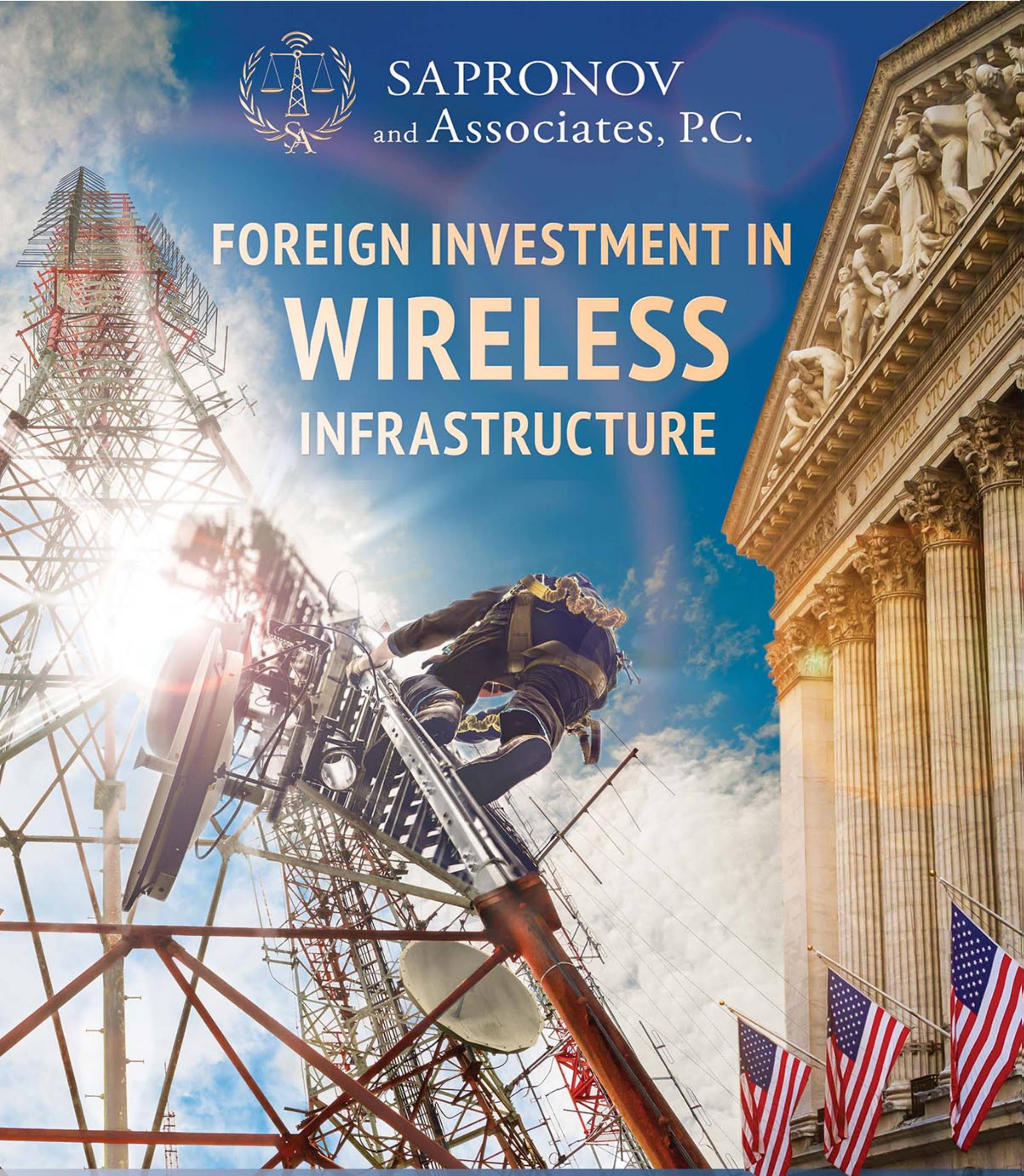
SAPRONOV
and Associates, P.C.

FOREIGN INVESTMENT IN WIRELESS INFRASTRUCTURE



5555 Glenridge Connector, Suite 200
ATLANTA, GA 30342
Phone: (770) 399-9100

1875 I Street, NW 5th Floor
WASHINGTON, D.C. 20006
Phone: (202) 429-2055

10 Vozdvizhenka Street
MOSCOW
RUSSIA 125009

www.wstelecomlaw.com

Foreign Investment in U.S. Wireless Infrastructure

Updated, July 2020

Preface

This is a compendium of client alerts and related materials on foreign investment in U.S. telecom and wireless markets – with emphasis on potential investors from Eastern and Central European countries.

Notably, our most recent "Negotiable Hostilities" alert (Part II) discusses a series of newly imposed orders by the U.S. Executive branch expanding scrutiny and regulation of foreign investment - specifically focused on the U.S. telecom sector from the standpoint of national security. This alert addresses whether such transactions are possible at all in the current geopolitical environment.

The answer is yes – but it just became harder: and not just for Russia. Much of the new regulatory framework is specifically aimed at China. The heightened regulation of foreign entry and investment in U.S. telecom and wireless markets was the focus of our latest webinar. Hosted by Thomson Reuters, the panel consisted of highly experienced regulatory and transactional attorneys (including the former General Counsel for U.S. National Security Agency as well as our Moscow-based Counsel representing foreign investors). The moderators were Walt (Vladimir) Sapronov of our Firm and James (Jim) Kevin Wholey, Partner in the Washington, D.C. office of Phillips Lytle LLP.

Other materials include Negotiable Hostilities (Part I), our prior discussion on structuring telecom transactions with Russia in the Sanctions Era, as well as Power Point presentation materials from our webinar on this subject. There is a discussion on what foreign investors generally need to know about investing in the lucrative (but highly regulated) telecommunications sector, including potential deal structures and regulatory barriers. A shortened, Russian version of this discussion is included as well. Finally, there is an alert published by our colleagues at Phillips Lytle LLP on how the recently expanded "Team Telecom" Committee specifically targets investments in U.S. telecommunications and digital infrastructure from China as a national security threat.

Please contact us at info@wstelecomlaw.com or at (404) 408-4605 if you have any questions or wish further information.

Contents

I. Negotiable Hostilities - Part II - Telecom Deals with Foreign Investors in the Current Administration

ATTORNEY ADVERTISING

SAPRONOV & ASSOCIATES, P.C.
ATTORNEYS AT LAW

info@wstelecomlaw.com
www.wstelecomlaw.com

1300 I STREET, NW, SUITE 400
WASHINGTON, D.C. 20005
TEL. 770.309.0462

5555 GLENRIDGE CONNECTOR
SUITE 200
ATLANTA, GEORGIA 30342
TEL. 770.399.9100

10 VOZDVIZHENKA STREET
MOSCOW, RUSSIA 125009
+7 985 920-89-93

Foreign Investment Alert[1]

Negotiable Hostilities - Part II: Telecom Deals with Foreign Investors in the Current Administration - Upcoming Webinar

June 15, 2020

I. INTRODUCTION

In a prior alert[2] and accompanying webinar,[3] we discussed whether Russian investment in U.S. wireless and other telecom markets in the current geopolitical hostile climate is doable.

The answer is yes – but it just became harder: and not just for Russia.[4]

Previously, we discussed the respective sanction and counter-sanction regimes imposed by U.S. and other western nations on Russia (and by Russia on those nations in response) as a result of hostilities among Russia, the Crimea, and the Ukraine. We also discussed the escalating U.S. legislative and regulatory barriers on foreign investment, including the Foreign Investment Risk Review Modernization Act of 2018.[5]

The escalation continues, having expanded to a series of executive orders by the U.S. administration, specifically focused on securing the domestic telecommunications and wireless infrastructure and supply chain, recently broadened to include foreign investors generally – with

---

[1] While accurate to the best of our knowledge, this discussion is for tutorial purposes only, is neither a legal opinion nor legal advice. Please contact us if you have any questions regarding this disclaimer.

[2] Sapronov & Associates, P.C. Client Alert, *"Negotiable Hostilities: Doing Business with Russia in the Sanctions Era,"* available at wstelecomlaw.com.

[3] The webinar was sponsored by Thomson Reuters and moderated by Walt Sapronov, Esq. and Paul Kouroupas (Sapronov & Associates, P.C.). Speakers include Daniel B. Pickard, Esq. (Wiley Rein, LLP), James Kevin Wholey, Esq. (Phillips Lytle, LLP), Alla Naglis, Esq. (King & Spalding), and Maxim Khlopotin, Esq. (Sapronov & Associates, P.C.). A video broadcast of the webinar is available for purchase at http://westlegaledcenter.com/program_guide/course_detail.jsf?videoCourseId=100267557&ADMIN_PREVIEW=true.

[4] https://www.rferl.org/a/russia-sanctions-timeline/29477179.html.

[5] This legislation ("FIRRMA") has expanded the scope and jurisdiction of the Committee on Foreign Investment in the U.S. (CFIUS) in review of foreign investment transactions raising national security concerns.

particular emphasis on China. The heightened regulation of foreign entry and investment in U.S. telecom and wireless markets is the topic of this alert. It will also be the focus of our upcoming webinar. Hosted by Thomson Reuters, the panel will consist of highly experienced regulatory and transactional attorneys (including the former General Counsel for the U.S. National Security Agency as well as our Moscow-based Counsel representing foreign investors). A brief introduction to the topic and additional webinar details are set forth below.

II. PROTECTING THE U.S. DIGITAL INFRASTRUCTURE: A NEW REGULATORY FRAMEWORK

Compared to previous administrations, there is considerably more governmental scrutiny today of foreign investment in U.S. telecom markets. Federal regulatory review is now triggered at a low threshold of would-be foreign control or ownership and undertaken from the standpoint of national security. The new framework is the recent expansion of "Team Telecom" – an informal multi-agency review team historically brought in under the auspices of the FCC in the exercise of its statutory licensing authority over telecommunications carriers and wireless spectrum - to a new Committee for the Assessment of Foreign Participation in the U.S. Telecommunications Services Sector - one including the U.S. Attorney General, the Secretaries of Defense and Homeland Security and other senior officials.[6] Others include the Commerce Department's recently proposed rule for national review of foreign acquisition of telecommunications and other technology supply chain components, as well as new regulations expanding the scope of The Committee on Foreign Investment in the United States ("CFIUS") review.

These expanded regulations dovetail with a longstanding suspicion held by U.S. lawmakers of Huawei Communications, a Chinese company and one of the world's largest wireless equipment and handset manufacturers, widely viewed to be under control of the People's Republic of China and thus a national security threat.[7]

Finally, there is a confluence of these heightened security concerns and the anticipated arrival of the wireless technology known as "5-G,"[8] expected to generate some $325 Billion in worldwide revenues. At least some of the U.S. buildout of 5-G will be financed by the Universal Service Fund ("USF") (a/k/a the "Connect America Fund" or "CAF"). The fund is comprised of revenue "contributions" made by carriers and other providers of telecommunications and is disbursed to those carriers "eligible" to receive them to help cover their network buildout costs (*e.g.*, in rural areas). The FCC has expressly banned the use of USF funds by eligible telecommunications carriers for equipment furnished by Huawei (and ZTE) on the grounds that those entities pose national security concerns. Huawei, to repeat, is one of the largest suppliers

[6] A brief overview of this Committee ("Foreign Assessment Committee") may be found at Attachment "A" to this alert.

[7] Huawei forcefully denies these allegations and has responded with legal action against the U.S., arguing that the regulatory scrutiny is an unconstitutional Bill of Attainder. See, https://www.wsj.com/articles/huawei-founder-ren-zhengfei-takes-off-the-gloves-in-fight-against-u-s-11591416028. See our Firm publication, *Investment in Wireless Infrastructure*, available upon request.

[8] Weiss, David interview (May 22, 2020), "What is 5G? Understanding the Growth and Complexity of the New Era w/ Walt Sapronov, Esq.," available at https://www.youtube.com/watch?v=WBamix6mM9Q&t=58s.

of 5-G infrastructure, and much of its equipment is embedded in U.S. networks (especially rural ones).

Against this backdrop, what opportunities – if any – are there for foreign investors in the U.S. telecom sector in the 5-G era? What are some of the key regulatory issues for those investors bold enough to enter it? And how does one craft deal protection measures, especially given the possibilities of retroactive license revocation and other changes of law that national security concerns might portend for the telecommunications sector?

III. FOREIGN TELECOM INVESTMENT WEBINAR

This will be part of the discussion of our upcoming webinar. Hosted by Thomson Reuters, the speakers will address the above-summarized, expanded regulation of foreign entry into U.S. telecommunications markets with emphasis on national security and protection of the U.S. digital supply chain. Topics will include the practical implications (including telecom investment transaction delays and retroactive foreign license revocation) of the expansion of Team Telecom to the Foreign Assessment Committee. The panel will also discuss the implications of the Commerce Department's proposed ICTS Supply Chain regulation, the recently codified Foreign Investment Risk Review Modernization Act of 2018 (FIRRMA) regulations (expanding CFIUS review) and other governmental entry barriers into U.S. telecommunications and digital infrastructure.

