



EXECUTIVE ORDERS

Executive Order on Establishing the Committee for the Assessment of Foreign Participation in the United States Telecommunications Services Sector

INFRASTRUCTURE & TECHNOLOGY

Issued on: April 4, 2020



By the authority vested in me as President by the Constitution and the laws of the United States of America, including section 301 of title 3, United States Code, it is hereby ordered as follows:

Section 1. Policy. The security, integrity, and availability of United States telecommunications networks are vital to United States national security and law enforcement interests.

Sec. 2. Definitions. For purposes of this order:

(a) “License” means any license, certificate of public interest, or other

authorization issued or granted by the Federal Communications Commission (FCC) after referral of an application by the FCC to the Committee established by subsection 3(a) of this order or, if referred before the date of this order, to the group of executive departments and agencies involved in the review process that was previously in place.

(b) “Application” means any application, petition, or other request for a license or authorization, or the transfer of a license or authorization, that is referred by the FCC to the Committee established in subsection 3(a) of this order or that was referred by the FCC before the date of this order to the group of executive departments and agencies involved in the review process that was previously in place. (c) “Intelligence Community” shall have the meaning assigned to it in subsection 3.5(h) of Executive Order 12333 of December 4, 1981 (United States Intelligence Activities), as amended.

(d) “Mitigation measures” shall mean both standard and non-standard mitigation measures.

(e) “Standard mitigation measures” shall be those measures agreed upon by the Committee Members (as defined in subsection 3(b) of this order) and Committee Advisors (as defined in subsection 3(d) of this order).

Sec. 3. Establishment. (a) There is hereby established the Committee for the Assessment of Foreign Participation in the United States Telecommunications Services Sector (Committee), the primary objective of which shall be to assist the FCC in its public interest review of national security and law enforcement concerns that may be raised by foreign participation in the United States

telecommunications services sector. The function of the Committee shall be:

- (i) to review applications and licenses for risks to national security and law enforcement interests posed by such applications or licenses; and
- (ii) to respond to any risks presented by applications or licenses by recommending to the FCC, as appropriate and consistent with the provisions of this order, that it dismiss an application, deny an application, condition the grant of an application upon compliance with mitigation measures, modify a license with a condition of compliance with mitigation measures, or revoke a license.

(b) The Committee shall be composed of the following members (Committee Members):

- (i) the Secretary of Defense;
- (ii) the Attorney General;
- (iii) the Secretary of Homeland Security; and
- (iv) the head of any other executive department or agency, or any Assistant to the President, as the President determines appropriate.

(c) The Attorney General shall serve as Chair of the Committee (Chair).

(d) The following officials shall be advisors to the Committee (Committee Advisors) with no role in the duties set forth in sections 4 through 11 of this order

except as provided in subsections 6(c), 9(f), 9(g), 10(g), and 11(d) of this order:

- (i) the Secretary of State;
- (ii) the Secretary of the Treasury;
- (iii) the Secretary of Commerce;
- (iv) the Director of the Office of Management and Budget;
- (v) the United States Trade Representative;
- (vi) the Director of National Intelligence;
- (vii) the Administrator of General Services;
- (viii) the Assistant to the President for National Security Affairs;
- (ix) the Assistant to the President for Economic Policy;
- (x) the Director of the Office of Science and Technology Policy;
- (xi) the Chair of the Council of Economic Advisers; and
- (xii) any other Assistant to the President, as the President determines appropriate.

(e) The Committee Members and Committee Advisors may, subject to the limitations in this order, designate a senior executive from their entity to perform the functions described in this order on their behalf.

Sec. 4. Duties of Committee Chair and Members. (a) The Chair shall designate one or more Committee Members to serve as the lead for executing any function of the Committee (Lead Member). The Chair may assign to a Lead Member any or all of the following responsibilities as appropriate and consistent with their statutory authorities:

(i) submitting to applicants or licensees any questions or requests for information to establish facts about an application or license necessary to conduct the reviews and assessments described in sections 5 and 6 of this order;

(ii) identifying risks to national security or law enforcement interests of the United States raised by an application or license, in consultation, as appropriate, with other Committee Members;

(iii) coordinating with other Committee Members on the reviews and assessments described in sections 5 and 6 of this order;

(iv) proposing, in coordination with the Chair, any mitigation measures necessary to address any risk to national security or law enforcement interests of the United States identified through the risk-based analysis described in subsection 9(c) of this order;

(v) coordinating with other Committee Members and communicating with

applicants or licensees regarding any mitigation measures necessary to address risks to national security and law enforcement interests of the United States;

(vi) monitoring compliance with, and coordinating with the Committee regarding, any mitigation measure the Committee recommends be imposed by the FCC as a condition on a license; or

(vii) any related responsibilities as specified by the Chair.

