarine cable license processing while ensuring that national security and law enforcement risks are addressed.³⁵

Next Steps

Once the NPRM has been published in the Federal Register, comments on the proposals set out in the NPRM will be due 30 days after the date of its publication in the Federal Register, and reply comments will be due 60 days after its publication date.

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Endnotes

¹ Review of Submarine Cable Landing License Rules and Procedures to Assess Evolving National Security, Law Enforcement, Foreign Policy, and Trade Policy Risks, OI Docket No. 24-523, MD Docket No. 24-524, Notice of Proposed Rulemaking, FCC 24-119 (rel. Nov. 22, 2024) (NPRM), paragraph 45.

² *Ibid.*, paragraphs 1, 13-15.

³ *Ibid.*, paragraph 1.

⁴ *Ibid.*, paragraphs 23-24.

⁵ *Ibid.*, paragraph 26.

⁶ *Ibid.*, paragraph 27.

⁷ *Ibid.*, paragraph 28.

⁸ *Ibid.*, paragraphs 29-31.

⁹ *Ibid.*, paragraph 30.

¹⁰ *Ibid.*, paragraph 39.

¹¹ *Ibid.*, paragraphs 44-53.

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- ¹² *Ibid.*, paragraphs 59-71.
- ¹³ *Ibid.*, paragraph 49.
- ¹⁴ *Ibid.*, paragraph 50.
- ¹⁵ *Ibid.*, paragraph 52.
- ¹⁶ *Ibid.*, paragraphs 180-193.
- ¹⁷ *Ibid.*, paragraphs 59-61.
- ¹⁸ *Ibid.*, paragraph 74.
- ¹⁹ *Ibid.*, paragraphs 79-81.
- ²⁰ *Ibid.*, paragraph 83.
- ²¹ *Ibid.*, paragraph 84.
- ²² *Ibid.*, paragraphs 85-86.
- ²³ *Ibid.*, paragraphs 92-95.
- ²⁴ *Ibid.*, paragraph 96.
- ²⁵ *Ibid.*, paragraphs 98-103.
- ²⁶ *Ibid.*, paragraphs 104-105.
- ²⁷ *Ibid.*, paragraph 107.
- ²⁸ *Ibid.*, paragraphs 108-119.
- ²⁹ *Ibid.*, paragraphs 119-121.
- ³⁰ *Ibid.*, paragraphs 124-127.
- ³¹ *Ibid.*, paragraph 134.
- ³² *Ibid.*, paragraph 128.
- ³³ *Ibid.*, paragraph 132.
- ³⁴ *Ibid.*, paragraphs 196-217.
- ³⁵ *Ibid.*, paragraphs 142-146.