In particular, the program will address how the new Committee, as well as other expanded foreign entry regulations, could (or perhaps already have) affect the foreign investment climate and how U.S. policy has shifted from that of a "free market" to one viewing foreign investment as a potential national security threat - especially as it concerns China and other adversarial sovereign entities. Some specific topics will include:

1. Overview of the current political landscape for, and national security concerns regarding, foreign investment in technology. Review of the US government's actions on Huawei, the approach of allies and how the highly partisan environment makes compromise difficult. Explaining how the renewed interest in a national industrial policy for domestic production of electronic chips is reflective of an increased willingness to decouple the US from overseas supplies in the tech area. Understanding how Silicon Valley and Big Tech are perceived in Washington and how that has consequences for foreign investment in the sector.

2. How will the overlapping reviews of foreign telecom investment by the Foreign Assessment Committee (telecom and wireline licensing), the Commerce Department (ICTS regulations) and CFIUS (FIRRMA regulations) intersect?

3. What are the new waiting periods? What percentage of foreign ownership and control will trigger review? What "mitigation" measures are to be expected under a Foreign Assessment Committee review?

4. “What is permitted; what is not;” navigating foreign ownership restrictions on U.S. telecom asset purchases, security interests, investment protection, and deal structures – including the importance of securing “no action” confirmation from U.S. regulators.

5. What other foreign investors (other than Huawei and others from China) may expect stricter scrutiny?

6. Round-table discussion on investment opportunities, geopolitical considerations, and takeaways for investors and their counsel (both in the U.S. and abroad).

7. What might (or might not) change as a result of the upcoming U.S. elections in November?

Please join us on July 1 at 10 a.m. ET for a detailed discussion of these topics (additional details available at https://westlegaledcenter.com/home/homepage.jsf). The webinar will be moderated by Walt Sapronov of our firm and Jim Wholey, Phillips Lytle, LLP. Speakers include Glenn Gerstell, former General Counsel for U.S. National Security Agency, Richard C. Sofield, Wiley Rein LLP, and Maxim Khlopotin, Of Counsel, Sapronov & Associates, P.C.

Meanwhile, we also take this opportunity to wish everyone safety in light of the pandemic and other developments, both here and abroad. Please do not hesitate to contact us if you have questions or wish additional details. Best wishes (*Всего хорошего*) and we hope you enjoy the webinar.

Attachment "A"

Summary of Executive Order 13913, 85 Fed. Reg. 19643 (April 8, 2020)
Establishing the Committee for the Assessment of Foreign Participation
in the United States Telecommunications Services Sector

On April 4, 2020 an executive order ("Order") was issued that created the Committee for the Assessment of Foreign Participation in the U.S. Telecommunications Services Sector ("Committee"). This Committee replaces the long standing "Team Telecom," an informal interagency group that assists the FCC in reviewing licensing and entry certification applications involving foreign ownership or control in an effort to mitigate national security and law enforcement risks. A brief summary of the Order follows.

Purpose

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.

Duties

- Review applications and licenses for national security/law enforcement risks
- Respond to any risks and making recommendations to the FCC (dismissal/denial/conditions/modification) of an application or license, if appropriate

Members

The Committee will include the following members:

- the Secretary of Defense
- the Attorney General
- the Secretary of Homeland Security
- the head of any other executive department or agency, or any Assistant to the President, as the President determines appropriate

The U.S. Attorney General shall serve as Chair, with 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. The Chair shall keep the Committee fully informed of all activities and shall consult with the Committee before taking any material actions under this Order.

Advisors

Advisors shall include:

- the Secretary of State
- the Secretary of the Treasury
- the Secretary of Commerce
- the Director of the Office of Management and Budget
- the United States Trade Representative
- the Director of National Intelligence
- the Administrator of General Services
- the Assistant to the President for National Security Affairs
- the Assistant to the President for Economic Policy
- the Director of the Office of Science and Technology Policy
- the Chair of the Council of Economic Advisers
- any other Assistant to the President, as the President determines appropriate

Committee Members and Advisory may designate a senior executive from within their agency to perform functions on their behalf. The Chair shall designate Members to serve as a Leads for the execution of any function of the Committee. Said functions include:

- Submitting questions/requests to applicants/licensees to assist with fact gathering in order to further review applications
- Identifying risks to national security or law enforcement raised y an application/license
- Coordinate with other Committee Members on the reviews
- Processing and communicating to applicants/licensees any mitigation measures necessary to address risks
- Monitoring compliance imposed by the FCC as a condition of a license
- Any related responsibilities as specified by the Chair

Committee Application Review Process

The Committee shall review and assess applications referred by the FCC to determine whether granting a license or the transfer of a license poses a risk to national security or law enforcement interests. During the initial review, the following may be determined:

- That no risk exists
- Risks identified may be addressed through standard mitigation measures
- That a secondary assessment is warranty because risks cannot be mitigated through standard measures

Initial reviews are to be completed within 120 days beginning on the date the Chari determines the applicant's responses to information requests are complete.

Any secondary assessment is to be completed no more than 90 days after the Committee's determination that a secondary assessment is warranted.

During an initial or secondary assessment, if an applicant fails to respond to any requests, the Chair may either extend the review/assessment or recommend that the application be dismissed without prejudice.

The Committee is to keep the FCC fully informed throughout these processes.

Committee License Review Process

The Committee may review existing licenses for any new risks upon majority vote of the Committee Members. Committee Advisors are to be promptly notified if it is determined such a review is warranted.

Threat Analysis by Director of National Intelligence

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 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. This analysis shall be provided to the Committee within 30 days of receipt of applicant/licensee's responses to any inquiries.

Requests for Information

The Committee may seek information from applicants, licensees, and any other entity as needed. Information will remain confidential, and will only be disclosed to other agencies as appropriate/required by law, and consistent with procedures governing the handling of classified/privileged/protected information.

Recommendations by the Committee Pursuant to Review Process

When reviewing applications, the Committee shall advise the FCC:

- That it has no recommendation/objection to the license being granted
- Recommend the application be denied due to risks
- Recommend contingencies for granting the application
- Recommend modifications to the license to include mitigation conditions
- Recommend revocation of the license due to risks

Recommendations shall be based on a written risk-based analysis and must contain credible evidence of risk(s).

The Committee shall attempt to reach consensus on all recommendations. If consensus cannot be reached, the issue shall be presented to the Committee by the Chair and a majority vote will determine the recommendation. In the event of a tie, the Chair shall determine the recommendation.

If anything other than approval is recommended, the Chair shall notify all Advisors and provide them with all assessments and evaluations which led to the decision. Advisors have 21 days to advise the Chair whether they oppose the recommendation. If any Advisors oppose the recommendation, designated executives shall promptly confer in an effort to reach consensus. If consensus is not reached, the Chair shall present the issue to Members and Advisors and attempt to resolve the issue(s). Resolution shall be attempted within 30 days if the recommendation is to deny or grant on contingency with non-standard mitigation and within 60 days if the recommendation is to modify or revoke a license. If consensus is still not reached, a majority vote will determine the recommendation. The Chair will make the recommendation in the event of a tie.

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, if either the recommendation or any opposition thereto 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 not earlier than 15 days after the date on which the President is notified of the intended action.

The Chair shall notify the FCC through the Administrator of the National Telecommunications and Information Administration (NTIA) of a final recommendation. The Administrator of NTIA shall notify the FCC of the recommendation within 7 days of the notification from the Chair.

Mitigation of Risk & Monitoring

The Committee may recommend to the FCC conditions to the granting/transferring of a license, such as compliance with mitigation measures. Modification of a license to comply with mitigation measures may also be recommended. Mitigation measures negotiated shall be based on a written risk analysis and shall be monitored by appointed Committee Members. Methods of monitoring shall be developed by the Committee in conjunction with the FCC. Noncompliance with mitigation measures shall be reported to the Committee. The Committee shall recommend actions for uncured violations to mitigation measures.

This Order does not constrain the relevant authority not described in this order of executive departments or agencies from conducting inquiries re: applications/licenses, communicating with applicants or licensees or negotiating, entering into, imposing or enforcing contractual provisions with an applicant or licensee.

Implementation

Executive departments and agencies shall take all appropriate measures within their authority to implement the provisions of the Order. DOJ shall provide funding and administrative support for the Committee. Heads of executive departments shall provide, to the extent permitted by law, resources, information and assistance as needed. An Intelligence Community liaison designated by the Director of National Intelligence shall support the Committee, consistent with applicable law.

Within 90 days from the date of the Order (by July 7, 2020), the Committee Members must enter into a Memorandum of Understanding among themselves and with the Director of National Intelligence describing their plan to implement and execute this Order. The Memorandum is to come up with questions/requests for applicants/licensees that may be needed to acquire the information necessary to conduct the reviews/assessments described in the Order, define mitigation measures standards and outline the process for designating a Lead Committee Member. The U.S. Attorney General will be tasked with review of the Order's implementation along with an annual report to the President with recommendations for relevant policy, administrative, or legislative proposals.

Negotiable Hostilities - Part II: Telecom Deals with Foreign Investors in the Current Administration

CONTINUING LEGAL EDUCATION
THOMSON REUTERS

JULY 1, 2020

Sapronov & Associates, P.C.
5555 Glenridge Connector, Suite 200
Atlanta, Georgia 30342
www.wstelecomlaw.com
(770) 399-9100

Negotiable Hostilities - Part II: Telecom Deals with Foreign Investors in the Current Administration

- Introduction
- Recent U.S. Governmental Actions
- Overlapping reviews
- Waiting Periods
- What is Permitted and What is Not?
- Round Table Discussion

Overview of the current political landscape for, and national security concerns regarding, foreign investment in technology

- Hyper-partisan atmosphere, prevalence of disinformation, etc. – all make it difficult to have a rational discussion of public policy in many areas
- The Chinese threat – 5G telephony equipment, electric grid equipment, electronic chips
- How the pandemic has accelerated decoupling and put some (soft) brakes on globalization
- How Big Tech is perceived in Washington, the desire to impose limitations on industry (antitrust concerns, content liability, cybersecurity responsibility, surveillance/privacy limits) – and the consequences for foreign investment in the tech sector

INTRODUCTION

- Recent U.S. Governmental Actions
  - Expanded scrutiny of foreign participation in the U.S. wireless and telecommunications industry, especially in light of the anticipated emergence of 5-G
  - Among these are:
    - Expanded jurisdiction of Committee on Foreign Investment in the U.S. (CFIUS).
      - Foreign Investment Risk Review Modernization Act of 2018, or "FIRMA"
      - Now extends government review of foreign participants in U.S. markets to "non controlling" investments in U.S. business involving critical technology, personal data and real estate

INTRODUCTION

- Recent U.S. Governmental Actions *(Cont.)*
  - New "Team Telecom"
    - Informal multi-agency advisory committee to FCC now expanded to new Committee for the Assessment of Foreign Participation in the U.S. Telecommunications Services Sector
      - Includes (in addition to the FCC) the U.S. Attorney General, the Secretaries of Defense and Homeland Security and other senior officials.
      - Focuses on foreign participation in the U.S. telecommunications and wireless markets from the national security perspective

INTRODUCTION

- Recent U.S. Governmental Actions *(Cont.)*
  - Pending regulation proposed by the U.S. Commerce Department
    - *Securing the Information and Communications Technology and Services* (ICTS) *Supply Chain*
    - Focuses on national security and threats posed to the U.S. digital infrastructure (telecommunications, software, hardware, etc.)
    - Proposes procedures for identifying foreign transactions that may pose such a threat
    - Based on Executive Order (13873)
    - Applies to manufacturers of antennae and other wireless infrastructure used in the U.S. wireless networks having dealings with foreign adversaries

wiley

NATIONAL SECURITY WEBINAR SERIES

Managing Team Telecom Reviews

June 2020

Rick Sofield

Overview of Presentation

- Overview of FCC / Team Telecom Relationship
- China Mobile Application Denied
- Team Telecom Executive Order
- China Telecom Recommendation to Revoke
- Recent Submarine Cable Decisions

FCC / Team Telecom Relationship

- When FCC adopted rules applicable to foreign carrier entry into the U.S. telecommunications market in late ’90’s, it affirmed it would consider national security, law enforcement, foreign policy, and trade policy concerns in its public interest review.

- Recognizing the “specific expertise” of Executive Branch agencies in these matters, the FCC concluded that its public interest analysis would benefit from seeking the views of the Executive Branch on these matters as they relate to applicants with foreign ownership.

FCC / Team Telecom Relationship

- Since that time, FCC practice has been to refer to the Executive Branch:
  - applications for:
    - international section 214 authority;
    - assignment or transfer of control of domestic or international section 214 authority;
    - a submarine cable landing license; and
    - assignment or transfer of control of a submarine cable landing license.
    - that have “disclosable” foreign ownership
  - petitions seeking authority to exceed the Section 310(b) foreign ownership limits for broadcast and common carrier wireless licenses, including common carrier satellite earth stations.