(b) Except as otherwise provided in this order, the Chair shall have the exclusive authority to act, or to authorize other Committee Members to act, on behalf of the Committee, including communicating with the FCC and with applicants or licensees on behalf of the Committee.

(c) In acting on behalf of the Committee, the Chair or a Lead Member, as applicable, shall keep the Committee fully informed of the Chair's or Lead Member's respective activities taken under this order and shall consult with the Committee before taking any material actions under this order.

Sec. 5. Committee Application Review Process. (a) The Committee shall review and assess applications to determine whether granting a license or the transfer of a license poses a risk to national security or law enforcement interests of the United States.

(b) Upon referral by the FCC of an application, the Committee shall conduct an initial review of the application to evaluate whether granting the requested license or transfer of license may pose a risk to national security or law

enforcement interests of the United States.

(i) During the initial review, the Committee may determine:

(A) that granting an application for a license or the transfer of a license raises no current risk to national security or law enforcement interests;

(B) that any identified risk to national security or law enforcement interests raised by an application may be addressed through standard mitigation measures recommended by the Committee; or

(C) that a secondary assessment of an application is warranted because risk to national security or law enforcement interests cannot be mitigated by standard mitigation measures.

(ii) If the Committee determines that granting the application does not raise a current risk to national security or law enforcement interests or that standard mitigation measures would mitigate any risk to national security or law enforcement interests, such a determination and any recommendations shall be communicated to the FCC in a manner consistent with sections 9 and 10 of this order.

(iii) Except as provided in subsection 5(d) of this order, any initial review shall be completed before the end of the 120-day period beginning on the date the Chair determines that the applicant's responses to any questions and information requests from the Committee are complete.

(c) When the Committee has determined that a secondary assessment of an application is warranted, it shall conduct such an assessment to further evaluate the risk posed to national security and law enforcement interests of the United States and to determine whether to make any recommendations pursuant to section 9 of this order. Any secondary assessment of an application shall be completed no more than 90 days after the Committee's determination that a secondary assessment is warranted. The Chair shall notify the FCC of a determination that a secondary assessment is warranted.

(d) During an initial review under subsection 5(b) of this order or a secondary assessment under subsection 5(c) of this order, if an applicant fails to respond to any additional requests for information after the Chair determines the responses are complete, the Committee may either extend the initial review or secondary assessment period or make a recommendation to the FCC to dismiss the application without prejudice. The Chair shall notify the FCC of a determination that the applicant's responses are complete, of any extensions of the initial review period, or when the Committee recommends dismissal under this subsection.

Sec. 6. Committee License Review Process. (a) The Committee may review existing licenses to identify any additional or new risks to national security or law enforcement interests of the United States.

(b) The Committee shall determine whether to review an existing license by majority vote of the Committee Members.

(c) If the Committee conducts such a review, it shall promptly notify the

Sec. 7. Threat Analysis by the Director of National Intelligence. (a) For each license or application reviewed by the Committee, the Director of National Intelligence shall produce a written assessment of any threat to national security interests of the United States posed by granting the application or maintaining the license. The Director of National Intelligence shall solicit and incorporate the views of the Intelligence Community, as appropriate.

(b) The analysis required under subsection (a) of this section shall be provided to the Committee within the earlier of 30 days from the date on which the Chair determines that an applicant's or licensee's responses to any questions and requests for information from the Committee are complete or 30 days from the date on which the Chair requests such an analysis. Such an analysis may be supplemented or amended as appropriate or upon a request for additional information by the Chair.

(c) The Director of National Intelligence shall ensure that the Intelligence Community continues to analyze and disseminate to the Committee any additional relevant information that may become available during the course of a review or assessment conducted with respect to an application or license.

Sec. 8. Requests for Information. In furtherance of its reviews and assessments of applications and licenses as described in this section, the Committee may seek information from applicants, licensees, and any other entity as needed. Information submitted to the Committee pursuant to this subsection and analysis concerning such information shall not be disclosed beyond Committee

Member entities and Committee Advisor entities, except as appropriate and consistent with procedures governing the handling of classified or otherwise privileged or protected information, under the following circumstances:

(a) to the extent required by law or for any administrative or judicial action or proceeding, or for law enforcement purposes;

(b) to other governmental entities at the discretion of the Chair, provided that such entities make adequate assurances to the Chair that they will not further disclose the shared information, including to members of the public; or

(c) to the Committee on Foreign Investment in the United States with respect to transactions reviewed by that Committee pursuant to 50 U.S.C. 4565, in which case this information and analysis shall be treated consistent with the disclosure protections of 50 U.S.C. 4565(c).

