

UNITED STATES

Team Telecom recommends the FCC revoke China Telecom's authorisations to provide international telecoms services

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On 9 April, a group of Executive Branch agencies, including those that comprise the working group known as 'Team Telecom', recommended to the Federal Communications Commission ('FCC') that it revoke authorisations that allow China Telecom (Americas) Corp. ('China Telecom') to provide international telecommunications services to and from the United States. The agencies that made the recommendation, including the departments of Justice ('DOJ'), Homeland Security, Defense, State, and Commerce, as well as the US Trade Representative, stated that 'substantial and unacceptable national security and law enforcement risks associated with China Telecom's operations... render the FCC authorizations inconsistent with the public interest.'

China Telecom is the US subsidiary of a People's Republic of China ('PRC') state-owned telecommunications company. Its parent, China Telecom Corp. Ltd., manages 70% of the internet in China.

China Telecom has been operating in the US under 2007 authorisations that were conditioned upon the company's adherence to a letter of assurance ('LOA') with DOJ, the Federal Bureau of Investigation ('FBI'), and the Department of Homeland Security. The DOJ, which led the review of the authorisations, stated that the recommendation to the FCC was based on:

- the evolving national security environment since 2007 and increased knowledge of the PRC's role in malicious cyber activity targeting the United States;
- concerns that China Telecom is vulnerable to exploitation, influence, and control by the PRC government;
- inaccurate statements by China Telecom to US government authorities about where China Telecom stored its US records,



- raising questions about who has access to those records;
- inaccurate public representations by China Telecom concerning its cybersecurity practices, which raise questions about China Telecom's compliance with federal and state cybersecurity and privacy laws; and
- the nature of China Telecom's US operations, which provide opportunities for PRC state actors to engage in malicious cyber activity enabling economic espionage and disruption and misrouting of US communications.

The FCC ultimately decides whether to revoke a licence and requires a majority vote of its five commissioners. In a statement on 9 April 2020, FCC Commissioner Brendan Carr said that he '[looks] forward to working with [his] FCC colleagues to act on this recommendation and to further secure America's networks from bad actors that would do us harm.'

RECOMMENDATION TO REVOKE AND TERMINATE § 214 AUTHORISATIONS

According to the Executive Branch agencies' recommendation, in addition to the existing authorisations to operate under Section 214 of the Communications Act, the FCC licences include facilities-based

authorisations, which means that China Telecom could expand its US presence without further FCC approval, including the extension of its network, the installation of new equipment, requesting interconnection with the networks of other US common carriers, or providing facilities-based mobile wireless services using its own network or facilities instead of reselling mobile services.

The agencies stated that under Section 214, a carrier may not provide common carrier telecommunications services without first obtaining from the FCC a certification that the 'present or future public convenience and necessity require' those services. In making that decision, the FCC considers a number of factors, including law enforcement, national security, foreign policy, and trade concerns raised by the Executive Branch.

The agencies also stated that '[b]ecause Section 214(a) directs the Commission to act when "present" or "future" interests are concerned, and to determine whether the public convenience and necessity require the carrier's service, the Commission should also apply the same deference to the Executive Branch's expertise with respect to any national security and law enforcement concerns associated with an existing international 214 authorization.'

In setting forth the agencies' concerns surrounding China Telecom's authorisations, the recommendation included a discussion of the same multifactor analysis that Team Telecom publicly applied for the first time in its July 2018 recommendation that the FCC deny China Mobile USA's licensing application. It determined that 13 of the 14 factors weighed in favour of revocation and termination of China Telecom's authorisations. China Telecom's lack of criminal history was the only neutral factor.

Further mitigation measures would not adequately address national security and law enforcement concerns, the agencies said, citing China Telecom's 'delayed responses to Team Telecom's request for information, its inaccurate statements to Team Telecom and US customers, and its apparent failure to comply with federal and state cybersecurity and privacy laws.'

The recommendation also highlighted that mitigation monitoring revealed breaches in at least two of the five provisions set forth in the 2007 LOA, namely '[t]o take all practicable measures to prevent unauthorized access to US records,' and '[t]o notify DOJ, FBI, and DHS of material changes to China Telecom's services, or of any action requiring notice or application to the FCC.' The terms of the LOA state that a breach of any of the conditions provides independent grounds for revoking or terminating China Telecom's 214 authorisations.

TIMING OF THE RECOMMENDATION

The recommendation comes less than a year after the FCC's May 2019 unanimous decision to deny China Mobile USA's application for a Section 214 licence to provide international telecommunications services between the US and foreign

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destinations. Indeed, in his statement accompanying the FCC's memorandum opinion and order in that matter, FCC Commissioner Brandan Carr called for examination of whether the FCC should revoke China Telecom's authorisations, stating '[China Telecom and China Unicom] hold the same Section 214 authorizations that China Mobile sought. The evidence I've seen in this case calls those existing authorizations into question... [s]o it's time for the US to take additional action. Our national security agencies should examine whether the FCC should revoke those existing Section 214 authorizations, and the FCC should open a proceeding on those matters.'

In September 2019, senators Chuck Schumer (D-N.Y.) and Tom Cotton (R-Ark.) sent a bipartisan letter to FCC Chairman Ajit Pai requesting that the FCC review the licensing applications for China Telecom and for China Unicom, another Chinese telecommunications company.

FORMALISING TEAM TELECOM

A recently issued executive order formalised Team Telecom into the Committee for the Assessment of Foreign Participation in the United States Telecommunication Services Sector.

Section 6 of that order allows for the review of existing licences 'to identify any additional or

new risks to national security or law enforcement interests of the United States.' If the committee determines that there is 'credible evidence' that the application or licence poses a risk to the national security or law enforcement interests of the United States, the committee may recommend that the FCC 'modify the license to include a condition of compliance with mitigation measures,' or 'recommend that

the FCC revoke the license due to the risk of national security of law enforcement interests of the United States.'

According to the DOJ, the China Telecom action was taken under the legacy, *ad hoc* working group Team Telecom. Applications referred by the FCC after the date of the executive order, 4 April 2020, will be handled under the process outlined in that order.

LINKS AND NOTES

See www.justice.gov/opa/pr/executive-branch-agencies-recommend-fcc-revoke-and-terminate-china-telecom-s-authorizations

http://licensing.fcc.gov/cgi-bin/ws.exe/prod/ib/forms/reports/related_filing.hts?f_key=-133273&f_number=ITCT/C2007072500285

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