FCC / Team Telecom Relationship

- The Executive Branch agencies consist primarily of:
  - Department of Justice
  - Department of Homeland Security
  - Federal Bureau of Investigation
  - Department of Defense
- Over time, these reviewing agencies came to be known as “Team Telecom”
- FCC policy is not to grant an application or petition for declaratory ruling until Team Telecom has completed its review
  - But, historically, no rules or procedures have governed the Team Telecom review process
  - Concerns about the length of Team Telecom reviews caused the FCC to issue a Notice of Proposed Rulemaking in 2016

FCC / Team Telecom Relationship

- Team Telecom Process
  - After a referral by FCC, Team Telecom will:
    - request that FCC not act on application until it has completed its review
    - send its own set of "Triage" questions to the applicants
  - Triage Questionnaire asks for detailed information, including:
    - nature of the transaction
    - details regarding the applicant's ownership structure, including personally identifiable information about owners
    - information regarding the applicant's network, including equipment and supplier information, network security practices

FCC / Team Telecom Relationship

- Often, Team Telecom will negotiate a "mitigation" agreement with the applicant, obligating applicant to:
  - Maintain a specific point of contact
  - Submit and follow network security practices and provide notice of data breaches
  - Provide advance notice of change in equipment, suppliers or ownership
  - Set out procedures for dealing with governmental subpoenas, warrants and other orders, including with respect to electronic surveillances
- Team Telecom will request that FCC condition any grant of authority on applicant's compliance with mitigation agreement

China Mobile Recommendation to Deny

- September 1, 2011 – China Mobile filed for Section 214
- May 14, 2015 – Team Telecom identified factors under consideration
- July 2, 2018 – National Telecommunications Administration (NTIA) filed a recommendation to deny
  - This is the first instance in which the Executive Branch agencies have recommended that the Commission deny an application due to national security concerns.
- May 10, 2019 – FCC issues Order Denying Application

Team Telecom Factors

- **Nature of the Applicant**
  - past criminal history
  - trustworthiness
  - vulnerable to exploitation, influence, or control by other actors.
- **Stale Control, Influence, and Ability to Compel Applicant to Provide Information**
  - could result in control of U.S. telecommunication infrastructure by a foreign government
  - country suspected of engaging in actions that could impair United States national security
  - required to comply with foreign requests relating to the applicant's U.S. operations
  - otherwise susceptible to such requests by a foreign nation
  - whether requests are governed by publicly available legal procedures subject to independent judicial oversight
- **Planned Operations**
  - undermine the reliability and stability of the domestic communications infrastructure
  - identify and expose national security vulnerabilities
  - render the domestic communications infrastructure vulnerable to exploitation
  - engage in economic espionage activities against corporations that depend on the security and reliability of U.S. communications infrastructure to engaged in lawful business activities
  - otherwise engage in activities with potential national security implications
- **US. Legal Process**
  - Executive Branch ability to conduct statutorily authorized law enforcement and national security missions
  - includes evaluation of confidentiality requirements that protect information about the targets of lawful surveillance, and classified sources and methods.

Team Telecon Executive Order

- On April 4, 2020, President Trump issued the Executive Order on Establishing the Committee for the Assessment of Foreign Participation in the United States Telecommunications Services Sector.
- EO is designed to formalize the Team Telecom review process
  - Established committee and advisors
  - Sets timeframe for completion of reviews
  - Directed Committee to prepare a Memorandum of Understanding outlining new procedures within 90 days

Committee Members and Advisors

- **Members**
  - Attorney General (Chair)
  - Secretary of Homeland Security
  - Secretary of Defense
  - Others as appropriate

- **Advisors**
  - Secretary of State;
  - Secretary of the Treasury;
  - Secretary of Commerce;
  - Director of OMB;
  - US Trade Representative;
  - Director of National Intelligence;
  - Administrator of General Services;
  - Asst to the Pres for National Security
  - Asst to the Pres for Economic Policy
  - Director of OSTP
  - Chair of CEA
  - any other Assistant to the President, as the President determines appropriate

Overview of EO Application Review Process

- The Committee **must conduct an initial review of an application referred by the FCC** to evaluate whether granting the requested license or transfer of license may pose a national security or law enforcement risk

- **License Reviews:**
  - The Committee **may review existing licenses** to identify any additional or new risks
  - The Committee determines **whether to review** an existing license by majority vote of the Committee Members.
    - When Committee does conduct a license review, the Committee may:
      - **recommend that the FCC modify the license** to include a condition of compliance with mitigation measures negotiated by the Committee;
      - **recommend that the FCC revoke** the license due to the risk to national security or law enforcement interests of the United States; or
      - **take no action** with respect to the license.

FCC Referral

- As before, the process will be triggered by a referral from the FCC of an application with disclosable foreign ownership or a petition for declaratory ruling
- Following release of the Executive Order, Chairman Pai has stated that the FCC will move forward to conclude its pending rulemaking on reform of the foreign ownership review process.
  - FCC may require initial "threshold questions" to be answered as part of application (rather than wait for Team Telecom to ask)
  - FCC may require certifications designed to replace standard mitigation terms.

Initial Review

- Initial 120-day review period begins once the Chair determines that the applicant's responses to any questions and information requests from the Committee are complete
  - If an applicant fails to respond to any requests for information during the initial review, the Committee may:
    - extend secondary assessment period, or
    - make a recommendation to the FCC to dismiss the application without prejudice
  - The Committee may determine:
    - that granting an application for a license or the transfer of a license raises no current risk;
    - that any identified risk may be addressed through standard mitigation measures; or
    - 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.

Secondary Assessment

- 90-day Secondary Assessment may be extended if applicant fails to respond to request for information
  - If an applicant fails to respond to requests for information during the secondary assessment, the Committee may:
    - extend secondary assessment period, or
    - make a recommendation to the FCC to dismiss the application without prejudice

Overview of Internal Recommendation and Consensus Process

- Applicable when recommendation is to:
  - grant or modify an application contingent on compliance with non-standard mitigation measures
  - deny or revoke a license
- Not applicable to license reviews that result in no action recommendation

Recommendation

- Following a review or assessment, Team Telecom must:
  - 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;
  - recommend that the FCC only grant the license or transfer of the license contingent on the applicant's compliance with mitigation measures; or
  - recommend that the FCC deny the application due to the risk to the national security or law enforcement interests of the United States.

FCC Action

- FCC will take the recommendation into account when deciding whether to approve the application
- While the Commission has “made clear” that that it will make an independent decision on whether to grant a particular application, based on past practice, the FCC historically has followed the recommendations
  - To the extent there is a mitigation agreement, the FCC will condition its approval on the applicant’s compliance with its terms
  - Or, as the China Mobile case demonstrates, deny the application

Recent Developments: China Telecom Recommendation to Revoke

- July 2007 – 214 conditioned on standard mitigation terms
- April 2020 – NTIA Recommendation to Revoke
  - Changed National Security environment
    - Increased concern about Chinese cyber activities
  - Untrustworthy
    - Inaccurate statements to US government and customers
  - Ultimately Controlled by Chinese Government
  - Will be forced to comply with Chinese government requests
    - Lack of sufficient legal procedures and not subject to independent judicial oversight
  - Operations provide opportunities for Chinese government to engage in conduct which harms U.S. national security
    - economic espionage
    - disrupt or misroute U.S. communications
  - Limits U.S. ability to conduct statutorily authorized law enforcement and nationals security missions
    - Including protecting information about targets and classified source and methods
- **NOTE**: DOJ provided notice that it intends to use/disclose **FISA information**

April 24, 2020 Orders to Show Cause

- FCC issued Show Cause Orders demanding an explanation why the FCC should not initiate proceedings to revoke the licenses of:
  - China Telecom Americas
  - China Unicom Americas
  - Pacific Networks
  - ComNet
- Chairman Pai: “The Show Cause Orders reflect our deep concern… 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 Carr: “when we blocked China Mobile from entering the U.S. market based on national security concerns, I said it was time for a top to bottom review of every telecom carrier with ties to the communist regime in China”

June 17, 2020 Submarine Cable Recommendation

- Team Telecom recommended that the FCC deny a submarine cable landing application to Pacific Light Cable Network based on:
  - Current national security environment, including new concerns about the PRC's intent to steal or acquire millions of U.S. persons' sensitive personal data, PRC access to foreign data through both digital infrastructure investments and new PRC intelligence and cybersecurity laws, and changes in the market that have transformed subsea cable infrastructure into increasingly data-rich environments that are vulnerable to exploitation;
  - Concerns about PLCN's PRC-based owners, Dr. Peng Group and Pacific Light Data, including Dr. Peng's support for PRC intelligence and security services under PRC law, questions about Dr. Peng's past compliance with U.S. laws when acquiring U.S. telecommunications assets, and Pacific Light Data's connections to PRC state-owned carrier China Unicom; and
  - Concerns about the PRC government's recent actions eroding Hong Kong's autonomy through the proposed expansion and applicability of the PRC's national security laws to Hong Kong while at the same time allowing PLCN to further strengthen Hong Kong's status as a hub for international communications critical infrastructure, where a growing share of U.S. communications traffic to the Asia-Pacific must first land on Chinese territory and traverse Chinese-owned or –controlled infrastructure before ultimately reaching final destinations in other parts of Asia.

Questions?

European Investment Perspectives on U.S. Telecom/5-G Deals

Maxim Khlopotin
Of Counsel
Sapronov & Associates, P.C.
10 Vozdvizhenka Street
Moscow, Russia 125009
mkhlopotin@wstelecomlaw.com
770.399.9100

European Investment Perspectives on U.S. Telecom/5-G Deals

- European investors are still looking into investment opportunities all over the word, especially in U.S.

- Telecom, in particularly 5-G deals, are very attractive

European Investment Perspectives on U.S. Telecom/5-G Deals *(Cont.)*

- ***What do European investors know about this area?***
  - It is well-known that telecom companies provide the technology that ties together our increasingly connected world. Companies in this sector provide phone, internet, and video services and the infrastructure to support them.
  - The sector is often attractive to more conservative investors looking for dividend-yielding stocks, but it is also full of companies with good potential for capital appreciation.

European Investment Perspectives on U.S. Telecom/5-G Deals *(Cont.)*

- ***What do they look for?***
  - At the moment, we can list some U.S. telecom companies which could present the investment opportunities in top telecommunications stocks:
    - **Verizon**
      - Largest wireless carrier in the U.S.
        - That scale produces excellent free cash flow and superior gross margin versus its peers
        - Relatively Safe
        - Cash flow consistently exceeds dividend payment
        - Recurring of revenue
          - Unlikely to see significant drop in cash flow

European Investment Perspectives on U.S. Telecom/5-G Deals *(Cont.)*

- ***What do they look for? (Cont.)***
  - **AT&T**
    - **Verizon’s biggest competitor**
    - World’s largest telecommunications company
    - Largest provider of mobile telephone services
    - Largest provider of fixed telephone services in the United States

European Investment Perspectives on U.S. Telecom/5-G Deals *(Cont.)*

- ***What do they look for? (Cont.)***
  - **Comcast (a/k/a Xfinity)**
    - Largest pay-TV and home Internet service provider in the U.S.
    - Also owns NBCUniversal, a giant in the entertainment industry
      - But biggest source of revenue and profits is its cable communications business

European Investment Perspectives on U.S. Telecom/5-G Deals *(Cont.)*

- ***What do they look for? (Cont.)***
  - **Comcast (a/k/a Xfinity)** ***(Cont.)***
    - Importantly, while AT&T and Verizon have been struggling to tread water in the home Internet market, Comcast brings in hundreds of thousands of new subscribers every year.
    - The relatively high margin on those customers has enabled the company to offset its video subscriber losses and still grow EBITDA at a strong rate.
    - Comcast also operates Sky, a dominant pay-TV operator throughout Europe, which it acquired in 2018.
    - Comcast's strengths in content through its NBCUniversal arm support the continued expansion of Sky throughout the continent.
    - Meanwhile, Sky provides a platform for NBCUniversal's plans for direct-to-consumer streaming in Europe

European Investment Perspectives on U.S. Telecom/5-G Deals *(Cont.)*

- ***What do they look for? (Cont.)***
  - **American Tower**
    - Operates more cell towers in the U.S. than anyone else
    - Well diversified in international markets
    - Large number of cell sites = good position to take advantage of increasing demand for mobile data

European Investment Perspectives on U.S. Telecom/5-G Deals *(Cont.)*

- ***What do they look for? (Cont.)***
  - **American Tower *(Cont.)***
    - As wireless carriers look to upgrade their networks requiring new cell sites and equipment, American Tower could see an increase in the number of tenants per tower in the U.S.
    - Meanwhile, its position in several strong growth markets internationally should lead to strong growth as well
    - The use of small cells in 5-G networks could prove a challenge for American Tower, due to its limited exposure

European Investment Perspectives on U.S. Telecom/5-G Deals *(Cont.)*

- ***What do they look for? (Cont.)***
  - **American Tower *(Cont.)***
    - Rival **Crown Castle** has invested heavily in small cells, betting these will be the backbone of 5-G networks
    - But American Tower believes its towers are best suited for building out a 5-G network in the more suburban and rural areas where you can find most of its sites
      - With less dense populations, there's less need for small cell technology

European Investment Perspectives on U.S. Telecom/5-G Deals *(Cont.)*

- ***What do they look for? (Cont.)***
  - **American Tower *(Cont.)***
    - As a real estate investment trust, American Tower pays out at least 90% of its taxable income to shareholders every quarter
    - And with a strong position in the growing U.S. market, sites in many developing markets, high switching costs for its tenants, and contractual annual rate increases, investors should expect both net income and dividends paid to keep climbing

European Investment Perspectives on U.S. Telecom/5-G Deals *(Cont.)*

- ***What do they look for? (Cont.)***
  - But small telecom companies are also attractive
    - The advocates of foreign direct investments claim they help smaller companies in foreign markets tap into greater financial resources and help the economies of investee countries grow through job creation and knowledge transfer
    - In the case of direct investments between developed economies such as the European Union and the United States, investments made by EU based investors into the U.S. **have increased by more than 100 percent since 2000**

European Investment Perspectives on U.S. Telecom/5-G Deals *(Cont.)*

- ***Spy Concerns and Chinese Technology***
  - Some have proposed that the U.S. "take control" of Nokia and / or Ericsson
    - either directly or through a consortium of companies private U.S. and allies
    - "We and our closest allies must certainly actively consider this approach," Bill Barr, the Minister of the Justice (at a conference in Washington, D.C., February 2020)

European Investment Perspectives on U.S. Telecom/5-G Deals *(Cont.)*

- ***Spy Concerns and Chinese Technology (Cont.)***
  - **Nokia** is a Finnish multinational telecommunication, information technology, and consumer electronics company, founded in 1865
  - **Ericsson** is a Swedish multinational networking and telecommunications company headquartered in Stockholm.
    - Offers services, software and infrastructure in information and communications technology for telecommunications operators, traditional telecommunications and Internet Protocol (IP) networking equipment, mobile and fixed broadband, operations and business support services, cable television, IPTV, video systems, and an extensive services operation

Russian Investment Perspectives on U.S. Telecom/5-G Deals

- ***What about Russian investors?***

  - The Russian investors know that the U.S. is the single largest recipient of foreign investment worldwide.

