

Communications and Information Technology Alert

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FCC Seeks Comment on Foreign Investment in the Telecommunications Sector

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The Federal Communications Commission (FCC) is refreshing its record regarding executive branch review of certain FCC applications that reveal foreign ownership in the applicants—informally known as the “Team Telecom” review process. The FCC released a [Public Notice](#) seeking comment on its implementation of an April 4th [Executive Order](#) regarding agency review of foreign participation in the U.S. telecommunications sector. Comments are due 30 days from publication of the Public Notice in the Federal Register.

Under current procedures, Team Telecom—an interagency group of several executive branch agencies, including the Department of Homeland Security, the Department of Justice, the Department of Defense, the Federal Bureau of Investigation and the United States Trade Representative—reviews applications referred to it by the FCC for any national security, law enforcement, foreign policy and trade policy concerns that may arise from the foreign ownership interests held in the applicants. The April 4th Executive Order seeks to formalize the Team Telecom review process under a new executive committee, the “Committee for the Assessment of Foreign Participation in the United States Telecommunications Services Sector.” The Executive Order provides some transparency and time restraints on the review process, but leaves open a number of key issues of concern to FCC applicants, such as public availability of committee procedures, forms of information requests, and standard mitigation measures that the Committee may recommend. A more fulsome Akin Gump analysis of the Executive Order is [available here](#).

The FCC’s April 27th Public Notice seeks comment on how the Executive Order impacts the FCC’s [2016 Notice of Proposed Rulemaking](#) (NPRM) to improve the “timeliness and transparency” of the Team Telecom review process. Specifically, the 2016 NPRM sought comment on the following key areas:

- the types of applications to be referred to the executive branch;
- the information that should be provided by an applicant with reportable foreign ownership in order to facilitate executive branch review;
- certifications to be made by an applicant that it will comply with several mitigation measures; and

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- time frames for executive branch review of the applications.

The 2016 NPRM proposed a 90-day review executive branch review period with one 90-day extension when additional review is required. These timelines are roughly equivalent to the overall timeline provided in the Executive Order, subject to the open question of when the Executive Order review clock begins.

In addition to participation from the telecommunications industry, the FCC asks the executive branch agencies who participate in the review process to weigh in publicly. The FCC poses a number of questions to executive agencies, seeking clarity around procedural issues important to applicants that are subject to the review process, including the following:

- Will the Committee make publicly available a standard set of questions and requests to applicants? If so, how will applicants be able to access them?
- Would the Committee expect an applicant's responses to such questions to be submitted to the Committee at the time the application is filed?
- Does the executive branch continue to propose that certain certifications be made by applicants as part of the application process? If so, are there any changes to the proposed certifications?
- Does the executive branch continue to propose that all applicants make the certifications, or that such certifications apply solely to those applicants with reportable foreign ownership?

The FCC also seeks comment on new facts or circumstances that have occurred since the 2016 NPRM that the FCC should consider in revising its processes. The FCC explicitly references the 2018 Clarifying Lawful Overseas Use of Data (CLOUD) Act, which expands the geographic scope of law enforcement requests and subpoenas for certain digital information when such data is stored overseas. The 2016 NPRM had proposed requiring applicants subject to Team Telecom review to adhere to similar requirements.

After Federal Register publication of the Public Notice, interested parties will have 30 days to provide comments, and 45 days to provide reply comments. Federal Register publication of the Public Notice is expected in the coming weeks.

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