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USTR among agencies recommending FCC revoke license of Chinese SOE

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A group of executive agencies including the Office of the U.S. Trade Representative has recommended that the Federal Communication Commission revoke a Chinese state-owned enterprise's license to provide international telecommunications services in the U.S., adding another irritant to an increasingly strained relationship between Washington and Beijing.

The agencies cited national security concerns that did not exist when the license was granted in 2007.

Goodwill from the signing of a phase-one trade agreement has largely dissipated as some administration officials have blamed China's handling of the coronavirus for the severity of the pandemic in the U.S. Trade officials from USTR and USDA, however, have maintained that China so far is living up to the terms of the agreement, while President Trump has continued to insist his relationship with Chinese President Xi Jinping remains strong.

Regardless, the executive agencies, known informally as "Team Telecom," on Thursday cited a litany of national security concerns created by China Telecom's continued access to the U.S. telecommunications network, claiming the Chinese SOE violated the conditions of its FCC license.

In doing so, Team Telecom cited USTR's March 2018 Section 301 investigation into Chinese practices, the basis for tariffs on billions of dollars' worth of Chinese goods. The agencies noted the report on the probe said "cyber theft [was] one of China's preferred methods of collecting commercial information because of its ... plausible deniability."

Later in 2018, USTR issued an update to its report that said Chinese cyber intrusions were increasing at an alarming rate, another point cited in the Team Telecom recommendation this week.

Team Telecom's recommendation came days after President Trump signed an executive order formalizing the agencies' ad hoc review process by establishing the "Committee for the Assessment of Foreign Participation in the United States Telecommunications Services Sector." The committee is chaired by the attorney general and includes the Defense and Homeland Security secretaries. USTR is one of 10 advisers to the committee, along with the secretaries of Commerce, Treasury and State.

A Justice Department announcement issued on Thursday said the recommendation was "taken under the legacy, ad hoc arrangement … formerly known as Team Telecom" that was formalized by the executive order.

The order has been in the works for years and is not aimed directly at China, several analysts and former government officials told *Inside U.S. Trade,* although it could impact Chinese telecommunications companies' ability to access the U.S. market. It was issued amid a larger administration push to restrict Chinese participation in the information and communications technology supply chain.

The language in the order is country-agnostic and intended to subject foreign investments and other participation in the U.S. telecoms market to a national security review, according to Harry Broadman, a former assistant USTR who is now a managing director at the Berkeley Research Group. Broadman said that it's difficult "to argue with a straight face" that the Trump administration does not have China in its crosshairs.

The order is a small part of the Trump administration's whole-of-government approach to fight what it sees as the national security threat posed by China, according to Andy Keiser, a fellow at George Mason's National Security

Institute. Keiser was the deputy national security senior adviser for Trump's transition team after the 2016 election; he also once served on the staff of then-House Intelligence Committee Chairman Mike Rogers (R-AL).

The administration has taken steps to restrict Chinese telecom giants Huawei and ZTE from accessing the U.S. market, adding the former to the Commerce Department's Entity List and issuing a May 2018 executive order that could serve as the basis for an import ban on Chinese ICT equipment. Huawei and ZTE together account for just 2 to 3 percent of the U.S. market, a share that is unlikely to increase, Keiser said.

The impact of the April 4 order on Huawei and ZTE likely will be more indirect. Huawei and ZTE are equipment providers and do not need FCC licenses to sell their products, said Richard Sofield, the former foreign investment review staff director for the Justice Department's national security division. But when a wireless reseller breaks into the market it will need an FCC license, and the newly formed committee likely insist that resellers not use Huawei products, Sofield said.

A U.S. block of Chinese telecom companies will send a message that those companies should not be trusted, Keiser said, describing the U.S. as a "national security model."

Given the limited U.S. participation in the Chinese telecoms market, Beijing has little recourse to directly respond to the FCC action, said Sofield and Martijn Rasser, a senior fellow at the Center for a New American Security. But Beijing could raise the issue in future trade negotiations in an attempt to gain other concessions from the U.S., Rasser said. Sofield suggested Beijing also could look outside the telecoms sector for ways to retaliate against the U.S.

A Chinese official on Friday intimated that revoking China Telecom's license would run counter to the market economy principles the U.S. has repeatedly criticized China for not following. "The Chinese government has always required Chinese companies to conduct foreign economic cooperation in accordance with market principles on the basis of compliance with laws and regulations, while also requiring them to abide by local laws and regulations," Foreign Ministry spokesman Zhao Lijian said during a press briefing. "We urge the United States to abide by the principles of market economy, stop wrong practices that generalize national security and politicize economic issues, stop unreasonable suppression of Chinese companies, and provide a fair, just and non-discriminatory environment for Chinese companies to invest and operate in the United States."

USTR has repeatedly criticized China for being a non-market economy, contending that Beijing has not enacted reforms that would help it transition to a market economy -- reforms it was expected to make after joining the World Trade Organization.

China is most likely to respond if its companies are subject to U.S. actions, Sofield said. A review mechanism could put Chinese companies in the FCC's crosshairs.

The April 4 executive order includes language that could potentially allow the committee to review FCC licenses that it would not have otherwise had the authority to, depending on how a forthcoming memorandum of understanding further explains the review mechanism. Section 6 of the order allows the committee to "review existing licenses to identify any additional or new risks to national security or law enforcement interests of the United States."

Whether Section 6 grants the committee new authority to review FCC licenses or codifies an already existing practice is not clear, according to Sofield and Caroline Brown, a former Treasury and Justice Department official who is now a partner at Crowell & Moring. The FCC and Team Telecom may condition some of those authorizations on mitigation measures outlined in letters of assurance or network security agreements, Brown said. Non-compliance with those agreements may constitute breach, Brown said, which could be the grounds upon which a company loses its license.

Team Telecom claims China Telecom repeatedly violated its letter of assurance.

If the executive order does offer the committee more authority for reviews than what Team Telecom enjoyed, the committee could re-evaluate a license provided to another Chinese SOE, China Unicom, Sofield said. The FCC approved China Unicom's license in 2007.

The committee could also assist in administration efforts to reshore American businesses, Rasser said, especially as the country attempts to recover from the coronavirus pandemic. The pandemic has shown the U.S. supply chain is more fragile that was previously known, he said, and it could further energize efforts to get companies to move production back to the U.S. or diversify supply chains outside of China. A formalized Team Telecom process could assist with those efforts, he said. -- *Brett Fortnam* (bfortnam@iwpnews.com)

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