  - A number of large-scale Russian holdings in the U.S. via private investment funds have already made the press, and many more likely remain unreported.

Russian Investment Perspectives on U.S. Telecom/5-G Deals

- ***What about Russian investors? (Cont.)***
  - Unfortunately, often the cases that get press are often the "shady and suspicious" cases
  - All these stories remind us that the concerns posed by opaque private investment funds extend to allegations of espionage
    - For example:
      - The sanctioned Russian businessman Viktor Vekselberg invested in the U.S. through Columbus Nova, a private investment firm. Vekselberg's company, Renova, was Columbus Nova's largest client.
      - LetterOne, the international investment group co-founded by the billionaire owners of Russia's Alfa Group, maintains a U.S. office and over $2 billion of investments in the United States.

Russian Investment Perspectives on U.S. Telecom/5-G Deals

- ***What about Russian investors? (Cont.)***

  - Altpoint Capital, the private equity firm of Russian billionaire Vladimir Potanin - who made his fortune in metals and mining - made the news recently because in 2015 it bought a company that has the contract to store Maryland's state-wide list of eligible voters on its servers.
    - Governor Larry Hogan has stated that Maryland was unaware of Potanin's ownership until informed by the FBI.
    - The contract still appears to be in effect.
    - The same company has also won data center work for the Department of Defense and the Department of Labor.
    - Another data center company in which Altpoint has invested received an Energy Department contract.

Russian Investment Perspectives on U.S. Telecom/5-G Deals

- ***Why the investment in U.S. deals by Russian investors could be attractive for them***
  - Capital Russian owners are constantly looking for new areas for investment.
  - Recently, more and more often their attention has turnedto investment assets of the most developed countries in the world – largely, the U.S.

Russian Investment Perspectives on U.S. Telecom/5-G Deals

- There are two aspects that explain this trend
  - First, many investment assets from the U.S. promise a serious level of profitability.
  - Second, in the U.S. there is a rather interesting immigration government program: EB-5.
    - It provides a person who invests in the U.S. economy, substantial benefits for obtaining American citizenship.

Russian Investment Perspectives on U.S. Telecom/5-G Deals

- The EB-5 Investment Program has been in operation in the U.S. since 1990

- With its help, the investor and his family members can obtain a so-called Green Card.

Russian Investment Perspectives on U.S. Telecom/5-G Deals

- The EB-5 program has a number of requirements for its potential participants. The main ones are:
  - Must invest at least one million U.S. dollars in the U.S. economy.
    - Can sometimes be reduced to $500K
  - At least 10 new jobs should be created
  - Information must be provided that the invested funds have been earned legally (here the Russian investors may have some issues to justify their funds)

Russian Investment Perspectives on U.S. Telecom/5-G Deals

- American citizenship is a major goal for many people. The existence of this investment program gives real chances to get the desired Green Card by making an investment. Thus, an investor can immediately kill two birds with one stone: make attractive investments and obtain U.S. citizenship

Russian Investment Perspectives on U.S. Telecom/5-G Deals

- Huawei
  - Not a “problem” in Russia like in U.S.
  - Recently Huawei signed a deal with Russian telecom firm MTS to develop 5-G technology in Russia.
  - The companies will develop next-generation 5-G networks in Russia over the next year.
  - The deal was agreed as China’s President Xi Jinping began a three-day visit to Russia.
  - It comes as some Western countries, led by the U.S., have blocked the Chinese firm on concerns it poses a national security risk.
  - The deal will see “the development of 5-G technologies and the pilot launch of fifth generation networks in 2019 and 2020.”
  - The deal is likely to provide some relief to Huawei which has been under intense international scrutiny in recent months.

Deal Protection
U.S. Sellers/Suppliers - Foreign Buyers/Investors

U.S. Telecom Suppliers/Sellers

- Due Diligence re: Foreign Buyers/Investors
  - Sanctions: OFAC/BIS Lists
  - AML: Cross Border $ Transfer
  - CFIUS Review Concerns
  - "Team Telecom" / Adversary Interests?
  - "Know Your Customer"

Foreign Buyers/Investors

- Regulatory approval (Informal clearance)
- Regulatory approval - (Closing condition v. best efforts obligation)
- Purchase $ holdback/Escrow
- Change of Law / Force Majeure

Walt Sapronov

SAPRONOV AND ASSOCIATES

770.399.9100
wsapronov@wstelecomlaw.com

Walt Sapronov has represented corporate clients in telecom transactions, regulation and privacy for over thirty years. He has been named in Georgia Super Lawyers and in the International Who's Who of Telecom Lawyers. Together with his Firm, Sapronov & Associates, P.C., he has negotiated commercial telecom contracts with every major telecom carrier in the U.S. and with many abroad. The Firm also supports clients in privacy compliance before the FCC, the FTC, EU and state regulatory agencies. Mr. Sapronov is a frequent conference speaker and has authored numerous publications on telecommunications law.

For more information, please visit: www.wstelecomlaw.com

James Kevin Wholey

Phillips Lytle LLP

Mr. Wholey has broad experience at the intersection of federal government, national security and international business. His specific focus is on the legislative, policy and compliance issues involved in international investment, trade and business development. Through his international business and federal government relations practice, he assists clients with transnational compliance matters (Foreign Corrupt Practices Act, EAR, ITAR, export licensing and involvement with various sanctions regimes) and works frequently with the Administration and Capitol Hill. He spent more than a decade as a senior staff member for several U.S. senators, including three years as chief of staff to then-Senate Leader Bob Dole (R-KS), for whom he also handled trade and telecommunications issues.

jwholey@phillipslytle.com
202.617.2714

Glenn Gerstell

ggerstell@csis.org

Glenn S. Gerstell served as the general counsel of the National Security Agency (NSA) and Central Security Service (CSS) from 2015 to 2020. He has written and spoken widely about the intersections of technology and national security and privacy. Prior to joining the NSA, Mr. Gerstell practiced law for almost 40 years at the international law firm of Milbank, LLP, where he focused on the global telecommunications industry and served as the managing partner of the firm's Washington, D.C., Singapore, and Hong Kong offices. Mr. Gerstell served on the President's National Infrastructure Advisory Council, which reports to the president and the secretary of homeland security on security threats to the nation's infrastructure, as well as on the District of Columbia Homeland Security Commission. A graduate of New York University and Columbia University School of Law, Mr. Gerstell is an elected member of the American Academy of Diplomacy and a member of the Council on Foreign Relations. Earlier in his career, he was an adjunct law professor at the Georgetown University Law Center and New York Law School. He is a recipient of the National Intelligence Distinguished Service Medal, the Secretary of Defense Medal for Exceptional Civilian Service and the NSA Distinguished Civilian Service Medal.

Richard C. Sofield

202.719.4500
rsofield@wileylaw.com

Rick has more than 24 years of experience in U.S. national security legal and public policy matters in both the public and private sectors, working closely with the Federal Bureau of Investigation (FBI), the National Intelligence Council, the Federal Communications Commission (FCC), the National Security Council, the Executive Office of the President, and the U.S. Departments of Treasury, Defense, Homeland Security, State, Commerce, and Energy, as well as other agencies evaluating foreign investment-related issues. He represents clients in matters involving U.S. national security issues, cross-border transactions, and government investigations. Prior to joining Wiley, Rick was the Director of the Foreign Investment Review Staff (FIRS) for the National Security Division (NSD) at the U.S. Department of Justice (DOJ), where he oversaw the DOJ's participation in the Committee on Foreign Investment in the United States (CFIUS), including the review of over 1,000 acquisitions and efforts to prohibit multiple transactions on national security grounds. He also served as Chair of Team Telecom, which evaluates certain applications before the FCC to determine whether they raise law enforcement or national security concerns.

Maxim Khlopotin

Mr. Khlopotin, of counsel to Sapronov & Associates, is a multi-lingual Associate at the Law Firm “Degroux Brugère” based in Paris. He advises international and domestic companies and investments funds on Private Equity, M&A and capital investment. He is also experienced in the fields of leveraged buyout acquisitions (LBO). Prior to joining Degroux Brugère, he practiced with Neptune AARPI (2015-2019) and then Luchtenberg Avocats.

Mr. Khlopotin is a dual French-Russian national and speaks French and English fluently in addition to his native language of Russian. He is licensed to practice in France as qualified attorney (avocat) and in Russia as a legal counsel.

For further information, please visit: http://www.degrouxbrugere.com/maxim-khlopotin

mkhlopotin@wstelecomlaw.com
770.399.9100

II. Negotiable Hostilities - Part I - Telecom Deals with Russia in the Sanctions Era

ATTORNEY ADVERTISING

SAPRONOV & ASSOCIATES, P.C.
ATTORNEYS AT LAW

info@wstelecomlaw.com
www.wstelecomlaw.com

1300 I STREET, NW, SUITE 400
WASHINGTON, D.C. 20005
TEL. 770.309.0462

5555 GLENRIDGE CONNECTOR
SUITE 200
ATLANTA, GEORGIA 30342
TEL. 770.399.9100

10 VOZDVIZHENKA STREET
MOSCOW, RUSSIA 125009
+7 985 920-89-93

Foreign Investment Alert[1]

"Negotiable Hostilities: Doing Telecom Deals with Russia in the Sanctions Era"

I. Overview

In a recent interview,[2] French President Emmanuel Macron recommended eventual rapprochement with Russia to his European Union ("EU") peers, a policy he believes necessary for the Continent's long term survival. Reaching it could take a decade, said President Macron, but failing to do so would be a "huge mistake."

We agree. It is an ancient maxim that free trade among nations promotes peace.[3] Since March, 2014,[4] investment transactions between Russia and western nations have been overshadowed by these economic and financial sanctions, originally imposed by U.S. and EU governments in response to the hostilities among Russia, the Crimea, and the Ukraine. In a continuing escalation, Russia has responded with countersanctions while, among other action, the U.S. has tightened regulations on foreign investment through the Foreign Investment Risk Review Modernization Act of 2018.[5] The détente envisioned by the French President would no doubt spur cross-border investment, but the "sanctions" regime would for now continue.

So if Europe were to eventually resume traditional commercial dealings with Russia, would the U.S. do likewise? Perhaps. But doing business with would-be Russian investors in the current geopolitical climate is not easy and, even if Macron's realpolitik is accepted, the sanctions' era will not end for some time.

---

[1] While accurate to the best of our knowledge, this discussion is for tutorial purposes only, is neither a legal opinion nor legal advice. Please contact us if you have any questions regarding this disclaimer.
[2] The Economist, Nov. 9 – 15, 2019, pp. 18-20.
[3] See generally, D. Griswold, "Peace on Earth, Free Trade for Men," Commentary, Dec. 31, 1998, Cato Institute, Washington, D.C., https://www.cato.org/publications/commentary/peace-earth-free-trade-men.
[4] https://www.rferl.org/a/russia-sanctions-timeline/29477179.html.
[5] This legislation ("FIRRMA") has expanded the scope and jurisdiction of the Committee on Foreign Investment in the U.S. (CFIUS) in review of foreign investment transactions raising national security concerns.

Ironically, these hurdles come at a time when investment opportunities in European and U.S. telecommunications markets, notably those associated with new wireless technology known as "5-G," are expected to explode, reaching, by some accounts, as much as $325 Billion worldwide by 2025.[6] Much of that investment will flow to the U.S., the global leader, according to the Federal Communications Commission ("FCC"),[7] in 5-G development. Foreign investment in these opportunities is certainly possible, the pending merger of T-Mobile / Sprint (respectively owned by German and Japanese companies) being a recent example.

That brings us to the topic of this alert: whether Russian investment in U.S. wireless and other telecom markets in the current geopolitical hostile climate is doable. As discussed in our Firm publication, *Investment in Wireless Infrastructure*[8] – with limitations and under a carefully crafted transactional structure - we believe that it is. The hostilities aside, cross-border investment deals with Russia are still negotiable. This alert also serves as an introduction to our webinar on this topic, sponsored by Thomson Reuters, *"Negotiable Hostilities: Doing Telecom Deals with Russia in the Sanctions Era"* available soon.[9] The webinar includes a detailed review of the following topics:

1. Foreign ownership restrictions on foreign investment in U.S. telecommunications and wireless infrastructure: FCC entry, radio licensing, and other regulations.

