

CLIENT ALERT

Team Telecom Opposes United States-Hong Kong Communications Link

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On June 17, 2020, Team Telecom, the multiagency body that reviews certain Federal Communications Commission (FCC) licensing applications for national security and law enforcement concerns, recommended that the FCC deny the portion of the Pacific Light Cable Network (PLCN) submarine cable system application that would have established a direct connection between the U.S. and Hong Kong, citing national security concerns. Team Telecom recommended that the FCC approve the portions of the application in so far as the undersea cable connects the U.S., Taiwan, and the Philippines, which are separately owned and controlled by subsidiaries of Google LLC and Facebook, Inc. and do not involve People's Republic of China (PRC)-based ownership. The recommendation that the FCC approve those portions of the application is subject to final mitigation agreements negotiated with the parties before the FCC issues an order.

In April, Team Telecom granted a six-month special temporary authority (STA) for the operation of the portion of the cable system that connected the U.S. to Taiwan, subject to terms set forth in a provisional National Security Agreement (NSA) between Google and the agencies that comprise Team Telecom, the U.S. Departments of Justice, Defense, and Homeland Security. Among other requirements, the terms of the provisional NSA included notice obligations, access and security guarantees, and auditing and reporting duties, as well as a commitment to "pursue diversification of interconnection points in Asia."

According to the DOJ, which chairs Team Telecom, the PLCN application raises several national security concerns, based, in part, on corporate ownership and whether information carried by the cable would be vulnerable to collection by the PRC at the Hong Kong landing station. Team Telecom cited concerns surrounding the relationship between an investor in PLCN, Pacific Light Data Co. Ltd., a Hong Kong company and subsidiary of Dr. Peng Telecom & Media Group Co. Ltd., and PRC intelligence and security services. Dr. Peng is the fourth largest provider of telecommunication services in China. The Executive Branch agencies also expressed concern with the track record of Dr. Peng's compliance with U.S. laws and regulations "stemming from separate acquisitions involving U.S. telecommunications assets" and Pacific Light Data's connections to the Chinese state-owned telecom China Unicom, the authorizations for which the FCC is currently considering terminating.

Team Telecom's concerns mirror many of those that formed the basis for its 2018 recommendation to deny China Mobile's international 214 application, a license that allows for international telecommunications operations that would have enabled the company to operate in the United States, and its recent April 2020 recommendation that the FCC revoke existing authorizations for China Telecom. Both China Mobile and China Telecom are Chinese state-owned companies. This recommendation – like those before it – revolves around concerns that the authorizations put at risk "the sensitive data of millions of U.S. persons," in this case through a cable system vulnerable to exploitation by the PRC. Team Telecom expressed concerns that, if approved in full, the cable system would transit through Hong Kong before continuing on to other destinations in the Asia Pacific region, exposing large amounts of internet, data, and telecommunications traffic containing U.S. persons information to collection by the Chinese. Recent actions by the PRC regarding Hong Kong's autonomy have exacerbated those concerns.

Team Telecom, formally the Committee on the Assessment of Foreign Participation in the United States Telecommunications Services Sector, was recently the subject of an [April 4, 2020 Executive Order](#) that established more robust processes and procedures for the national security review body.

Takeaways for Industry

The recommendation is the latest in a series of actions that signal that Team Telecom is taking a tough stance on China projects and will oppose those transactions that involve PRC-based ownership or that present concerns regarding PRC access to sensitive data. Currently, the existing authorizations of four Chinese state-owned companies lie in wait for an ultimate determination by the FCC as to whether they can continue to operate in the United States. While the FCC is the ultimate arbiter of whether a company receives a license to operate, it has deferred to Team Telecom's recommendations in the past, and is likely to do so again here.

In their recommendation, the Executive Branch agencies also noted that allowing a direct cable connection with Hong Kong would "advance the PRC government's goal that Hong Kong be the dominant hub in the Asia Pacific region for global information and communications technology and services infrastructure." Team Telecom's reluctance to approve a pathway that would almost certainly provide the PRC with such a competitive advantage is consistent with what seems to be a broader U.S. strategy to reduce the opportunities for China to wrest control from the United States and its allies over certain supply chains and reduce the PRC's access to U.S. critical infrastructure.

DOJ stated that pending before Team Telecom are several other applications for undersea cable landing licenses that would similarly allow for a direct connection between the United States and Hong Kong. Given the concerns surrounding a direct connection to Hong Kong identified in this recommendation, those applications – along with the large amounts of money invested and cables already installed – could ultimately meet the same fate as that of PLCN. Accordingly, the companies and investors involved in those transactions should prepare for increased scrutiny from Team Telecom and extensive and time-consuming engagement with those agencies, including responding to multiple rounds of Team Telecom's "triage questions." Companies should also be prepared to discuss and consider possible mitigation strategies, which could include Team Telecom-approved third party monitors, onsite audits by U.S. government personnel, additional security protocols, and frequent reporting obligations.

As has been the case with 214 authorizations, the FCC and Team Telecom might also look anew at existing authorizations for undersea cable systems to reassess national security considerations such as those identified in this recommendation, particularly those that involve PRC-ownership or that may ultimately connect the United States to mainland China. Companies operating under those licenses that were previously reviewed by Team Telecom might also prepare for renewed interest by the FCC and Team Telecom. To the extent that licenses are conditioned upon mitigation agreements, companies might review their compliance with those agreements, and prepare for reinvigorated engagement with Team Telecom and the FCC.

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