

Client Alert

FCC Adopts Final Rule Formalizing Team Telecom Foreign Ownership Review

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On September 30, the Federal Communications Commission (“FCC”) adopted new rules and procedures (the “Order”) aimed at formalizing and modernizing the interagency review process for applications from companies with foreign ownership seeking to participate in the U.S. telecommunications market.¹ The rules adopted by the FCC partially implement Executive Order 13913 (the “Executive Order”), which was signed by President Donald J. Trump on April 4, 2020, and established the Committee for the Assessment of Foreign Participation in the United States Telecommunications Services Sector, formerly known and referred to herein as “Team Telecom.” By adopting these rules, the FCC hopes to promote efficiency and transparency in the Team Telecom review process.

The Order primarily addresses five points: (i) applications that will be, and will generally not be, referred to Team Telecom; (ii) adoption of the review timeframes set out in the Executive Order; (iii) the creation of standardized national security and law enforcement questions, responses to which must be provided directly to Team Telecom at the time of the filing of the relevant FCC application; (iv) provision of certain certifications to the FCC for certain applications; and (v) Team Telecom review of existing licenses.

1. Applications at Issue – Referred and Generally Not Referred

Under the new rules, the FCC will continue to refer to Team Telecom applications for international Section 214 authorizations and submarine cable landing licenses, as well as applications to assign, transfer control of or modify such authorizations and licenses, where the applicant has reportable foreign ownership. The FCC will also continue to refer petitions seeking approval of foreign ownership of broadcast, common carrier wireless, and common carrier satellite earth station applicants and licensees under Section 310(b) of the Communications Act. Notably, the FCC reserved the right to refer all additional types of applications to Team Telecom where “the specific circumstances of an application require the input of [Team Telecom] as part of our public interest determination of whether an application presents national security, law enforcement, foreign policy, or trade policy concerns.”

The FCC also identified several types of applications that it will no longer routinely refer, or will generally not refer, for Team Telecom review. These include: (i) standalone applications to transfer control of domestic section 214 authority; (ii) satellite earth station applications unless associated with a request for a section 310(b) foreign ownership ruling; (iii) pro forma notifications and applications; (iv) international

¹ For ease of reference in this Client Alert, we continue to use the term “Team Telecom” to refer to the interagency review process for applications where foreign ownership is present.

section 214 applications, submarine cable applications, and section 310(b) petitions where the only reportable foreign ownership is through wholly owned intermediate holding companies and the ultimate ownership and control is held by U.S. citizens or entities; (v) international section 214 applications where the applicant has an existing mitigation agreement and there are no new reportable foreign owners of the applicant; and (vi) international section 214 applications where the applicant was cleared by Team Telecom within the past 18 months without mitigation and there are no new reportable foreign owners.

2. Timeframe for Review by Team Telecom

The FCC's rules formally adopt the timeframes for review set forth in the Executive Order, adding more transparency to a previously opaque review process. Under the rules, Team Telecom has 120 days in which to conduct an initial review of referred applications with reportable foreign ownership. This initial review period can be extended by an additional 90 days (the "secondary assessment") in "instances where national security or law enforcement interests cannot be mitigated by standard mitigation measures." If Team Telecom fails to communicate its findings at the end of the 120-day or 90-day review period, as applicable, the FCC has the discretion to act on the application.

3. Standardized National Security and Law Enforcement Questions

Parties to applications that are routinely referred for Team Telecom review must now, under the new rules, provide standardized information regarding ownership, network operations and other matters. Such information must be provided directly to Team Telecom prior to or at the time that the parties file their application with the FCC. The FCC has directed the International Bureau to draft the standardized question set, which will focus on five categories: (i) corporate structure and shareholder information; (ii) relationships with foreign entities; (iii) financial condition and circumstances; (iv) compliance with applicable laws and regulations; and (v) business and operational information.

4. Certifications Required from All Applicants

The new rules require all applicants – with or without foreign ownership – for certain types of licenses to make certain certifications to the FCC. These include certifications regarding communications with law enforcement agencies, and designation of a U.S. citizen or permanent U.S. resident as a point of contact to receive service and "lawful requests."

5. Review of Existing Licenses

Finally, the Executive Order authorizes Team Telecom to, at any time, "review existing licenses to identify any additional or new risks to national security or law enforcement interests of the United States." Such review could result in: (i) a recommendation that the FCC modify an existing authorization or license to include new mitigation conditions; (ii) a recommendation that the FCC revoke the authorization or license; or (iii) a decision to make no recommendation to the FCC with respect to the authorization.

This Client Alert is not comprehensive as to the full scope of the Order published by the FCC and represents only a high-level overview of the FCC's Order.

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