2. Expanded investment scrutiny on foreign investment under statutory amendments to CFIUS (FIRRMA regulations) as well as the Foreign Agency Registration Act (FARA): implications for Russian investment transactions.

3. Sanctions and countersanctions; cross-border money transfer regulations under the Financial Crimes Enforcement Network (FINCEN), money transmitter laws under U.S. state laws and foreign jurisdictions.

4. "What is permitted; what is not;" navigating foreign ownership restrictions on U.S. telecom assets deal points, investment protection, and deal structures – including the importance of securing "no action" confirmation from U.S. regulators.

5. Round-table discussion on investment opportunities, geopolitical considerations, and takeaways for Russian investors and their counsel (both in the U.S. and abroad).

---

[6] https://www.forbes.com/sites/patrickmoorhead/2018/02/22/5g-set-to-massively-boost-it-infrastructure-spending-of-326b-by-2025/#7a6007f02805.

[7] https://docs.fcc.gov/public/attachments/DOC-356317A1.pdf (Remarks of FCC Commissioner Brendan Carr at the Mobile World Congress – Barcelona, February 25, 2019).

[8] The entire publication is available upon request at nbilodeau@wstelecomlaw.com.

[9] The webinar, *"Negotiating Hostilities Doing Telecom Deals with Russia in the Sanctions Era,"* is sponsored by Thomson Reuters and moderated by Walt Sapronov, Esq. and Paul Kouroupas (Sapronov & Associates, P.C.). Speakers include Daniel B. Pickard, Esq. (Wiley Rein, LLP), James Kevin Wholey, Esq. (Phillips Lytle, LLP), Alla Naglis, Esq. (King & Spalding), and Maxim Khlopotin, Esq. (Sapronov & Associates, P.C.).

In preparation and as background "reading material" for the webinar, here is a brief overview of U.S. domestic regulatory barriers to foreign investment in telecommunications and wireless infrastructure.

Meanwhile, we also take this opportunity to announce the opening of our new office in Moscow, Russia, as of the beginning of 2020. Please do not hesitate to contact us if you have questions or wish additional details.

II. Foreign Investment Opportunities in U.S. Telecommunications and Wireless Infrastructure

The anticipated development of wireless fifth generation ("5-G") infrastructure is a priority for telecommunications carriers, equipment manufacturers, and other wireless technology vendors, as well as for policymakers and regulators. As 5-G technology evolves, there is expected to be increased demand for cell sites to support the infrastructure needed to carry wireless signals.

This infrastructure generally consists of radios, radio spectrum, fiber, roof tops, towers, poles (and pole attachment rights), data centers, and network facilities – all located on public and private property. Public property owners are typically municipalities that own public right-of-way that house utility poles and conduit for fiber-optic telephone lines. Private property owners are typically landlords that enter into long term leases, easements or other contracts with telecommunications carriers for use of their property for placement of the carrier's towers, radios, antennas, and other wireless devices.

The build-out of 5-G networks is expected to require huge investment – by some estimates, $225 Billion between 2019 and 2025. These include strategic investments in telecommunications carriers and other operators, wireless and wireline, as well as financial investments in 5-G infrastructure. Opportunities also may arise in merger and acquisition ("M&A") transactions, as well as in debt and equity financing for 5-G and other network buildouts. Such financing arrangements include vendor financing, loan syndication, high-yield debt and, of course, traditional venture capital and other "start-up" funding.

III. Regulatory Complications

A hurdle facing telecom investors is the complex U.S. regulatory environment, with federal, state and local authorities exercising overlapping jurisdiction over wireline and wireless telecommunications. Regulatory approval is often required not just for carrier M&A, but in the case of telecom investors, for control transfers, assignments, debt incurrence, securities issuances, and foreclosure remedies - all potentially applicable to telecom investment deals.

Control transfer regulations are especially noteworthy. Regulatory approvals may be required, for example, for exercise of default remedies in financing transactions secured by regulated assets. Security interests in some types of collateral (*e.g.*, FCC radio licenses) are prohibited altogether. Some state regulations may require prior approval for issuance of debt or equity securities by regulated entities or prohibit encumbrance of state entry certification. State or local regulations in some jurisdictions may restrict the assignment of cable or telecom franchise agreements or of access rights to pole attachments, rights of way, or other infrastructure.

Such regulations can complicate or delay investment transactions, at times requiring prior transactional approval from the FCC or state regulators, use of special purpose entities to hold spectrum licenses, or reduced lender deal protection.

For example, applicable law generally permits an investor to take a security interests in proceeds of an FCC license sale but not the license itself; but whether the lender could perfect its interest in proceeds of a satellite (C-Band) license is unclear.[10] Further, in some states, assignment restrictions on access or use of regulated infrastructure (or third party landlord consents for colocation rights) may preclude the grant or perfection of security interest in a telecom borrower's collateral under a credit facility. Finance transactions involving such regulated assets may thus require a "no consent required" or similar opinion as closing deliverable (an often unanticipated exercise requiring last minute negotiations).[11] Control transfer regulations may also complicate inter-creditor or subordinated debt transactions with involving regulated borrowers or issuers: for instance, in some jurisdictions, the issuance of subordinated, unsecured debt perhaps may not require regulatory approval, whereas senior secured or bank debt might – at least in the exercise of foreclosure remedies.

Here is a brief sketch of domestic control transfer regulations required for investment in U.S. telecommunications or wireless carriers.

1. <u>Generally</u>. Federal entry and exit regulations under the Federal Telecommunications Act are codified at 47 U.S.C. §214 and enforced by the FCC. Entry regulations apply to both strategic investors[12] (*e.g.*, in a merger or acquisition) and financial investors in any telecommunications carrier (where the investment results in a control transfer). Approval is required for control of both domestic and international ("International 214") services, with the latter applying to any telecommunications facility capable of international transmission. Where uncontroversial, eligible for streamlined processing with automatic approval upon 14 days' public notice. Broadband services (Internet access) services are currently treated as unregulated "information services," an FCC decision made under Republican Chairman Pai's leadership (so-called

[10] See https://www.fiercewireless.com/wireless/dish-should-be-able-to-keep-proceeds-if-it-sells-spectrum-licenses-analyst.

[11] *See generally*, C. E.C. Paris, DRAFTING FOR CORPORATE FINANCE, Second Edition (2014), Practicing law Institute, Section 9.9 (Opinions) (keeping in mind that the protection given by the opinion is a right to sue the opinion giver). *See also*, J.C. Quale, B.D. Weimer, "Legal Opinions in Corporate Transactions Affected by FCC Regulation", Federal Communications Law Journal May 1999, Volume 51, Number 3.

[12] A discussion of the complex regulatory requirements for telecommunications mergers and acquisitions is beyond the scope of this brief outline. *See generally*, H. Chatzinoff, H. Saferstein, W. Sapronov, <u>Telecommunications Deals, M&A, Regulatory and Financing Issues</u>, New York, Practicing Law Institute, 1999 (available at https://www.worldcat.org/title/telecommunications-deals-m-a-regulatory-financing-issues/oclc/742572796?referer=di&ht=edition).

"Internet Freedom Order") that is pending en banc review in the D.C. Circuit Court of Appeals.[13]

2. Wireless Licenses. Investment in a wireless carrier generally requires FCC approval under "Title III" of the Communications Act. Approval is required for both wireless license assignment and direct or indirect control (*e.g.*, through stock purchase) of a wireless "licensee." Grant of a security interest in a wireless license, as indicated, is prohibited or unenforceable. Control transfers typically follow a purchase or acquisition (de jure) or, in some circumstances, can be inadvertent and fact driven (de facto) based on indicia recognized by case law.[14] To avoid the uncertainty of de facto control transfers, wireless control transferees can make use of the FCC's spectrum leasing rules, essentially perfecting a leasehold interest in the licensee's spectrum under a spectrum manager or de facto transfer lease).

3. State Public Utility Commissions. To varying degrees, exercise jurisdiction over control transfers, certificate transfers, and (occasionally) stock and debt issuances by regulated telecommunications companies. Under the Federal Telecommunications Act,[15] state telecommunications entry barriers are largely preempted – as is state entry or rate regulation of wireless (commercial mobile services) services - but other state utility regulations are not. Control transfer approvals vary by state, some requiring a hearing, others mere notice.

   Many states have deregulated broadband service. State approvals for wireless financing transactions (*e.g.*, loan covenants, security instruments) vary by state. Finally, following the D.C. Circuit's partial remand of the FCC's Internet Freedom Order, some states are adopting their own "net neutrality" regulations – thereby expanding the regulatory review required for broadband investment.

4. Local Franchise, Zoning and Siting Regulations. Various municipal or local authorities regulate use of public rights-of-way and pole attachment (for example, for deployment of fiber optic cable) by, for example, cable companies and telecommunications carriers (CLECs) through franchise authority. Typically, this takes the form of a franchise agreement (offering requiring an ordinance or other local approval) with fees customarily assessed at 3-5 percent of revenues for cable or telecommunications franchises respectively. Following the FCC's video reform regulations, many states have adopted state-wide franchises, thus simplifying the

[13] *Mozilla Corporation v. Federal Communications Commission, et al.,* No. 18-1051 (D.C. Cir.) (Oct. 1, 2019) (reversing in part the Obama Administration's "Net Neutrality" Rules). For a detailed review of the net neutrality controversy, see Thomson Reuters webinar, "Overview of the Restoring Internet Freedom Order," available at http://westlegaledcenter.com/program_guide/course_detail.jsf?videoCourseId=100204569&ADMIN_PREVIEW=true.

[14] *See e.g.,* Applications for Microwave Transfers to Teleprompter Approved with Warning; Non-broadcast and General Action Report No. 1142, Public Notice (by the Commission en banc), 12 FCC 2d 559, 559–60 (1963) subsequent history omitted).

[15] 47 U.S.C. §253(a) (broadly prohibiting state or local statutes, regulations or legal requirements from prohibiting the ability of any entity to provide any interstate or intrastate telecommunications service); 47 U.S.C. § 332(c)(3).

process and obviating the need to seek franchise approval from each municipality. Franchisee control transfer requirements (and related assignment prohibitions) – whether for financing or otherwise – will be determined by the language of the franchise agreement. Local entry barriers to deployment of wireless and other broadband infrastructure is a controversial issue, made complicated by a recent FCC preemption order seeking to preempt local entry barriers to broadband deployment.[16] Litigation over zoning regulations that impede with wireless siting, antenna placement or pole attachments by wireless providers is commonplace – and zoning authorities can be aggressive in varying degrees among different localities.

IV. FCC and State Foreign Ownership Regulations

For foreign telecom investors, there are still more hurdles, including foreign ownership restrictions on radio spectrum, U.S. homeland security requirements, cross-border privacy rules, and Congressional oversight, such as the Committee on Foreign Investment in the U.S. ("CFIUS"). In some foreign jurisdictions, especially in Russia, Eastern Europe, and the Middle East, the current geopolitical climate exacerbates these concerns.

1. FCC Regulation – Foreign Ownership or Control Transfer. Russian investors seeking control transfer authority over FCC regulated carriers can expect to undergo expanded "International 214" (47 U.S.C. § 214) scrutiny on foreign ownership of common carrier facilities. The review will almost certainly not be "streamlined" under the 14 day notice period but will undergo multi-agency ("Team Telecom") review. This expanded review includes that of the FCC, Justice Department (DOJ), the Department of Homeland Security, and the FBI.

There are statutory prohibitions on direct or indirect foreign ownership of wireless spectrum (47 USC §310(d)): that of a licensee may not exceed 20%. The FCC has statutory authority to limit foreign ownership of a licensee's direct or indirect owners to 25% if doing so is in the public interest.

2. State and Local Entry Regulation of Foreign Telecoms Ownership. As indicated, state entry regulation of telecommunications carrier (foreign or otherwise) is largely preempted and many foreign carriers operate in the U.S. through domestic affiliates. States do retain "police powers," local rights-of-way authority, and other authority finance regulations vary by state. That said, economic investment (again, whether foreign or otherwise) – especially in rural areas – is often encouraged.

V. Other Foreign Ownership Barriers to U.S. Telecom Investments

Finally, there are a host of other foreign ownership barriers to foreign investment in U.S. infrastructure. Russian investors can expect to see full scrutiny here including:

---

[16] *In re: Accelerating Wireline Broadband Deployment by Removing Barriers to Infrastructure Investment, etc.*, Third Report and Order and Declaratory Ruling, WC Docket Nos. 17-84, 17-79 (Rel. Aug. 3, 2018).

1. Expanded investment scrutiny on foreign investment under statutory amendments to CFIUS (FIRRMA regulations);
2. Foreign Agency Registration Act (FARA);
3. Cross-border money transfer regulations; both federal – Financial Crimes Enforcement Network (FINCEN) regulations (including "knowing your customer" (KYC) and state money transmitter laws.

Importantly, failure to comply with these regulations can trigger draconian penalties. There are ways, however, to secure governmental confirmation regarding such compliance, a very important topic that will be discussed during our webinar.

