

Executive Order Seeks to Modernize ‘Team Telecom’ After Years-Long Effort

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Introduction and Background

On April 4, 2020, President Donald Trump signed an executive order clarifying and formalizing the role of the ad hoc interagency body currently known as “Team Telecom.” Team Telecom, an executive branch group comprising the U.S. Departments of Justice, Defense and Homeland Security, is charged with reviewing the national security risks associated with foreign ownership for entities with pending applications before, or licenses granted by, the Federal Communications Commission (FCC). Although Team Telecom has a mandate that parallels its perhaps better known counterpart, the Committee on Foreign Investment in the United States (CFIUS), its operation has been much less structured in comparison. Accordingly, the order on “Establishing the Committee for the Assessment of Foreign Participation in the United States Telecommunications Services Sector” is the culmination of a years-long effort to formalize Team Telecom (under the order, the Committee) and its processes. This effort is not yet at the finish line. Agencies implicated by this order will have 90 days to enter into a Memorandum of Understanding regarding their plans to implement the order.

Over the past years, Team Telecom wielded considerable power to review and advise on transactions implicating the telecommunications sector. According to publicly available information, more than 100 FCC licensees have entered into mitigation agreements with Team Telecom to address national security concerns. Further, the FCC has, on several occasions, terminated licenses for failure to abide by the terms of these agreements. For example, in 2019, the FCC denied the Chinese-government-owned telecommunications company China Mobile’s petition to provide international telecommunications services in the United States based on national security concerns raised by Team Telecom. All indications are that, going forward, the Committee will continue its trend of expansive review and enforcement, albeit with increased structure and constrained timelines that should make the process more efficient for dealmakers.

The Future of Team Telecom: The Structure and Operation of the Modernized Committee

The April 4, 2020, executive order not only formalizes the process for national security reviews of FCC license petitions, it also makes several notable changes to the prior Team Telecom structure and process:

New Timelines for the Committee’s Review and Action

In perhaps its most noteworthy change, the executive order establishes timelines for the Committee’s review — an administrative change that will substantially impact the experiences of some FCC licensees before the Committee. Previously, Team Telecom had no time limits on its reviews, meaning that the reviews could languish for months or years. For example, in the China Mobile transaction discussed above, the review was lengthy by any estimation. The petition that was ultimately denied by the FCC in 2019 at Team Telecom’s recommendation was filed eight years earlier, in 2011. Under the order, the Committee must complete its initial review of a license petition within 120 days. Only after the chair notifies the FCC that a secondary assessment is warranted, the Committee may then extend its inquiry into a second-stage assessment lasting an additional 90 days. This time period — 210 days in total — is still undoubtedly lengthy (and can be extended further in certain cases). CFIUS, by comparison, has up to 90 days to review a transaction. But the introduction of specific time periods is a welcome development for a previously open-ended process that could, and often did, last for years.

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Committee Stakeholders Defined

In formalizing the Committee’s membership and operations, the order designates the U.S. attorney general, through the Department of Justice, as the chair of the Committee. The Departments of Defense and Homeland Security will continue their prominent roles as the other two voting members. In addition, several agencies that do not traditionally have a national security or law enforcement mission but nevertheless participate in CFIUS as voting members will also contribute (*e.g.*, the U.S. secretaries of state and commerce). On the Committee, however, these agencies are to serve as *non-voting* advisory members. The difference in stakeholder influence likely exhibits the intent for the Committee to retain a narrower focus on its dual national security and law enforcement objectives as compared with CFIUS, which historically has balanced a diverse range of objectives, including economic and trade, across a broad range of industries.

Authority To Review New Applications and Existing Licenses, Including Previously Reviewed Licenses

Historically, Team Telecom reviewed three categories of FCC licenses:

- “international 214 licenses,” *i.e.*, licenses to provide U.S.-foreign telecommunications services;
- underseas cable licenses; and
- broadcast, common carrier wireless or satellite earth station licenses where the licensee sought to exceed the FCC’s foreign ownership limitations.

On its face, the executive order does not include any express limitation on the types of FCC petitions that the Committee may review. It is not clear at this stage whether the FCC or the Committee intend to expand the scope of reviews for future license applications substantially beyond the historical scope of Team Telecom.

In addition to reviewing prospective applications, the order clarifies that the Committee can review past granted licenses to determine whether they present national security risks not previously identified. Unlike CFIUS, whose authority to reopen a previously completed review is curtailed, the executive order provides the Committee an ostensibly broad and discretionary authority to review even those licenses that the Committee or Team Telecom had previously reviewed. Our experiences indicate that, even if only for lack of resources, it is unlikely that the Committee will engage in a full-scale review of existing licenses but, because the executive order does not provide any threshold or standard for reviewing existing licenses, the order will create some ongoing uncertainty for dealmakers. It is possible that the Committee and the FCC may seek to resolve this uncertainty through future guidance. For now, the executive order makes clear that the grant of a license, even with national security mitigation, will not in itself provide a “safe harbor” like that provided by CFIUS.

Key Takeaways

- The president’s executive order does not immediately change Team Telecom’s current process, as it requires the agencies to take further action to implement the new guidance, which will in turn provide further clarification on the new process.
- Team Telecom (and the Committee) will continue to review a large number of transactions each year, and to enjoy a substantial enforcement authority.
- Once fully implemented, the new Committee process will be more formal, have stricter review timelines and likely will more closely resemble CFIUS — all of which will have a real impact for dealmakers.
- The Committee may review some licenses that previously were approved if it identifies new national security threats, even absent changes in foreign ownership.