

Biden Signs Secure Equipment Act, Requires FCC to Ban Covered Chinese Communications Equipment from Obtaining Equipment Authorizations

November 15, 2021

Pursuant to the Federal Communications Commission's (FCC or Commission) equipment authorization rules, all radio frequency (RF) devices must be properly authorized prior to being marketed, imported, sold, or shipped to customers in the United States. While the FCC has taken several steps to reduce the presence of Huawei and ZTE equipment in U.S. communications networks, the FCC rules do not prohibit the agency from reviewing and authorizing RF devices manufactured by these companies. To address this perceived loophole, on November 11, 2021, President Biden signed into law the bipartisan Secure Equipment Act of 2021 (Act), which requires the FCC to adopt rules clarifying that it will no longer review or approve any application for authorization of equipment that is on the agency's "Covered List." The Secure Equipment Act requires the FCC to adopt the rules no later than **November 11, 2022**.

The Secure Equipment Act instructs the FCC to adopt rules clarifying that the agency will no longer review or approve applications for equipment authorization for equipment on the FCC's Covered List, which currently includes telecommunications equipment and services produced or provided by Huawei Technologies Company and ZTE Corporation, and video surveillance and telecommunications equipment and services produced or provided by Hytera Communications Corporation, Hangzhou Hikvision Digital Technology Company, and Dahua Technology Company – and their respective subsidiaries and/or affiliates.

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Last summer, the FCC issued a Notice of Proposed Rulemaking proposing significant changes to the equipment authorization regime, including prohibiting Covered List entities from obtaining equipment authorizations. The Commission may issue a follow up public notice in this proceeding related to the passage of the Secure Equipment Act.

The FCC maintains the Covered List pursuant to section 2(a) of the Secure and Trusted Communications Networks Act of 2019, which lays out the criteria for determining what communications equipment or services pose an unacceptable risk to the national security of the United States or the security and safety of United States persons (*see* earlier Wiley Alert).

Key Takeaways

Industry should expect forthcoming FCC action to ban Covered List equipment, including Huawei and ZTE-manufactured RF devices, from obtaining FCC equipment authorizations. Communications equipment manufacturers and companies should ensure they know the origins of component parts of their devices to make sure they are not on the Covered List.

Wiley's Telecom, Media & Technology and National Security, Privacy, Cyber & Data Governance, and Government Contracts practitioners can help navigate these evolving issues.

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