

## Exec. Order Solidifies Team Telecom, But Gray Areas Remain

By **Kelcee Griffis**

*Law360 (April 30, 2020, 6:07 PM EDT)* -- President Donald Trump's new order formalizing the federal government's "Team Telecom" review process will preserve the integrity of the previously informal arrangement for reviewing foreign telecom operations while giving federal officials and applicants a playbook to abide by, national security attorneys say.

Still, important questions remain about how the somewhat routine changes will affect deals, including whether a more formal process will significantly speed up reviews and whether the formalized committee will wield more power.

The executive order, inked in early April, replaced the ad hoc Team Telecom with a new Committee for the Assessment of Foreign Participation in the United States Telecommunications Services Sector. It imposes timelines on member national security agencies that help the Federal Communications Commission assess potential risks of domestic involvement by foreign companies that hold U.S. telecommunications licenses, and it allows retroactive review of already-approved operations by foreign entities.

According to David Fagan, a Covington & Burling LLP partner who focuses on foreign investment and national security, the order addressed shortcomings in the informal process acknowledged both by investigated companies and the reviewing agencies themselves.

"There was a recognition over time that they did largely operate on an ad hoc basis and without a formal structure, and that that allowed for delays," he said. "That created some lack of transparency to transaction parties, and there was a greater focus on it both within the agencies and in the FCC."

Under the executive order, the committee is empowered to "dismiss an application, deny an application, condition the grant of an application upon compliance with mitigation measures, modify a license with a condition of compliance with mitigation measures, or revoke a license."

Like under the informal process, the newly solidified team is headed by the U.S. attorney general and includes Team Telecom advisers such as the secretaries of homeland security and defense and the U.S. Trade Representative.

The order lays out a 120-day initial review period after the FCC refers a transaction to the committee, followed by a 90-day secondary review period. During the first period, the committee may decide no

intervention is necessary and recommend that the FCC move forward with approving the deal. A secondary review would be used "to further evaluate the risk posed to national security and law enforcement interests" and to flesh out remedies to suggest to the FCC.

While these activities were par for the course before the executive order, Caroline Brown, a Crowell & Moring LLP partner who specializes in trade and national security matters, said the new framework imposes a welcome dose of structure.

"Without any type of timeline, there was no pressure to complete the review of an application in a timely fashion," she said. "It does give it added rigor, which I think is a good thing, both for applicants and those reviewing the applications."

Brown noted that there's wiggle room for when the timeline is triggered, which begins after the committee deems a review application is complete, and there's no prescription for how long preliminary discussions may be prolonged.

"That signals that it's allowing for some back and forth between the committee and the applicants," she said.

One section of the executive order also solidifies the committee's ability to retroactively probe telecom companies already authorized to operate in the U.S.

This review leaves room for officials to cast a critical eye on companies as international markets and cybersecurity threats change, said Mario Mancuso, an international trade and national security partner at Kirkland & Ellis LLP.

"While this is a striking new development, it is responsive to concerns expressed by certain U.S. officials that prior approvals and mitigation agreements were no longer appropriate in light of new and different national security risks that had arisen since the initial reviews," he said in a statement shared with Law360.

Although the order wasn't yet in place, U.S. officials flexed this muscle last year when the FCC rejected China Mobile's application to interconnect with U.S. networks, agreeing with Team Telecom's recommendation. Based upon Team Telecom's input, the FCC decided the carrier was too connected to China's government and could not be trusted to offer international phone service in the U.S. without possible interference from officials in Beijing.

Since then, regulators have signaled that they're willing to be aggressive in revetting current operators, and Trump's order appears to reflect that priority.

For example, on April 9, the Justice Department, the Pentagon and other agencies within the executive branch recommended that the FCC revoke a license belonging to another Chinese company — China Telecom — claiming the provider's U.S. operations present "substantial and unacceptable national security and law enforcement risks."

In response, the FCC put China Telecom and three other foreign telcos on notice that their licenses will be probed, and it asked them to justify their U.S. operations. The licensees have 30 days to demonstrate that they are not subject to the influence and control of the Chinese government, or they could have their licenses revoked, the FCC said.

The agency also put out a public call for comments on how the White House policy change will affect its own internal procedures.

By early July, Team Telecom agencies will be required to lay out how they plan to implement the executive order, which will likely include defining what starts the clock on the initial review period.

"In three months, we should see some more definition to the executive order," Brown said. "That includes potentially a list of the questions that the applicants will have to answer before the initial review begins."

Whether the committee's retroactive review powers are merely codified or are somehow expanded is another area to watch, according to Brown.

"There are a lot of questions that still surround that provision," she said.

--Additional reporting by Anne Cullen. Editing by Adam LoBelia.