Please do not hesitate to contact us if you have any questions, or would like further information.

Negotiable Hostilities: Doing Telecom Deals with Russia in the Sanctions Era

CONTINUING LEGAL EDUCATION
THOMSON REUTERS

Sapronov & Associates, P.C.
5555 Glenridge Connector, Suite 200
Atlanta, Georgia 30342
www.wstelecomlaw.com
(770) 399-9100

Negotiable Hostilities: Doing Telecom Deals with Russia in the Sanctions Era

- Introduction
- Foreign Ownership Restrictions
- State / Local Restrictions
- Statutory Restrictions on Foreign Investment
- Cross-border Financing Regulation
- Navigating Foreign Investment Deals
- Round Table Discussion

INTRODUCTION

- Overview: Foreign Ownership Restrictions on U.S. Wireless & Telecom Infrastructure
  - Federal, state and local regulation
    - Federal Telecommunications Act (47 U.S.C.)
    - Federal Communications Commission (FCC)
    - Entry/Exit Regulation 47 USC 214 (“International 214”)
    - Wireless Licensing/Control Transfer (“Title III”)
    - Submarine Cable Landing rights
    - State public utility commission rate/entry/financing regulation
    - Municipal cable and telecom franchise regulation, zoning authority

INTRODUCTION *(Cont.)*

- Overview: Foreign Ownership Restrictions on U.S. Wireless & Telecom Infrastructure *(Cont.)*
  - Unregulated: broadband internet access - (for now)
    - FCC Partially upheld by D.C. Circuit Court of Appeals, Mozilla Corp. v. FCC & USA, No. 18-1051 (D.C. Cir.)
    - (Petition for En Banc Review Pending)
    - Obama-era Open Internet ("Net Neutrality") Rules dismantled by Republican controlled FCC(*)
  - Unsettled: pole attachments / state net neutrality laws /satellite "C Band"

(*) See Overview of the Restoring Internet Freedom Order, Feb. 5, 2018, Thomson Reuters Podcast, Available at http://westlegaledcenter.com/program_guide/course_detail.jsf?videoCourseId=100204569&ADMIN_PREVIEW=true

Foreign Ownership Restrictions

- Foreign ownership restrictions
  - Expanded Section 214 scrutiny on foreign ownership (landline/wireless) - "Team Telecom" Multi-agency review (FCC, Department of Justice, Department of Homeland Security, FBI)
  - Statutory caps on foreign wireless spectrum ownership 47 U.S.C. §310(d)
    - No more than 20% direct
    - No more than 25% indirect if FCC refuses based on public interest

State / Local Restrictions

- State / Local Restrictions
  - Entry regulation (foreign or otherwise) largely preempted
  - But "police powers," local rights-of-way authority, finance regulations vary by state
  - State Attorneys' General have Clayton Act merger enforcement authority (*e.g.*, T-Mobile / Sprint litigation)
  - But economic investment – (foreign or otherwise) especially in rural areas – often encouraged.

Statutory Restrictions on Foreign Investment

- Expanded investment scrutiny on foreign investment under statutory amendments to CFIUS (FIRRMA regulations)
- Foreign Agency Registration Act (FARA)
- Implications for Russian investment transactions (Discussion)

Cross-border Financing Regulations

- Sanctions and counter-sanctions
- Cross-border money transfer regulations
  - Financial Crimes Enforcement Network (FINCEN)
  - Money transmitter laws under U.S. state laws and foreign jurisdictions
- Know Your Customer (KYC) regulations
- Other

Cross-border Financing Regulations *(Cont.)*

- EU Sanctions
  - Brief historical overview
  - Special Focus:
    - Synopsis
    - Diplomatic Measures
    - Restrictive measures (asset freezes and visa bans)
    - Restrictions for Crimea and Sevastopol
    - Measures targeting sectoral cooperation and exchanges with Russia ("economic" sanctions)
    - Measures concerning economic cooperation
  - Update and extension

Cross-border Financing Regulations *(Cont.)*

- Russian Counter-Sanctions: How Do These Impact Telecoms Market?
- Inbound Investments:
  - Restrictions on foreign investment:
    - Foreign Investments Law 160-FZ, dated July 9, 1999 (as amended)
    - Strategic Investments Law 57-FZ, dated April 29, 2008 (as amended)
    - Safety of Critical Information Infrastructure Law No 187-FZ, dated July 26, 2017

Cross-border Financing Regulations *(Cont.)*

- Russian Counter-Sanctions: How Do These Impact Telecoms Market *(Cont.)*?
- Counter-Sanctions:
  - Federal Law “On counter-measures in respect of unfriendly acts of the United States of America and other foreign states” 127-FZ, dated June 4, 2018
  - Federal Law On Special Economic Measures and Enforcement Measures 281-FZ, dated December 30, 2006
- Information Disclosure (Exemptions)

- Reducing U.S. Telecom Regulatory Risk
  - Private carrier exception to entry regulation
    - Avoid 214 entry regulation
    - Regulatory control transfer avoidance
      - (Exercise upon default only)

Navigating Foreign Investment Deals
What is Permitted; What is Not *(Cont.)*

- Spectrum financing
  - "LicenseCo" Structure
  - Use Special Purpose /Bankruptcy Remote Entity

- Security Interests/Investment protection
  - License proceeds only
  - Subordination / Inter-creditor agreements

Navigating Foreign Investment Deals
What is Permitted; What is Not *(Cont.)*

- Due diligence / Dealing with U.S. Regulators
- Deal Protection - Foreign / Russian investor perspective
  - Russian investor perspective in the U.S.

Round Table Discussion

15

- Opportunities in U.S. Wireless / telecom assets - how attractive?
  - “5-G” rollout / rural markets /FCC low interest rates /real property (data centers) /distressed assets
  - Worth the risk?
- Geopolitical outlook
  - Impact of U.S. 2020 election
  - Would Republican or Democratic control be better for Russian investors?
- Key takeaways

Walt Sapronov

770.399.9100
wsapronov@wstelecomlaw.com

Walt Sapronov has represented corporate clients in telecom transactions, regulation and privacy for over thirty years. He has been named in Georgia Super Lawyers and in the International Who's Who of Telecom Lawyers. Together with his Firm, Sapronov & Associates, P.C., he has negotiated commercial telecom contracts with every major telecom carrier in the U.S. and with many abroad. The Firm also supports clients in privacy compliance before the FCC, the FTC, EU and state regulatory agencies. Mr. Sapronov is a frequent conference speaker and has authored numerous publications on telecommunications law.

For more information, please visit: www.wstelecomlaw.com

Paul Kouroupas

For over twenty years, Mr. Kouroupas has represented a variety of companies in telecommunications and energy/transportation before local, state, federal, and international regulators. Mr. Kouroupas has successfully prosecuted hundreds of State, federal, and international regulatory proceedings with a direct impact on corporate financial and operational performance, served as an expert witness in over 30 state regulatory proceedings, testified before numerous state legislatures, and spoken at industry conferences around the world. While at Global Crossing, Mr. Kouroupas obtained CFIUS approval for multiple transactions and served as Security Officer under Global Crossing's Network Security Agreement.

pkouroupas@wstelecomlaw.com
770.399.9100

Daniel B. Pickard

202.719.7285
dpickard@wileyrein.com

Dan counsels U.S. and international clients on the laws and regulations governing international trade, with particular emphasis on import remedy, anti-bribery, national security, and export control issues. He represents and advises clients in matters related to trade remedy investigations (including antidumping, countervailing duty, and safeguard cases), U.S. economic sanctions, export controls, anti-boycott measures, and the Foreign Corrupt Practices Act (FCPA). Dan provides comprehensive international trade law compliance guidance, including assessing and resolving sensitive national security matters; developing corporate compliance programs; establishing compliance with the National Industrial Security Program (NISP) and mitigating Foreign Ownership, Control, or Influence (FOCI) issues; conducting internal investigations relating to potential violations; and appearing before the relevant agencies in connection with investigations, licensing, and enforcement actions. He also teams with the firm's Election Law & Government Ethics Group to provide guidance pertaining to the Foreign Agents Registration Act (FARA).

James Kevin Wholey

Phillips Lytle LLP

Mr. Wholey has broad experience at the intersection of federal government, national security and international business. His specific focus is on the legislative, policy and compliance issues involved in international investment, trade and business development. Through his international business and federal government relations practice, he assists clients with transnational compliance matters (Foreign Corrupt Practices Act, EAR, ITAR, export licensing and involvement with various sanctions regimes) and works frequently with the Administration and Capitol Hill. He spent more than a decade as a senior staff member for several U.S. senators, including three years as chief of staff to then-Senate Leader Bob Dole (R-KS), for whom he also handled trade and telecommunications issues.

jwholey@phillipslytle.com
202.617.2714

Alla Naglis

KING & SPALDING

+7 495 228 8504
anaglis@kslaw.com

Alla Naglis is a partner with King & Spalding's Moscow office. She has over 20 years of advising on a daily basis major U.S., European and Russian companies on virtually all aspects of media and entertainment industry, telecommunications, e-commerce and IT, technology and know-how protection; and data privacy and security issues. The scope of her expertise ranges from counselling and contractual matters to regulatory advice and representation of clients in courts and arbitration. In data privacy area, her experience includes counseling on internal compliance policies and audits for major international players, as well as compliance checks of local vendors or partners. Ms. Naglis has been consistently ranked as one of the leading Russian TMT lawyers.

Maxim Khlopotin

Mr. Khlopotin, of counsel to Sapronov & Associates, is a multi-lingual Associate at the Law Firm "Degroux Brugère" based in Paris. He advises international and domestic companies and investments funds on Private Equity, M&A and capital investment. He is also experienced in the fields of leveraged buyout acquisitions (LBO). Prior to joining Degroux Brugère, he practiced with Neptune AARPI (2015-2019) and then Luchtenberg Avocats.

Mr. Khlopotin is a dual French-Russian national and speaks French and English fluently in addition to his native language of Russian. He is licensed to practice in France as qualified attorney (avocat) and in Russia as a legal counsel.

For further information, please visit: http://www.degrouxbrugere.com/maxim-khlopotin

mkhlopotin@wstelecomlaw.com
770.399.9100

III. Investment in U.S. Telecommunications and Wireless Infrastructure: What Investors Need to Know

Investing in U.S. Telecommunications and Wireless Infrastructure

Introduction

The anticipated deployment of wireless fifth generation ("5-G") infrastructure in the U.S. is a priority for telecommunications carriers, equipment manufacturers, and other wireless technology vendors, as well as for policymakers and regulators. As 5-G technology evolves, there is expected to be increased demand for cell sites to support the infrastructure needed to carry wireless signals.

This infrastructure generally consists of radios, radio spectrum, fiber, roof tops, towers, poles (and pole attachment rights), data centers, and network facilities – all located on public and private property. Public property owners are typically municipalities that own public right-of-way that house utility poles and conduit for fiber-optic telephone lines. Private property owners are typically landlords that enter into long term leases, easements or other contracts with telecommunications carriers for placement of the carrier's towers, radios, antennas, and other wireless devices on the landlord's property.

Investment Opportunities

The build-out of 5-G networks is expected to require huge investment – by some estimates, $225 Billion between 2019 and 2025. These include strategic investments in telecommunications carriers and other operators, wireless and wireline, as well as financial investments in 5-G infrastructure. Opportunities also may arise in merger and acquisition ("M&A") transactions, as well as in debt and equity financing for 5-G and other network build-outs. Such financing arrangements include vendor financing, loan syndication, high-yield debt and, of course, traditional venture capital and other "start-up" funding.

Importantly, investment opportunities will also arise for public and private property owners, essentially serving as landlords for infrastructure providers seeking franchises, leases, or other property rights to use the property for long term periods (typically 10 to 20 years). For municipalities, such property rights typically take the form of a franchise agreement with the telecommunications (or cable) provider that often must be approved by a city ordinance. For private property owners, the rights granted to the provider typically take the form of a long term lease, easement or both.

In recent years, landlord investment opportunities have grown as AT&T, Verizon, and other major carriers are rapidly expanding their wireless networks, thus increasing both the demand for cell sites and the leasing opportunities for landlords that control them.

Moreover, major carriers today face competition in the quest for cell site access – not just from each other, but from nationwide operators such as Crown Castle, American Tower, and others. Many cell sites are owned and controlled by such "middle men." The larger ones operate nationwide, having accumulated ("rolled up") large numbers of leasehold and other property rights for the placement of towers, antennas and other infrastructure. As part of the roll-up, they often take an assignment of the carrier rental stream for existing roof-top licenses from the building owner, thus effectively stepping into the site lease as a substitute lessor. That leaves wireless carriers such as AT&T, Verizon, *et al.*, with long-term, escalating payment obligations to the nationwide cell site operators.

Recently, as the demands for wireless infrastructure has grown, carriers are increasingly seeking to lessen their dependence on Crown Castle and other middle men by negotiating new site lease agreements directly with the property owners. That in turn provides landlords with leverage to negotiate longer "roll-up" deals with the middle men – especially if the transaction involves multiple cell sites spread across various geographic locations or (ideally) cell sites spread nationwide.

In short, as 5-G networks evolve, the correlating demand for cell site access is expected to continue to create investment opportunities. The same holds true for pole attachment rights, rights-of- way, antenna placement, and fiber, all of which comprise today's wireless infrastructure. Other factors affecting these opportunities are discussed below.

