

FCC Is Refreshing the Team Telecom Record Amidst Increased National Security Activity

April 27, 2020

On April 27, 2020, the International Bureau of the Federal Communications Commission (FCC or Commission) released a Public Notice (PN) to refresh the record and seek comment in its long-pending proceeding to reform its approach to Team Telecom, a group of Executive Branch agencies that reviews certain telecom transactions. For years, the FCC has referred transactions involving reportable foreign ownership to Team Telecom for review and feedback on national security and law enforcement concerns that might arise from foreign ownership or influence. In early April, President Trump issued an Executive Order (EO) to formalize Team Telecom's responsibilities and process for review. This latest PN refreshes the FCC's Team Telecom record to include the recent EO and seeks comment on the impact of the EO on the FCC's previous proposals to improve timeliness and transparency of review. The PN comes on the heels of a series of actions driven by cyber and national security concerns targeted at certain Chinese companies.

The comment and reply comment deadlines will be established following publication of the PN in the Federal Register.

The PN Asks a Series of Questions to Refresh the FCC's Years-Old Record on Team Telecom

As the PN details, the Commission "adopted a Notice of Proposed Rulemaking [(NPRM)] to improve the timeliness and transparency of the process involving referral of certain applications with reportable foreign ownership to Executive Branch agencies, including the Team Telecom agencies, for feedback on any national security, law enforcement, foreign policy, or trade policy concerns" in June 2016. Wiley filed comments on behalf of certain telecommunications

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companies in response to that NPRM, supporting reforms that would increase predictability and transparency in the Team Telecom process, while facilitating effective and appropriate review.

The April 27, 2020 PN seeks to refresh the Commission's record in this proceeding, in light of the recent EO. It enters the EO into the record, and it asks, among other questions: "how the [EO] affects the specific proposals and issues raised in the [NPRM]" and "whether the [EO] warrants any further or different rules to improve timeliness and transparency." In addition, it asks about implications of the Clarifying Lawful Overseas Use of Data (CLOUD) Act.

The PN also "invite[s] the Executive Branch to provide its view on the effect of the Executive Order." It asks whether Team Telecom will "make publicly available a standard set of questions and requests to applicants [,]" and whether "the Executive Branch continue[s] to propose that certain certifications be made by applicants as part of the application process[.]"

In a statement, Commissioner O'Rielly observed that updating the record in light of the recent EO is an "appropriate next step" and reiterated his belief that "Team Telecom can be reformed to eliminate its opaque and unpredictable existing practices, while still firmly preserving our ability to protect U.S. national security."

The April 27, 2020 PN Is Issued Amidst a Flurry of National Security Activity at the FCC

As we described last week, the FCC has taken a series of targeted actions concerning national security risks posed by certain Chinese companies. In May 2019, the FCC denied an application by China Mobile USA for section 214 authorization based on national security and law enforcement grounds. In November 2019, the FCC prohibited the use of universal service support to purchase or obtain equipment or services produced or provided by a covered company posing a national security threat to communications networks or the communications supply chain. As a part of that action, the FCC began the process of designating Huawei Technologies Company and ZTE Corp. as covered companies. And following a recommendation earlier this month from Team Telecom that the FCC revoke China Telecom Americas' 214 authorization, the FCC on April 24, 2020, issued Show Cause Orders to four Chinese government-owned telecommunications companies—China Telecom Americas, China Unicom Americas, Pacific Networks, and ComNet—demanding that they explain why their section 214 authorizations should not be revoked.

The FCC is also presently considering how to implement various Congressional instructions in the Secure and Trusted Communications Networks Act in the midst of its ongoing proceedings to restrict the use of universal service funds to purchase or maintain equipment from Huawei and ZTE.

Companies across the technology and communications sector should pay attention to and engage on these issues, as the government's rapidly developing approach raises the risk of additional oversight, review, and regulation.

Wiley's TMT, National Security, and International Trade practices have represented clients before Team Telecom and CFIUS for decades. We have worked with Congress, the FCC, and other agencies on legal and policy issues affecting investors and companies across the private sector. Should you have any questions,

please contact one of the attorneys listed on this alert.

*Please join us for a webinar on National Security and Team Telecom on Wednesday, April 29 at 12 p.m. **RSVP here.***