

U.S. Regulatory Developments of International Note

-- National Security Impact on Foreign
Ownership

-- Submarine Cables & Regulatory Fees

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National Security Issues Impact FCC

Licensing

- Controlling foreign investment in US companies subject to review by the Committee on Foreign Investment in the United States (CFIUS)
- Lower threshold for FCC -- All FCC license applications involving 10% or greater foreign ownership subject to Executive Branch security review
- FCC gives deference to the Executive Branch in areas of national security and law enforcement, and routinely delays application processing pending their review
- “Team Telecom” is a subset of agencies involved in the CFIUS process focused on review of foreign ownership in telecom companies
 - DOJ, FBI, DHS, DOD

National Security (cont.)

- Focus is on improving national security – foreign ownership is merely a hook for extracting concessions desired of all carriers
- Seek private voluntary commitments, and if significant concerns, require public Network Security Agreement that is incorporated by the FCC as a condition to the license grant.
- Review process can add months to processing time
 - Trans-Pacific Express submarine cable license application still pending after 8 months (normally 45 day review)

Typical Components Of Security Agreement

- Customer billing records and subscriber information maintained in the U.S. and not subject to mandatory destruction laws of other countries
- No disclosure of U.S. records to foreign governments without prior U.S. approval
- U.S. citizen designated as point of contact
- Domestic communications routed in U.S.
- Location limits on Network Operations Centers
- Visitation Policy established for non-US personnel access to critical infrastructure and information
- Establishment of U.S. citizen as Security Officer
- Unlimited access by FBI/DOJ etc. to NOCs in both US and abroad
- Personnel screening procedures established

Submarine Cable Regulatory Fees

- The FCC charges an annual regulatory fee to the owners of U.S. bearer circuits on submarine cables
 - Current fee is \$1.10 per 64 KB equivalent bearer circuit
 - Bearer circuits are original ownership interests, IRUs or leases of bare capacity (long-term leases)
- Explosion in both supply and demand for large amounts of capacity, with many sales at gigabit level, results in regulatory fees higher than cost of equivalent 64 KB circuit
- FCC aware of situation, but has delayed response for several years despite intense pressure from private submarine cable owners
 - Result is creative pricing and reporting of circuits to FCC