

ALERT

U.S. Senate Subcommittee Calls for Team Telecom Reform

June 9, 2020

The Senate Permanent Subcommittee on Investigations (PSI) of the U.S. Senate Committee on Homeland Security & Governmental Affairs issued a lengthy and extensively researched report regarding the U.S. government's national security reviews by Team Telecom of foreign telecommunications companies operating in the United States. The report comes on the heels of the Trump Administration's recently issued Executive Order to formalize Team Telecom and its process.

The PSI report could lead to increased Federal Communications Commission (FCC) scrutiny of national security issues in transactions as well as legislation to codify Executive Branch oversight. The global investing community and any companies regulated by the FCC that may consider investments of any kind from non-U.S. interests should pay attention to this report and next steps at the FCC, the Departments of Justice and Homeland Security, and in Congress.

Starting from the premise that "[t]he expansion of global telecommunications networks, in particular, acts as a driving force of economic development by affording individuals unprecedented access to information and opportunities," the PSI report concludes that "[n]ot all international expansion of telecommunications carriers, however, is in the United States' national security interests. Some foreign governments seek to exploit the openness of America's telecommunications market to advance their own national interests."

For the past 20 years, the U.S. government has tried to balance the often competing imperatives of security and investment in the telecommunications space using Team Telecom. According to PSI, Team Telecom "measures were ineffective as Team Telecom lacked formal statutory authority, leaving its operations unstructured and *ad*

Authors

Megan L. Brown

Partner

202.719.7579

mbrown@wiley.law

Nova J. Daly

Senior Public Policy Advisor

202.719.3282

ndaly@wiley.law

Amb. David A. Gross

Senior Counsel

202.719.7414

dgross@wiley.law

Practice Areas

Committee on Foreign Investment in the United States (CFIUS)

International Trade

National Security

Team Telecom

Telecom, Media & Technology

hoc. Because of the lack of statutory authority, Team Telecom had no formal, written processes for reviewing applications or monitoring compliance with security agreements. The informality also resulted in protracted review periods and a process that FCC commissioners described as “broken.” The report lays out the history of FCC and Team Telecom investment review and characterizes the current *status quo* in terms of review and oversight of regulated companies.

The report discusses cybersecurity breaches and surveillance activity attributed by the U.S. government to China and does a deep dive into global internet and telecom connectivity. It calls out interconnection with Chinese telecom companies as particularly risky and recites some concerns about the Border Gateway Protocol, though it does not discuss much recent security work in those areas.

The PSI makes several recommendations of which communications providers, as well as telecom equipment manufacturers and service vendors, should be aware:

1. The FCC should complete its current reviews regarding the potential revocation of authorizations for China Telecom Americas, China Unicom Americas, and ComNet because of “substantial and unacceptable” national security concerns in a timely manner.
2. The FCC should establish a clear standard and process for revoking a foreign carrier’s existing authorizations on national security grounds.
3. Congress should require the periodic review and renewal of foreign carriers’ FCC authorizations to provide international telecommunications services.
4. Congress should statutorily authorize Team Telecom or a successor while preserving the participation of other relevant Executive Branch agencies.
5. Congress should set deadlines by which decisions on FCC-related application reviews must be made such as those required by the Committee on Foreign Investment in the United States (CFIUS).
6. Congress should provide sustained resources necessary for Team Telecom or a successor to effectively assess foreign carriers’ applications and to continually monitor foreign carriers operating in the United States.
7. Congress should require Team Telecom or its successor to formally coordinate reviews of foreign carrier applications with CFIUS.
8. Congress should provide Team Telecom or its successor with authority to recommend revocation of a carrier’s authorization.
9. Congress should require the periodic review and renewal of network security agreements entered between Team Telecom or its successor and foreign carriers to mitigate any identified security concerns.
10. Team Telecom or its successor should establish formal, written policies and procedures governing its monitoring of compliance with security agreements.
11. Congress and the Administration should take steps to ensure reciprocal access to the Chinese telecommunications market for U.S. companies.

Wiley's team of national security professionals, including the former Chair of Team Telecom and the former Staff Chair of CFIUS, have the detailed insider knowledge and experience required to help shape the development and navigate the evolving requirements of the Team Telecom process. We have worked with Congress, the FCC, and other agencies on legal and policy issues affecting investors and companies across the telecommunications, media, and technology sectors. Our team of Team Telecom specialists have guided myriad companies and investors through FCC approvals, government review, and the negotiation of mitigation agreements. Additionally, we have managed oversight by Team Telecom, including annual reporting, investigations, and site visits.

Should you have any questions, please contact one of the attorneys listed on this alert.