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Report from Washington

Executive Order Formalizes Team Telecom Review Process

April 8, 2020

Introduction

On April 4, 2020, President Trump issued an executive order establishing the Committee for the Assessment of Foreign Participation in the United States Telecommunications Services Sector (the “Committee”). The establishment of the Committee largely codifies the current ad hoc Team Telecom review process by providing formal authority to the Committee to review certain license applications and otherwise participate in reviews of telecommunications related transactions. While we do not expect a significant change to existing practices, this executive order institutes more certainty around that process.

Comprised primarily of the Attorney General, the Secretary of Homeland Security and the Secretary of Defense (the “Committee Members”), the Committee will assist the Federal Communications Commission (“FCC”) in its public interest review of national security and law enforcement concerns that may be raised by foreign participation in the U.S. telecommunications services sector. In addition to reviewing certain license applications, the Committee is empowered to reevaluate and mitigate existing telecommunications licenses.

The executive order requires the Committee Members to enter into a Memorandum of Understanding (“MOU”) with the Director of National Intelligence describing their plan to implement and execute the order within 90 days. This MOU will include, among other things, additional details related to the types of information requests that applicants will need to comply with, potential mitigation measures and member roles within the Committee. The effective date of the implementation of this executive order will be dependent upon the issuance of the MOU.

Committee Membership

The Committee will be chaired by the Attorney General, and its members will also include the Secretary of Homeland Security, the Secretary of Defense and “the head of any other executive department or agency, or any Assistant to the President, as the President determines

appropriate.” The executive order also designates the following officials as advisors to the Committee (“Committee Advisors”): the Secretary of State, the Secretary of the Treasury, the Secretary of Commerce, the Director of the Office of Management and Budget, the U.S. Trade Representative, the Director of National Intelligence, the Administrator of General Services, the Assistant to the President for National Security Affairs, the Assistant to the President for Economic Policy, the Director of the Office of Science and Technology Policy, and the Chair of the Council of Economic Advisors. The Committee Advisors may be expanded to include any other Assistant to the President as the President deems appropriate.

Committee Review Process

Upon an application referral by the FCC, the Committee will conduct an initial review to determine whether granting a license or license transfer poses a risk to the national security or law enforcement interests of the United States. The initial review must be completed before the end of the 120-day period beginning on the date that the Chair determines that the applicant’s responses to questions and information requests are complete. If the Committee determines that any identified risks cannot be mitigated by standard mitigation measures¹ during the initial review, a secondary 90-day assessment period is triggered. Following the conclusion of the initial review, or secondary review where applicable, the Committee will do one of the following:

- Advise the FCC that it has no objection to the FCC granting the license or transfer of license;
- Recommend the FCC only grant the license contingent on the applicant’s compliance with mitigation measures; or
- Recommend the FCC deny the application.

Authority to Review Existing Licenses

Importantly, the Committee may also review existing licenses to identify any additional or new risks to U.S. national security or law enforcement interests. The decision to review an existing license is determined by majority vote of the Committee Members, and upon the conclusion of such a review, the Committee may recommend that the FCC take no action with respect to the license; mitigate such license; or revoke the license.

¹ Standard mitigation measures are to be established in the MOU between the Committee and the Director of National Intelligence.

Intergovernmental Information Sharing

Information provided to the Committee is subject to confidentiality requirements and cannot be disclosed except in certain identified circumstances. Notably, an exception is made for information sharing to the Committee on Foreign Investment in the United States (“CFIUS”). Other identified exceptions allow information sharing to the extent required by law or for law enforcement purposes and to other governmental entities at the discretion of the Chair.

Key Takeaways

- The executive order clarifies the often opaque and lengthy Team Telecom review process by standardizing timelines for review and instituting guidelines for the Committee’s decision-making process. This should minimize delays in the review process while offering transaction parties additional clarity as to the status of their license reviews.
- The executive order broadens Team Telecom’s jurisdiction by authorizing the Committee to review existing licenses to identify additional risks to national security or law enforcement interests. The Committee can recommend that the FCC place mitigating conditions on such licenses, and, if necessary, revoke those licenses. This mechanism may have wide-ranging effects for existing FCC licensees with foreign owners or investors.
- The executive order further highlights the parallels between the Team Telecom and CFIUS review processes, both of which are intended to address national security issues related to foreign investment in U.S. critical infrastructure (including the telecommunications sector). The Committee Members and Committee Advisors largely consist of the same member agencies that form CFIUS and the executive order also explicitly contemplates information-sharing between the Committee and CFIUS.

Conclusion

This executive order formalizes and clarifies the Team Telecom review process, although the timeline for implementation of the executive order will depend upon the Committee’s issuance of an MOU with the Director of National Intelligence. This MOU will set forth in greater detail the types of information requests that applicants will need to comply with, define potential mitigation measures, and establish member roles within the Committee. Simpson Thacher & Bartlett continues to monitor the regulatory developments regarding this executive order as well as any rules proposed by the FCC on this topic and is experienced in assisting parties in understanding and successfully navigating both the Team Telecom and the related CFIUS review process.

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