Sec. 9. Recommendations by the Committee Pursuant to the Committee Review Process. (a) With respect to applications that are reviewed or assessed pursuant to section 5 of this order, the Committee shall:

(i) advise the FCC that the Committee has no recommendation for the FCC on the application and no objection to the FCC granting the license or transfer of the license;

(ii) recommend that the FCC deny the application due to the risk to the national security or law enforcement interests of the United States; or

(iii) recommend that the FCC only grant the license or transfer of the license contingent on the applicant's compliance with mitigation measures, consistent with section 10 of this order.

(b) With respect to a license reviewed pursuant to section 6 of this order, the Committee may, when appropriate:

(i) recommend that the FCC modify the license to include a condition of compliance with mitigation measures negotiated by the Committee;

(ii) recommend that the FCC revoke the license due to the risk to national security or law enforcement interests of the United States; or

(iii) take no action with respect to the license.

(c) Any recommendation made by the Committee pursuant to subsections (a) and (b) of this section shall be based on a written risk-based analysis, conducted by the Committee Member entity or entities proposing the denial, mitigation measures, modification, revocation, or no action.

(d) The Committee shall make the recommendations described in subsections (a)(ii), (a)(iii), (b)(i), and (b)(ii) of this section if it determines that there is credible evidence that the application or license poses a risk to the national security or law enforcement interests of the United States.

(e) The Committee shall attempt to reach consensus on any recommendation authorized by this order. If senior executive Committee officials designated

pursuant to subsection 3(e) of this order cannot reach consensus on a recommendation, the Chair shall present the issue to the Committee Members, who shall determine the Committee recommendation by majority vote. If the vote results in a tie, the Chair shall determine the recommendation.

(f) If the Committee's determination is a recommendation to deny an application, to grant an application contingent on compliance with non-standard mitigation measures, to modify a license to condition it upon compliance with non-standard mitigation measures, or to revoke a license, the Chair shall notify the Committee Advisors and, to the extent consistent with applicable law, provide them all available assessments, evaluations, or other analyses regarding such determination. Within 21 days of the notification, the Committee Advisors shall advise the Chair whether they oppose the recommendation.

(i) If one or more of the Committee Advisors opposes the recommendation, the senior executives designated by the Committee Members and Committee Advisors shall promptly confer in an effort to reach consensus on a recommendation. If consensus is reached, the recommendation shall be provided to the FCC consistent with subsection 9(h) of this order.

(ii) If the senior executives designated by the Committee Members and Committee Advisors do not reach consensus, the Chair shall present the issue to the Committee Members and the Committee Advisors to seek to resolve any objections within 30 days of the notification by the Chair of a recommendation to deny or to grant an application contingent on compliance with non-standard mitigation, or within 60 days in the case of a recommendation to modify

a license to condition it upon compliance with non-standard mitigation measures or to revoke a license. Committee Members and Committee Advisors may consider any submissions by the Committee Advisors (e.g., a countervailing risk assessment), as appropriate.

(iii) If the Committee Members and Committee Advisors are unable to reach consensus through the foregoing process, the Committee Members identified in subsection 3(b) of this order shall determine a recommendation by majority vote. If the vote results in a tie, the Chair shall determine the recommendation.

(g) The Chair shall notify the President of any intended recommendation, and any opposition thereto by a Committee Member or Committee Advisor, within 7 days of a majority or tie vote held under subsection 9(e) or 9(f)(iii) of this order if either the recommendation or any opposition thereto by a Committee Member or Committee Advisor involves the denial of an application, granting an application contingent on non-standard mitigation measures, modifying a license to condition it upon compliance with non-standard mitigation measures, or revoking a license. The FCC will receive notice of the recommendation, consistent with subsection 9(h) of this order, not earlier than 15 days after the date on which the President is notified of the intended action.

(h) Except as provided in subsection (b)(iii) of this section, the Chair, on behalf of the Committee, shall notify the FCC through the Administrator of the National Telecommunications and Information Administration (NTIA) of a final recommendation made pursuant to this section. The Administrator of NTIA shall notify the FCC of the recommendation within 7 days of the notification from the Chair.

