

ALERT

FCC Continues National Security Efforts Targeting Certain Chinese Companies

April 24, 2020

On April 24, 2020, the Federal Communications Commission (FCC or Commission) issued Orders to Show Cause demanding that four Chinese government-owned telecommunications companies explain why their section 214 authorizations to operate in the United States should not be revoked on cyber and national security grounds. These Show Cause Orders are the latest in a series of actions targeting the national security risks posed by certain Chinese companies.

In May 2019, the FCC blocked China Mobile USA from entering the U.S. telecom market on national security and law enforcement grounds. In November 2019, the FCC adopted a rule that no universal service support may be used to purchase or obtain equipment or services produced or provided by a covered company posing a national security threat to communications networks or the communications supply chain. As part of this action, the Commission began the process of designating Huawei Technologies Company and ZTE Corp. as covered companies. And earlier this month, Team Telecom—a group of Executive Branch agencies that reviews FCC applications involving reportable foreign ownership—recommended that the FCC revoke China Telecom Americas’ 214 authorization. These aggressive moves are consistent with other recent actions by the U.S. Government to curtail the participation of Chinese companies in U.S. communications networks.

Below, we summarize Team Telecom’s recommendation regarding China Telecom and the Show Cause Orders issued to China Telecom Americas, China Unicom Americas, Pacific Networks, and ComNet. This action has the potential to impact a host of broader interconnection arrangements between companies operating in the United States and may expand to other FCC regulated activities

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Practice Areas

International Trade
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where carriers partner with Chinese government-owned entities.

Team Telecom Recommends Revocation of China Telecom Americas' 214 Authorization

On April 9, 2020, close on the heels of the April 4, 2020 Executive Order on Establishing the Committee for the Assessment of Foreign Participation in the United States Telecommunications Services Sector, Team Telecom recommended revoking the 214 license of China Telecom Americas. In a remarkable 71 page filing with a confidential appendix which includes information obtained or derived under some of the U.S. government's most powerful surveillance tools under the Foreign Intelligence Surveillance Act, the Executive Branch agencies mounted a broad attack against China's malicious cyber activities, invoked a general distrust of China, and made numerous allegations of inaccurate statements by China Telecom Americas and the opportunity posed by its U.S. operations for increased Chinese state-sponsored cyber activities. The recommendation concludes that the national security and law enforcement risks associated with China Telecom Americas' 214 authorization cannot be mitigated.

Show Cause Orders Issued to China Telecom Americas, China Unicom Americas, Pacific Networks, and ComNet

The Show Cause Orders issued by the FCC on April 24, 2020 give the companies 30 days to respond. In the press release accompanying the Orders, Chairman Pai stated that "[f]oreign entities providing telecommunications services—or seeking to provide services—in the United States must not pose a risk to our national security. The Show Cause Orders reflect our deep concern—one shared by the U.S. Departments of Commerce, Defense, Homeland Security, Justice, and State and the U.S. Trade Representative—about these companies' vulnerability to the exploitation, influence, and control of the Chinese Communist Party, given that they are subsidiaries of Chinese state-owned entities. We simply cannot take a risk and hope for the best when it comes to the security of our networks."

Commissioner Starks also released a statement on April 24, 2020, underscoring the need for security in light of America's reliance on communications networks during the pandemic and tied the Orders to Show Cause to the May 2019 Commission Order:

As countries around the world fight the COVID-19 pandemic, we rely more than ever on our communications networks. Every day throughout the world, historic amounts of traffic cross these networks as people work from home, students engage in distance learning, and patients engage in telehealth visits with their doctors.

With such an unprecedented increase in data traffic, we've never had a greater need to ensure the security of these communications. That's why we must pay even greater attention to whom we permit to interconnect with American communications networks.

I support this decision by the Commission's professional staff, based on the recommendation of the Executive Branch's expert agencies. Last year, I voted to deny a Chinese carrier's application to operate in the United States based on concerns that allowing the company to interconnect with our networks would harm our national security. The authorizations at issue today raise similar concerns. I look forward to reviewing the

companies' responses and the final recommendation of the professional staff. Our national security must be protected.

Wiley's TMT, National Security, and International Trade practices have represented clients before Team Telecom and CFIUS for decades. We have worked with Congress, the FCC, and other agencies on legal and policy issues affecting investors and companies across the private sector. Should you have any questions, please contact one of the attorneys listed on this alert.

*Please join us for a webinar on National Security and Team Telecom on Wednesday, April 29 at 12 p.m. **RSVP here.***