

ALERT

FCC Releases Draft NPRM to Secure Equipment Authorization Testing Labs

May 10, 2024

July 9, 2024 Update: On May 23, 2024, the FCC adopted a final NPRM. The final NPRM was published in the Federal Register on July 5, 2024, creating a comment deadline of September 3 and a reply comment deadline of October 3.

On May 1, the Federal Communications Commission (FCC or Commission) released a draft Notice of Proposed Rulemaking (draft NPRM or Draft) regarding the Commission's equipment authorization program. The bipartisan proposal – accompanied by a press release from Chairwoman Rosenworcel and Commissioner Carr – is aimed at barring entities of national security concern from certifying and testing wireless equipment. The draft NPRM specifically targets Telecommunications Certification Bodies (TCBs) and Measurement Facilities (test labs), which the FCC entrusts with testing and certifying communications equipment.

If adopted, the Draft would direct the Office of Engineering and Technology (OET) to immediately suspend the recognition of any TCB or test lab for which there is "sufficient evidence" that they are directly owned or controlled by an entity on the FCC's "Covered List" of entities that produce communications equipment and/or services deemed to pose an unacceptable national security risk. Further, the Draft would propose collecting detailed ownership information from TCBs and test labs, review of which could result in further prohibitions. The draft NPRM is not yet final, and is scheduled to be voted on at the Commission's May 23 open meeting.

The draft NPRM follows several recent national security-focused FCC proceedings. In 2022, the Commission banned FCC authorization of equipment on the Commission's Covered List, which includes

Authors

Megan L. Brown
Partner
202.719.7579
mbrown@wiley.law

Joshua S. Turner
Partner
202.719.4807
jturner@wiley.law

Sara M. Baxenberg
Partner
202.719.3755
sbaxenberg@wiley.law

Practice Areas

National Security
Telecom, Media & Technology

equipment produced by companies such as Huawei and ZTE Corporation. In 2023, the Commission initiated a rulemaking that sought comment on decreasing ownership reporting thresholds for international Section 214 authorizations.

This latest item likewise demonstrates the Commission's increasing focus on securing communications networks and supply chains from national security threats. Organizations and companies that operate, own, or utilize TCBs and test labs should monitor this proceeding, which could cause major shifts in their equipment authorization practices. Interested stakeholders can provide feedback to the FCC in advance of the May open meeting (until the Commission issues its Sunshine Agenda), or through public comments if the Draft is adopted.

Prohibition on TCBs and Test Labs Owned or Controlled by Covered List Entities

The FCC has delegated authority to TCBs to review and evaluate applications for equipment certification for compliance with FCC requirements. Test labs report on the results of equipment tests, which TCBs rely on when evaluating applications.

The Draft proposes prohibiting from participation in the equipment authorization program any TCB or test lab in which a Covered List entity controls or holds a 10% or more direct or indirect ownership interest. The prohibition would apply to testing for both certifications and the Supplier's Declaration of Conformity (the process by which entities can self-certify compliance with equipment authorization rules). TCBs and test labs would be required to certify that no Covered List entity has such ownership interests 30 days after the effective date of any final rules.

Notably, the above proposal is also accompanied by an interim suspension. The Commission would direct OET to suspend, pending the outcome of the proceeding, recognition of any TCB or test lab for which there is "sufficient evidence" to conclude such TCB or test lab is owned or controlled by an entity identified on the Covered List. The Draft notes the Commission's "expect[ation]" that OET would "work diligently with [the FCC's] federal partners to take action against such entities[.]" Suspended TCBs and test labs would have 30 days from the date of suspension to certify and provide supporting documentation that no Covered List entity has ownership or control.

The Draft would also seek comment on whether to utilize other Executive Branch lists of national security risks to determine national security risks. The draft NPRM lists potential candidates, such as the Department of Commerce's foreign adversary list and Entity List.

Ownership Information Reporting for TCBs and Labs

The draft NPRM would propose that each TCB or test lab be required to report any entity that holds a 5% or greater direct or indirect equity and/or voting interest. The draft NPRM would seek comment on other potential ownership thresholds and the frequency of reporting. TCBs and test labs would be required to identify any entity that holds a 5% ownership or control interest no later than 90 days after the effective date of any final rules.

The Draft NPRM would create more ownership reporting requirements and potentially more prohibitions on participation in the Commission's equipment authorization program. Wiley's Telecom, Media & Technology, National Security, and Privacy, Cyber & Data Governance practitioners can help navigate these evolving issues.