(i) As necessary and in accordance with applicable law and policy, including procedures governing the handling of classified or otherwise privileged or protected information, the Committee may consider classified information and otherwise privileged or protected information in determining what recommendation to make to the FCC through the Administrator of NTIA under this section, and may provide such information to the FCC as necessary on an ex parte basis.

Sec. 10. Mitigation of Risk and Monitoring. (a) The Committee may recommend to the FCC, consistent with section 9 of this order, that the FCC condition the granting of a license or transfer of a license on compliance with any mitigation measures in order to mitigate a risk to the national security or law enforcement interests of the United States arising from the application.

(b) The Committee may recommend to the FCC, consistent with section 9 of this order, that the FCC modify a license to condition it upon compliance with any mitigation measures in order to mitigate a risk to national security or law enforcement interests of the United States arising from the license.

(c) Consistent with subsection 4(a)(v) of this order, the Chair or assigned Lead Member shall communicate any mitigation measures proposed by the Committee to the applicant or licensee.

(d) Any mitigation measures negotiated pursuant to this section shall be based on a written risk-based analysis.

(e) The Committee shall monitor any mitigation measures imposed by the FCC

as a condition on a license.

(i) Committee Member entities, as appropriate, shall report to the Committee regarding any material noncompliance with any mitigation measures imposed by the FCC as a condition on a license as a result of the Committee's recommendation under subsections (a) through (d) of this section.

(ii) The Committee, in consultation with the FCC, as appropriate, and in a manner that does not unduly constrain Committee resources, shall develop methods for monitoring compliance with any mitigation measures imposed by the FCC as a condition on a license as a result of the Committee's recommendation under subsections (a) through (d) of this section.

(f) If the Committee determines that a licensee has not complied with a mitigation measure and has not cured any such noncompliance in a satisfactory manner, the Committee may recommend actions consistent with subsection 9(b) of this order.

(g) When requested by the Chair, the Director of National Intelligence shall provide analyses assessing threats related to risk mitigation, compliance monitoring, and enforcement to Committee Member entities and Committee Advisor entities that are monitoring compliance with mitigation measures imposed by the FCC as conditions on licenses as a result of Committee recommendations under subsections (a) through (d) of this section.

(h) This order does not constrain the discretion of executive departments or agencies, pursuant to any relevant authority not described in this order, to:

- (i) conduct inquiries with respect to an application or license;
- (ii) communicate with any applicant, licensee, or other necessary party; or
- (iii) negotiate, enter into, impose, or enforce contractual provisions with an applicant or licensee.

Sec. 11. Implementation. (a) Executive departments and agencies shall take all appropriate measures within their authority to implement the provisions of this order.

(b) The Department of Justice shall provide such funding and administrative support for the Committee as the Committee may require. The heads of executive departments and agencies shall provide, as appropriate and to the extent permitted by law, such resources, information, and assistance as required to implement this order within their respective agencies, including the assignment of staff to perform the duties described in this order. An Intelligence Community liaison designated by the Director of National Intelligence shall support the Committee, consistent with applicable law.

(c) Within 90 days from the date of this order, the Committee Members shall enter into a Memorandum of Understanding among themselves and with the Director of National Intelligence (or the Director's designee) describing their plan to implement and execute this order. The Memorandum of Understanding shall, among other things, delineate questions and requests for applicants and licensees that may be needed to acquire information necessary to conduct the reviews and assessments described in sections 5 and 6 of this order, define the

standard mitigation measures developed in accordance with section 2(e) of this order, and outline the process for designating a Lead Member as described in section 4 of this order.

(d) The Chair, in coordination with the Committee Members and the Committee Advisors, shall review the implementation of this order and provide a report to the President on an annual basis that identifies recommendations for relevant policy, administrative, or legislative proposals.

Sec. 12. General Provisions. (a) Nothing in this order shall be construed to impair or otherwise affect:

(i) the authority granted by law to an executive department or agency, or the head thereof; or

(ii) the functions of the Director of the Office of Management and Budget relating to budgetary, administrative, or legislative proposals;

(b) This order shall be implemented consistent with applicable law and subject to the availability of appropriations.

(c) This order is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.

(d) If any provision of this order, or the application of any provision to any

person or circumstances, is held to be invalid, the remainder of this order and the application of any of its other provisions to any other persons or circumstances shall not be affected thereby.

DONALD J. TRUMP

THE WHITE HOUSE,

April 4, 2020.