Regulatory Obstacles

Not to be overlooked, a major hurdle facing foreign telecom investors is the complex U.S. regulatory environment, with federal, state and local authorities exercising overlapping jurisdiction over wireline and wireless telecommunications. Regulatory approval is often required not just for carrier M&A, but in the case of telecom investors, for control transfers, assignments, debt incurrence, securities issuances, and foreclosure remedies - all potentially applicable to telecom investment deals.

For foreign telecom investors, there are still more hurdles, including foreign ownership restrictions on radio spectrum, U.S. homeland security requirements, cross-border privacy rules, Congressional oversight, and the Committee on Foreign Investment in the U.S. ("CFIUS"), an interagency group that reviews all foreign investments in the U.S. In some foreign jurisdictions, especially in Russia, Eastern Europe, and the Middle East, the current geopolitical climate exacerbates these concerns.

A brief outline of U.S. regulations potentially applicable to foreign telecom investment – along with alternative ways to address them - is provided in Part II below.

Vendor and Project Financing

Regardless of the outcome of the Sprint / T-Mobile merger, there could be ample opportunities for investors. Among these are vendor finance and other secured financing opportunities.

A word of caution: beware of the Nortel vendor finance (self funding) model of the Internet bubble days. The Nortel bankruptcy shows that separation of vendor and lender can be a good thing in such circumstances. Investor opportunities here, supported by inter creditor / subordination agreements, are quite possible. Understanding the risks of taking security interests in regulated collateral (possibly shared among syndicated lenders) is of course a must.

Russian Investment

Finally, for would-be Russian investors, the current geopolitical climate exacerbates these concerns. Against this backdrop, our Firm is seeking to expand its practice to represent foreign institutional investors - particularly those in Russia and other Eastern European counties – seeking U.S. telecom investment opportunities. Our Firm's collective experience in representation of foreign investors goes back to the 1980's and break-up of the Bell System. We have represented numerous institutional and strategic investors, both U.S. and foreign, in telecom finance transactions. This experience, as well as native Russian language fluency and cultural familiarity, makes us especially well suited to assist in these efforts.


SAPRONOV
and Associates, P.C.
ИНВЕСТИЦИИ
В ТЕЛЕКОММУНИКАЦИИ
И БЕСПРОВОДНУЮ
ИНФРАСТРУКТУРУ США
5555 Glenridge Connector, Suite 200
ATLANTA, GA 30342
Phone: (770) 399-9100
1875 I Street, NW 5th Floor
WASHINGTON, D.C. 20006
Phone: (202) 429-2055
10 Vozdvizhenka Street
MOSCOW,
RUSSIA 125009
www.wstelecomlaw.com

КОНФИДЕНЦИАЛЬНО – НЕ ДЛЯ РАСПРОСТРАНЕНИЯ

SAPRONOV & ASSOCIATES, P.C.
ATTORNEYS AT LAW

info@wstelecomlaw.com
www.wstelecomlaw.com

1300 I STREET, NW, SUITE 400
WASHINGTON, D.C. 20005
TEL. 770.309.0462

5555 GLENRIDGE CONNECTOR
SUITE 200
ATLANTA, GEORGIA 30342
TEL. 770.399.9100

10 VOZDVIZHENKA STREET
MOSCOW, RUSSIA 125009
+7 985 920-89-93

Инвестиции в телекоммуникации и беспроводную инфраструктуру США: Краткое резюме[1]

I. Вступление

Развитие инфраструктуры[2] беспроводной связи пятого поколения (далее "5-G") приоритетно для операторов связи, производителей оборудования и других поставщиков беспроводных технологий в том числе для законадателей и регулирующих органов. По мере развития технологии 5-G ожидается увеличение спроса сотовых точек для поддержки другой инфраструктуры, необходимой для обеспечения передачи беспроводных сигналов.

Эта инфраструктура включает в себя радиостанции, радио частоты, оптоволокно, крыши зданий, вышки, столбы (право их использования), а также центров обработки данных и сетевых объектов. Они могут располагаться на территориях государственной собственности или частных владельцев. Государственная собственность принадлежит муниципалитетам, к их собственности относятся дороги, коммунальные хозяйства и каналы для прокладки телефонных линий. Владельцы частной собственности это физические лица (владельцы той или иной собственности), которые могут заключать долгосрочные контракты с поставщиками телекоммуникационных услуг с целью использования их собственности для размещения на ней вышек, радиостанций, антенн и других беспроводных устройств.

1 Это резюме не является ни юридическим заключением, ни юридической консультацией. Если у вас есть вопросы относительно данного заявления, пожалуйста свяжитесь с нами 2 Для получения общей информации о технологии 5-G смотрите: IEEE, 5-G New Radio, A New Standard и обнавление, https://www.comsoc.org/education-training/training-courses/online-courses/2019-06-5g- new-radio-new-standard-and-industry.

II. Инвестиционная привлекательность

Приход на рынок 5-G принесёт беспрецедентные инвестиционные возможности, включающие в себя инвестиции в телекоммуникации и других операторов проводной и беспроводной связи, равно как и финансовые инвестиции в инфраструктуру 5-G («Telecom Investments»). Инвестиционные возможности также могут проявляться как в слиянии и поглащении («M & A») существующих компаний в данном секторе, так и в инвестициях в основной капитал этих компаний. Существующие механизмы финансирования также могут включают в себя финансирование поставщиков, предоставление синдицированного кредита, вложение в высокодоходные ценные бумаги, привлечение венчурного капитала и другие методы финансирования.

Важно отметить, что инвестиционные возможности появятся для владельцев всех форм собственности в качестве арендодателей для компаний, претендующих на франшизу, аренду и других прав собственности на долгосрочный период (10–20 лет). Для муниципалитетов это выражается в соглашении о франшизе с телекоммуникационным (или кабельным) провайдером, который должен быть утвержден соответствующим постановлением. Для владельцев частной собственности – в форме долгосрочной аренды, сервитута или того и другого.[3]

В настоящее время в связи со стремительным развитием беспроводной связи таких гигантов как AT&T, Verizon резко возросли соответствующие инвестиционные возможности. На сегодняшний день, множество существующих сотовых точек принадлежат и контролируются национальными операторами, такими как Crown Castle, American Tower и другими более мелкими компаниями-посредниками. Эти компании-посредники работают по всей стране, сконцентрировав вокруг себя большое колличество прав на аренду и других прав собственности на размещение вышек, антенн и другой необходимой инфраструктуры. В качестве одной из функций компании-посредники принимают на себя обязательсва по взиманию арендной платы с телекоммуникационных компаний и передачи её части владельцам коммерческих зданий и сооружений, на крышах которых расположены телекоммуникационные вышки и соответствующее оборудование; тем самым фактически вступая в договор аренды/субаренды в качестве субарендодателя. В последнее время, из-за возросшего спроса на беспроводную инфраструктуру, операторы все чаще стремяться уменьшить свою зависимость от Crown Castle, American Tower и других компаний-посредников, стараясь заключать договора об аренде напрямую с владельцами собственности. Точнее сказать происходит прекращение дальнейшего сотрудничества с компаниями-посредниками, особенно если несколько сотовых сайтов расположены в разных концах страны.

Для общего обсуждения переговоров по ожидаемым соглашениям между арендодателями и поставщиками услуг 5G , см.W. Sapronov and R. Turner III, “Key Points for Negotiating 55-G Cell Site Contracts”, Law 360, Expert Analysis, March 20, 2019, https://www.law360.com/articles/1140884/key- points-for-negotiating-5g-cell-site-contracts (копия прилагается).

III. Законодательные барьеры

Препятсвием для инвестирования в сферу телекоммуникаций является сложная нормативно-правовая среда США с федеральными, штатными и местными властями , которая осуществляет юридический контроль над проводной и беспроводной телекоммуникациями. Одобрение контролирующих органов зачастую требуется не только для операций по слиянию и поглощению, но и для контроля денежных переводов, назначения на ключевые руководящие должности, перевода долга и уступки права требования, выпуска ценных бумаг защитного периода в случае банкротства – все выше перечисленное может быть применимо не только в инвестирование в телекоммуникационный сектор, но и во многие другие.

Для иностранных инвесторов в сферу коммуникаций существуют другие ограничения, связанные с владением радиочастотами, различного рода требованиями Агенства национальной безопасности США, международными правилами конфиденциальности и надзор Комитета по иностранным инвестициям Конгресса США (“ CFIUS”). Для потенциальных российских инвесторов нынешний геополитический климат усугубляет эти опасения.

IV. Наш опыт

Однако в свете этого наша фирма расширяет практику представления интересов американских и иностранных институциональных инвесторов в особенности из России и других восточноевропейских стран тем самым расширяя их 5-G инвестиционные возможности. Опыт нашей фирмы в составлении и сопровождении коммерческих контрактов, операций по слиянию и поглощению, финансированию и созданию совместных предприятий , поисках возможностей для инвестиций в сферу телекоммуникаций составляет суммарно более 30 лет перед любыми инстанциями и органами власти. Наши возможности включают в себя свободное владение русским языком , знание культуры и менталитета, что делает нас конкурентоспособными в сотрудничестве с иностранными инвесторами из Российской Федерации.

Дополнительная информация будет предоставлена по вашему запросу. Пожалуйста свяжитесь с нами www.wstelecomlaw.com или wsapronov@wstelecomlaw.com или kdarmody@wstelecomlaw.com.

IV. Phillips Lytle LLP Client Alert: New U.S. Team Telecom Takes Aim at China Investment

New U.S. Team Telecom Takes Aim at China Investment

Recent regulatory actions appear to place the Federal Communications Commission (FCC or "Commission") at the spearhead of an increasing "whole-of-government" effort to address the risks of Chinese investment in U.S. telecommunications networks, technology and critical data.

On April 24, 2020, the FCC unanimously issued Orders to Show Cause against four state-related Chinese telecommunications companies: **China Telecom (Americas) Corporation**; **China Unicom (Americas) Operations Ltd.**; and **Pacific Networks Corp.** and its wholly owned subsidiary, **ComNet (USA) LLC**. The Commission directed that within 30 days, the companies show why their U.S. operating authorities should not be revoked (China Telecom Americas is the U.S. subsidiary of a state-owned Chinese company; Pacific Networks is a wholesale reseller of voice and data to U.S. operators; ComNet offers global SIM card, termination and calling card services). FCC Chairman Ajit Pai cited concerns regarding "national security and law enforcement risks" as the basis for the Commission's orders.

This is far from the first FCC action against a Chinese telecommunications company on that basis; on May 9, 2019, the Commission unanimously denied the Section 214 (international operating license) of **China Mobile USA**, finding that its Chinese state ownership resulted in an unacceptable national security risk. *34 FCC Rcd 3361 (4).*

However, it does represent the first official interaction involving a new government entity with the acronym-resistant title, "Committee for the Assessment of Foreign Participation in the United States Telecommunications Services Sector ("Committee")." Dubbed by some as "CFIUS (Committee on Foreign Investment in the United States) for Telecoms," the Committee (established by President Trump's Executive Order on April 4, 2020) in fact formalizes a long-standing ad hoc interagency process known less formally as "Team Telecom," which reviews foreign investments in the U.S. telecommunications industry. The Committee includes representatives of the Commerce, Treasury, Defense, Homeland Security and Justice Departments. It may also include the head of any other executive department or agency, or White House official the President deems appropriate in a given case. The Executive Order gives the Committee jurisdiction to review both existing licenses and new applications. In addition, the Executive Order directs the involvement of the Director of National Intelligence, who must (among other things), provide an Intelligence Community threat assessment on a matter within 30 days of the Committee's request.

Such time limits are a novel attribute of the new Team Telecom's mandate; while under the previous ad hoc process, Team Telecom referrals (notably the China Mobile review) have sometimes taken years to get to the FCC. The Executive Order imposes a 120-day period for the Committee to make its initial reviews and recommendations, with an additional 90 days if a secondary review is warranted.

In this instance, that was unnecessary. The new entity, chaired by the Attorney General, lost no time; just days after inception, the entity sent a letter on April 7, 2020, recommending and requesting that the FCC urgently consider revoking the licenses of China Telecom Americas. The Commission promptly took matters further by including the other companies in the Orders to Show Cause.

The concern regarding Chinese investment in this sector centers on (1) the risks seen in Chinese state ownership and exploitation of its companies' positions to collect (or reroute) critical information and gain access to telecommunications technologies; and (2) the so-called Chinese "intelligence law" which, while not perfectly understood, is broadly believed to obligate private Chinese companies to provide, upon demand, whatever information they collect – or to which they have access – to Chinese state security.[1]

In responding to the FCC's Order, these concerns pose particular challenges for the subject companies. In a "show cause" proceeding, the burden is on the incumbents to show why these concerns do not or should not apply. It's not easy to envision how that burden can be met here. For one thing, the simple fact of China Telecom Americas' state ownership is unlikely to change. As to mitigation agreements regarding reducing the risk involving the "intelligence law," none of the other companies appear to be in a position to alter or selectively avoid compliance with Chinese law. Additionally, based on the record, assurances on this point are unlikely to be accepted. In his letter seeking action against China Telecom Americas dated April 7, 2020, the Attorney General specifically referred to the company "failing to honor" the terms of its Letter of Assurance to the FCC regarding transparency and data security in its 2007 licensing proceeding.

