

NOTICE OF PROPOSED RULEMAKING DOCKET NO. NSD-104
AG ORDER NO. 6067-2024; RIN 1124-AA01
89 FR 86116 (Oct. 29, 2024)

***DEPARTMENT OF JUSTICE: PROPOSED RULE ON PROVISIONS PERTAINING TO
PREVENTING ACCESS TO U.S. SENSITIVE PERSONAL DATA AND GOVERNMENT-
RELATED DATA BY COUNTRIES OF CONCERN OR COVERED PERSONS***

MEETING SUMMARY

RE: MEETING WITH TELECOMMUNICATION INDUSTRY ASSOCIATION (“TIA”) REGARDING THE DEPARTMENT OF JUSTICE’S PROPOSED RULE ON PROVISIONS PERTAINING TO PREVENTING ACCESS TO U.S. SENSITIVE PERSONAL DATA AND GOVERNMENT-RELATED DATA BY COUNTRIES OF CONCERN OR COVERED PERSONS

DATE/TIME OF MEETING: NOVEMBER 27, 2024 11:00 AM – 11:30 AM EST

PLACE OF MEETING: VIRTUAL

ATTENDEES:

FROM THE NATIONAL SECURITY DIVISION OF THE DEPARTMENT OF JUSTICE

Lee Licata, Deputy Section Chief
Jennifer Roan, Program Analyst
Michelle Bazu, Attorney
Kaveh Miremadi, Attorney
Joesph Lullo, Attorney

FROM THE DEPARTMENT OF COMMERCE

Marvin Wiley, Policy Advisor, Global Data Policy and Privacy
Isabella Carlton, Policy Advisor, Global Data Policy and Privacy

FROM TELECOMMUNICATION INDUSTRY ASSOCIATION

Melissa Newman, Senior Vice President
Colin Andrews, Senior Director, Government Affairs

SUMMARY OF MEETING:

On November 27, 2024, representatives from the Department of Justice (“DOJ”) and the Commerce Department (“Commerce”) engaged with representatives from Telecommunication Industry Association (“TIA”) regarding TIA’s comments on DOJ’s October 29, 2024, Notice of

Proposed Rulemaking (“NPRM”) entitled “Proposed Rule on Provisions Pertaining to Preventing Access to U.S. Sensitive Personal Data and Government-Related Data by Countries of Concern or Covered Persons.” *See* 89 FR 86116. These notes are a summary of the engagement; they are not a transcript. The Department of Justice has not shared these notes with meeting participants to confirm their accuracy.

During the engagement, a representative from Telecommunications Industry Association (TIA) provided a brief introduction stating it is the trusted manufacturers of information communications technology equipment supporting companies such as Cisco, Nokia, Ericsson, and Qualcomm. The member carriers do not have a vote in TIA’s policy discussions but rather the manufacturers do.

TIA is an advocacy organization and an anti-accredited standards organization that follows the two rules that guide both sides of the aisle on the proposed rule on data security. The representative from TIA mentioned President Biden changed a rule that would allow companies to engage with companies in China in the context of standards setting organizations as to ensure, for example, we did not create incongruent 5G standards resulting in interoperable telecommunications networks. TIA mentioned this as an example where their organization is involved in not just policy discussions but in border security standard setting work between the US and the PRC.

The representative from Commerce appreciated the level setting on understanding TIA’s concerns with the proposed rule. The representative from TIA responded their members provided three concerns: First, submission of few signed letters on CISA’s proposed docket that will encourage additional communications with CISA, DOJ, and Commerce on implementation of the CISA security requirements. TIA’s member appreciates the ex parte system because it adds transparency by keeping it so meetings aren't occurring and decision making isn't occurring in a black box. TIA requested a formalized process for giving engagement specifically to CISA and have constantly cited to the FCCs existing ex parte rules as a good example of what they would like to see replicated during this NPRM, as this is kind of exploring its regulatory powers.

The representative from DOJ responded to TIA’s first point stating the ex parte system derives from the Administrative Procedures Act (APA) that governs any regulatory process and DOJ has followed those ex parte rules for the purpose of this rule-making process.

The representative from TIA commented how CISA don't view themselves bound by ex parte rules since they are not conducting their own rulemaking, and there's a question as to whether CISA should be bound by those rules.

The representative from DOJ responded it’s a regulator who priority is to follow the rules through this rulemaking and advised TIA to visit the docket where DOJ’s rule is posted to review the ex parte summaries of every engagement.

The representative from TIA thanked DOJ for the reminder and proceeded with its second concern regarding a big push to include an exemption for telecom services in the NPRM. TIA members are elated to see DOJ tying the Title 2 definition strictly to the telecom services

since ICT and Telecom services have evolved since 1996. They want to ensure the definition for telecom services covers the modern set of communications and networking services.

The representative from DOJ commented how imperative an appropriate definition will be in the final rule regarding the telecom industry and indicated that DOJ may consider the most recent OFAC definition of a communication service or could create a new definition just for the purpose of this rule.

The representative from TIA did not provide a substantial response to the definition or bulk data thresholds.

The representative from TIA raised its final concern that DOJ try to emulate the process BIS has used to implement the ICTS Executive Order 13873 and its implementing regulations. They see ICTS narrow and targeted in how it's implemented. TIA's Manufacturers express concern about compliance costs, lack of clarity on how to implement rule and want to understand how the NPRM will address their role in the regulated ecosystem. DOJ also asked the TIA representative what sort of bulk sensitive personal data the manufacturers deal in that would create regulated transactions. The TIA representatives did not have an example.

The representative from DOJ commented the next phrase will incorporate compliance and enforcement guideline with additional engagements after final rule is issued next year.

The representative from Commerce proposed a question to the TIA representatives if there are any of your companies expressing any concerns about complying with the rule in respect to any potential economic impacts that they may encounter.

The representative from TIA responded there is a concern of what compliance will look like especially our specific manufacturing members perspective, it's more pertaining to the level of how much will this cost? How will we comply?

The representative from Commerce continued with a question to TIA regarding if there less impact input from manufacturers on the thresholds. The representative from TIA responded they did not receive substantial feedback from their members on thresholds and economic impact. They thanked DOJ for the transparency and indicated they would not submit any comments on the NPRM during this comment period.

The representative from DOJ asked a follow-up question to TIA if they are planning to file comments on CISA docket since several letters were submitted recently.

The representative from TIA responded yes as a signatory since efforts is led by USTelecom.

TIA had no further questions.

Commerce concluded the meeting and wished everyone a happy holiday.