

Security Fears Over HK Cable Reveal 'Team Telecom' Priorities

By **Caroline Brown** (July 8, 2020, 2:59 PM EDT)

On June 17, Team Telecom, the multiagency body that reviews certain Federal Communications Commission licensing applications for national security and law enforcement concerns, recommended that the FCC deny the portion of the Pacific Light Cable Network, or 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-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, or 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, or NSA, between Google and the agencies that comprise Team Telecom, the U.S. Department of Justice, U.S. Department of Defense and U.S. Department of 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



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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.

While the FCC is the ultimate arbiter of whether a company receives a license to operate, it has deferred to Team Telecom's national security expertise in the past, and is likely to do so again here.

Team Telecom, formally the Committee on the Assessment of Foreign Participation in the U.S. Telecommunications Services Sector, was recently the subject of an April 4 executive order that established more robust processes and procedures for the national security review body.

Commentary

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 otherwise present concerns regarding PRC access to sensitive data. Included in those concerns, as underscored in this determination, are the very points of connection of undersea cable systems.

Over the past decade, major U.S. information and communications technology service providers have heavily invested in infrastructure in order to accommodate the increasing amount of internet and data traffic between the U.S. and Asia.

Until now, few may have considered the ability of Team Telecom to sink those plans, what may have been a logical assessment given past precedent that suggested little opposition to a cable system like PLCN's. But this submission marks a departure from the way Team Telecom previously considered similar applications, and brings into question whether providers will be able to successfully pursue projects aimed at increasing bandwidth and capacity through direct connections to PRC-owned or -controlled territory.

As recently as 2017 — the same year PLCN submitted its application to the FCC — the FCC approved a license application for a cable system connecting the U.S. to China, the New Cross Pacific cable system. This recommendation makes clear that Team Telecom considers such applications very differently three years later.

Given their inherent complexity coupled with the number of companies that can appear on an application, all of which require thorough vetting, reviews of submarine cable landing systems can take time to review. Unlike previous applications for cable systems connecting China to the U.S. that were met with approval, the review of this application occurred during an inflection point in the U.S.-China relationship.

It is in this current national security environment, the recommendation stated, that there are "new concerns about the PRC's intent to steal or acquire millions of U.S. persons' sensitive personal data, PRC access to foreign data through both digital infrastructure investments and new PRC intelligence and cybersecurity laws, and changes in the market that have transformed subsea cable infrastructure into increasingly data-rich environments that are vulnerable to exploitation."

Team Telecom's Focus on the Vulnerability of Sensitive Data

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 U.S., and its recent April 2020 recommendation that the FCC revoke existing authorizations for China Telecom Corp. Ltd.

Both China Mobile and China Telecom are Chinese state-owned companies. Both were also included in a list released by the Department of Defense on June 24 that named companies operating at the behest of the PRC military. 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.

Though not yet defined by Team Telecom, the regulations that implement the Foreign Investment Risk Review Modernization Act, which authorized the overhaul of the Committee on Foreign Investment in the United States, does define sensitive personal data. CFIUS has demonstrated concern with the extent that information can be collected in vast quantities and the corresponding ability for foreign intelligence to manipulate that information, forcing divestitures of several investments, including deals involving Grindr, PatientsLikeMe and StayNTouch Inc.

The concerns regarding collection opportunities of sensitive data as articulated in Team Telecom's written recommendation closely parallel those of CFIUS. Companies that find their operations contingent upon Team Telecom's approvals might consider FIRRMA's definition and whether any combination in their application of potential access to sensitive personal data and other factors, particularly any PRC nexus in the form of ownership structure or points of connection, might give Team Telecom pause.

Thwarting a Geopolitical Competitive Advantage

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 U.S. and its allies over certain supply chains and reduce the PRC's access to U.S. critical infrastructure.

Caught in the crosshairs are those U.S. providers looking to shore up their own infrastructure, which would allow them additional outlets for additional bandwidth and increased capacity "to connect their affiliates' data centers in the United States and Asia."

According to the recommendation, Google, Facebook, Microsoft Corp. and Amazon.com Inc. are the largest investors in new subsea cable routes. This recommendation — should the FCC act on it — signals that building direct connections to PRC-controlled territory would provide long-term geopolitical

advantages to the PRC government and is no longer up for discussion, at least for the time being.

The Fate of Other Pending Applications

According to the DOJ, pending before Team Telecom are several other applications for undersea cable landing licenses that would similarly allow for a direct connection between the U.S. and Hong Kong.

Those include applications for the Hong Kong-Americas and Bay to Bay Express cable systems, which are financed in part by the PRC government through state-owned carriers and include Facebook and Amazon as co-owners. Also pending is the Hong Kong-Guam cable, owners include Google and RTI.

Given the concerns surrounding a direct connection to Hong Kong identified in this recommendation, those applications — along with the large amounts of money already invested and cables already installed — could ultimately meet the same fate as that of PLCN.

Accordingly, the companies and investors involved in those transactions, and any future applications that propose to connect the U.S. and the Asia Pacific region, 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.

Applicants might reevaluate their ownership structure and proposed points of connection, and should be prepared to consider possible mitigation strategies, which could include Team Telecom-approved third-party monitors, divestiture of certain segments of a cable system, onsite audits by U.S. government personnel, additional security protocols and frequent reporting obligations.

The FCC and Team Telecom might also look anew at existing authorizations for undersea cable systems to reassess national security considerations, particularly those that involve PRC-ownership or that ultimately connect the U.S. to mainland China. The FCC has already begun doing so in the context of Section 214 authorizations: the existing Section 214 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 U.S.

A provision in the April executive order that formalizes Team Telecom also expressly allows Team Telecom to review existing authorizations. Accordingly, companies operating under licenses previously referred to Team Telecom for review might prepare for renewed interest by the FCC and Team Telecom. And to the extent that licenses are conditioned upon mitigation agreements, companies might review their compliance with those agreements, and prepare for reinvigorated engagement with the government.

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