Concern about these companies is evidently bipartisan. Back on September 16, 2019, the FCC received a letter co-signed by Senators Charles (Chuck) Schumer (D-NY) and Thomas (Tom) Cotton (R-AR) – a notable event in itself – asking the Commission to consider a proceeding reviewing the licenses of China Telecom Americas and China Unicom. Congressional support seems likely for any revocations the FCC might order in this case.

These FCC Orders, and the formalization of Team Telecom, come on the heels of other recent administration action. As described in an earlier Alert, President Trump recently ordered the unwinding of a Chinese company's (Beijing Shiji Information Technology Co. Ltd.) acquisition of a U.S. hotel guest-management software company (StayNTouch, Inc.) after CFIUS review. This came under new regulations specifically governing foreign investment in U.S. companies collecting or maintaining "sensitive personal data" of U.S. citizens (31 CFR Sec. 800.241). While the regulations are not by their terms Chinese-specific, the recent Order follows a series of (pre-regulations) CFIUS-ordered divestitures of Chinese investments in U.S. data-collecting enterprises (e.g., in June 2019 regarding Beijing Kunlun Wanwei Technology Co., Ltd. and U.S. dating application, Grindr).

Taken together, these actions and new regulations clearly indicate a crystallizing consensus at the highest levels of the administration that, no matter the financial benefits, Chinese-backed investment in certain areas constitutes an unacceptable national security (broadly defined to include intelligence, intellectual property, economic interests, and exploitable personal information) risk. Moreover, with telecommunications and network access now seen as the focus of that risk, the FCC finds itself central to U.S. steps to confront it.

This may have an impact on merger and acquisition strategies going forward. Because of the close correlation of data access with telecommunications networks, it's very possible that a proposed acquisition or investment could face both CFIUS and Team Telecom/FCC scrutiny. The timelines, legal efforts and expense – and potential mitigation options involved in such reviews – should be

1 This latter concern among others underlies the U.S. administration's sustained efforts to effectively outlaw **Huawei** and **ZTE**, and to persuade allies from incorporating Huawei equipment in their buildout of 5G networks. See Letter of Attorney General Barr to FCC Chairman Pai, Nov. 14, 2019: "Their own track record, as well as the actions of their government, indicate that Huawei and ZTE cannot be trusted." Also at issue in that matter were both companies' violations of U.S. -Iran sanctions.

built into the planning and legal guidance for such transactions.

Conclusion

As the U.S. emerges from the current pandemic-induced slowdown, American telecommunications companies will likely seek new capital and distribution alliances, and at possibly distressed price levels, might well present an attractive value for prospective foreign investment. From the foregoing, however, it's clear that such companies and investors will need to recognize the heightened regulatory hurdles for any such deal for capital from, or strategic relationships involving, a Chinese source (particularly state-connected).

Investors should be prepared to accept that pursuing such opportunities will entail – now as a matter of deliberate U.S. policy – extensive, expensive and protracted regulatory review, with lengthening odds against success. Borrowing a phrase from the trade compliance world, for now there appears a "presumption of denial" – with the path to overcoming such a presumption seeming ever-steeper.

Additional Assistance

For further assistance, please contact James Kevin Wholey or the Phillips Lytle attorney with whom you have a relationship. ■

Phillips Lytle LLP

Albany Omni Plaza 30 South Pearl Street Albany, NY 12207-1537 (518) 472-1224
Buffalo One Canalside 125 Main Street Buffalo, NY 14203-2887 (716) 847-8400
Chautauqua 201 West Third Street Suite 205 Jamestown, NY 14701-4907 (716) 664-3906
Garden City 1205 Franklin Avenue Plaza Suite 390 Garden City, NY 11530-1629 (516) 742-5201
New York City 340 Madison Ave 17th Floor New York, NY 10173-1922 (212) 759-4888
Rochester 28 East Main Street Suite 1400 Rochester, NY 14614-1935 (585) 238-2000
Cleveland, OH One Cleveland Center 1375 E. 9th Street 30th Floor Cleveland, OH 44114-1797 (216) 928-3474
Washington, DC 1101 Pennsylvania Avenue NW Suite 300 Washington, DC 20004-2514 (202) 617-2700
Canada The Communitech Hub 151 Charles Street West Suite 100 The Tannery Kitchener, Ontario N2G 1H6 Canada (519) 570-4800

V. Sapronov & Associates, P.C. - Firm Summary

SAPRONOV & ASSOCIATES, P.C.
ATTORNEYS AT LAW

info@wstelecomlaw.com
www.wstelecomlaw.com

1300 I STREET, NW, SUITE 400
WASHINGTON, D.C. 20005
TEL. 770.309.0462

5555 GLENRIDGE CONNECTOR
SUITE 200
ATLANTA, GEORGIA 30342
TEL. 770.399.9100

10 VOZDVIZHENKA STREET
MOSCOW, RUSSIA 125009
+7 985 920-89-93

Firm Summary

Sapronov & Associates, P.C., an AV Peer Review Rated Law Firm, has decades' long experience in the representation of corporate and institutional clients - including some of the largest in the U.S. and abroad – in telecommunications and broadband transactions, mergers & acquisitions, financing (domestic and cross-border), bankruptcy, privacy and regulatory compliance. Firm shareholder Walt Sapronov has been named in Georgia Super Lawyers and in every edition of Who's Who Legal: Telecoms & Media since its first publication. Our Firm regularly sponsors webinars and other events (most recently with Thomson Reuters), including seminars for Law Seminars International, the Center for International Legal Studies (CILS) and (in years past) the PLI series of Telecom Mergers, Acquisitions and Financing publications.

Notably, our Firm includes attorneys with native Russian fluency and extensive European transactional experience. In January, 2020, we opened an office in Moscow, Russia, through which we assist clients in cross-border transactions. In the future, even as the world struggles with the Covid pandemic, we hope to expand our presence in Central Europe. For more information, for copies of our prior alerts or publications, or to join our mailing list, please visit us at wstelecomalw.com, contact kdarmody@wstelecomlaw.com or call us at 770.399.9100.

PRACTICE SYNOPSIS

Broadband/Telecom Transactions - The Firm represents clients in a wide variety of telecom transactions, including complex commercial transactions for enterprise and wholesale sourcing, *e.g.*, managed service, equipment, wireless backhaul, data center, fiber buildout, satellite, IP networks, Internet and broadband access agreements. Our experience dates back to the AT&T Consent decree, spans a wide variety of wireless and wireline technologies, and covers negotiations with every major domestic telecommunications carrier - with many abroad. We have successfully negotiated telecom contracts with a cumulative deal value of well over a Billion Dollars.

Wireless - We have a wide array of experience that includes representation of every major wireless provider in the U.S. – including mobile service providers such as SouthernLINC Wireless, T-Mobile USA, Leap Wireless/Cricket (now AT&T) – as well as early cellular, paging, and specialized mobile service companies (including AT&T Wireless, Nextel, Mobile-Media/Arch, and Bell Atlantic Nynex Mobile (now Verizon)).

Our experience also includes wireless infrastructure, including negotiation of Distributed Antenna System (DAS) agreements supporting both LTE and 5-G for a recently built, state-of-the art sports stadium. Other wireless infrastructure experience includes a nationwide Wi-Fi buildout for the largest corporate housing providers, Wi-Fi network agreements for a major U.S. airport, and LTE network buildout for a wireless affiliate of a large utility holding company.

Perhaps most importantly vis-a-vis today's technology trends, we have "hands on" experience in the negotiation of transactions involving a critical new wireless technology ("5-G"). See https://www.youtube.com/watch?v=WBamix6mM9Q.

Telecom Regulatory - Firm attorneys' regulatory experience – going back to the 1980s - includes client representation before the Federal Communications Commission ("FCC"), all public utility commissions throughout the U.S., and numerous other state and local governmental authorities affecting telecommunications related matters. We routinely assist clients with domestic and international entry, rate regulation, financing, administrative (including Universal Service Fund ("USF") reporting and payments) and other compliance. Clients include DSL, cable, and broadband wireless providers as well as "traditional" local and long distance, operator service and public communications providers. We also have extensive experience in local exchange interconnection negotiations, tariff and service guide preparation. The Firm also handles carrier entry/exit and control transfer applications, complex dispute resolution, settlement negotiations and complaint proceedings before the FCC, "Team Telecom," state utility commissions, and other governmental agencies.

Cross-Border Telecom Financing - Our Firm has extensive experience in the representation of foreign strategic investors in U.S. telecommunications markets – including such matters as project and vendor finance, security interests in regulated U.S. assets, inter-creditor (subordination) agreements with foreign lenders, securing regulatory approval for foreign ownership of U.S. wireless assets, and dealing with cross-border money transfer regulations. Recently, U.S. regulatory hurdles for foreign investors have expanded with new multi-agency scrutiny ("Team Telecom") of foreign participation in U.S. wireless, telecommunications and digital supply chain market sectors. With emphasis on deal protection, our Firm attorneys have represented both domestic and foreign counter-parties in such transactions.

In the future, we plan to expand our presence in Central and Eastern Europe as the new 5-G technology evolves here and abroad, representing both U.S. and foreign investors seeking to capitalize on this new opportunity. For more information on some of the new cross-border complexities, please see our alert *"Negotiable Hostilities – Part II: Telecom Deals with Foreign Investors in the Current Administration,"* included in this brochure.

Privacy - Our Firm has extensive experience in representing clients in compliance with the Electronic Communications Privacy Act, state wiretap laws, and EU privacy laws – including GDPR compliance. In recent years, we have advised clients on privacy implications in transactions requiring protection of personal information and other U.S. and foreign privacy rights. For a copy of our discussion on emerging Class Action jurisprudence in the EU, please see our publication, W. Sapronov; J. Srouji, *"Class Consciousness: Class Action Arbitration under U.S. and EU Privacy Laws"* TDM1 (2017), www.transnational-dispute-management.com/article.asp?key=2416.

Enterprise and Wholesale Sourcing: Procurement: Voice / Data / Managed Services / IP Telephony - The Firm's procurement practice includes complex commercial agreements for voice, data, managed services and other enterprise and wholesale sourcing agreements. In recent years, our experience has encompassed emerging IP technologies such as VOIP, MPLS, wireless and Broadband Internet access - with emphasis on crafting "SLAs" and other buyer protections when purchasing new technologies. We have represented clients in "state of the art" nationwide broadband wireless backhaul and fiber buildout transactions - as well as in large data center agreements, both in the U.S. and abroad.

Broadband / Cable / Wireless - The Firm's broadband, cable, and wireless practice includes building access, pole attachments, rights-of-way, cable telephony, fiber builds, DSL and wireless interconnection/access transactions - with leading edge experience in emerging broadband technologies: Voice-over-IP, Video (IPTV), Broadband Wireless access (Wi-Fi, WiMAX) and wireless backhaul.

Building Access / Multi-Tenant / Real Property - We have represented some of the largest landlords in the U.S. in building access transactions and regulation. Among these is a nationwide Wi-Fi agreement for the largest domestic corporate apartment manger. We routinely represent clients in rooftop and building access, riser cable, and "forced access" issues for both telecommunications and cable. On the provider side, we have represented broadband wireless providers in hub-and-rooftop access and lease agreements. We have represented shared tenant service providers in regulatory and transactional matters since the 1980s. Our experience also includes numerous "in the ground" transactions such as fiber leasing, indefeasible rights-of-use, pole attachments, rights-of-way franchises, easements, and dealings with municipalities.

Finance / M&A / Bankruptcy - The Firm has represented numerous clients in telecommunications finance, transfer of control and related transactions. Clients include private equity firms and hedge funds, as well as borrowers. Matters include multi-party telecom contracting for private equity portfolio companies, regulatory approvals for financing, securities, mergers and acquisitions, carrier build out and vendor financing, and distressed asset and claim purchases and other bankruptcy matters. We were extensively involved in the WorldCom bankruptcy and, more recently, advised various investors on the Windstream-Aurelius dispute.

Российские Телекоммуникации и Международное Финансирование

Анонсирование московского офиса и знакомство с нашей российской практикой.

Представляя инвесторов на внутреннем и внешнем телекоммуникационных рынках (”telecoms” на языке ЕС) более десяти лет и отвечая на запросы клиентов, мы решили расширить присутствие нашей фирмы в Москве, Россия. Мы рады сообщить, что к нашему новому московскому офису присоединится ряд российских адвокатов.

В это же время акционер фирмы русско-американского происхождения и свободно владеющий русским языком Уолт (Владимир) Сапронов посодействует процессу расширения. Это происходит конечно во время геополитической неопределенности и повышенной обеспокоенности США в отношении безопасности иностранных беспроводных поставщиков, глобальной гонки за беспроводное развертывание "5-G" и повышенных российско – американских международных инвестиционных барьеров. Представление интересов инвесторов в этой среде является «противоположной» игрой, по меньшей мере сложной.

Мы принимаем этот вызов. Инвестиционные возможности в беспроводной инфраструктуре США более чем компенсируют регуляторные барьеры и барьеры для международного ввода. Получить более подробную информацию о представительстве российских инвесторов в сегодняшней эпохе санкций/встречных санкций и других трудностей вы можете ознакомившись с публикацией этого сайта. Кроме того, смотрите наш недавний вебинар, спонсируемый Thomson Reuters.